

Family reunification legislation and migrant integration

Article 41 .1 of the Irish Constitution

The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

EU Directive 2003/86/EC of 22 September 2003 on the right to family reunification

Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

Minister of State with responsibility for Integration Policy – Conor Lenihan addressing the Seanad on 14/12/07

We must see our migrants as more than workers as they are not just units of the labour market

Much of the debate around immigration and integration has been centred on the theme of learning from other countries' mistakes. In his address to the Seanad on 14/12/2007 the Minister of State with Responsibility for Integration Policy, Conor Lenihan, referenced the often quoted phrase "We asked for workers, but instead we got people" - which referred to the infamous guest worker system in Germany which simply brought people in for their ability to supply labour without recognition of or provision for their wider human needs. Recognising and providing for the broader human and social needs of migrants is the key to getting immigration right and consequently to getting integration right.

The manner in which a new migrant enters and starts life in a society has a significant influence on that migrant's potential to become a full member of that society. Crosscare Migrant Project (CMP) sees human rights as being at the core of successful integration. Immigration legislation frames the terms under which the person enters the country and it also defines which rights the person has removed from them while they are living in the country. For this reason immigration legislation, policy and procedure have a huge role to play in facilitating integration. Immigration legislation needs to recognise the human and social needs of migrants and it needs to recognise the influence that family reunification rights can have in facilitating successful integration.

Along with access to Long Term Residency and Nationality, the Migration Integration Policy Index (MIPEX)¹ lists access to Family Reunification as one of the six indicators of successful integration policies. The Irish constitution was altered in 2004 to limit the right to nationality of children born in Ireland. Had we continued to live in a country that granted the same nationality to all children born here it could have facilitated integration significantly. While this opportunity is now gone it is important that we do not lose any other aspects of our constitution and remain true to the family dimension of Article 41.1. However MIPEX lists only 8 countries out of 28 where access to family reunification is worse than Ireland. <http://www.integrationindex.eu/integrationindex/2598.html> (16/1/08).

There are considerable weaknesses and contradictions in the current systems of family reunification in Ireland. This directly affects migrants but also Irish citizens with non-EEA family members in their attempts to build a family life in Ireland. The rights to family reunification of various categories and nationalities of person are unbalanced, unequal and unfair:

Issues with the system

- Various categories of immigrant who have legally lived and worked in Ireland for many years still have no guarantee that they will be able to bring their spouse and children to reside with them in Ireland; for example, work permit and long term residency holders and people with leave to remain on humanitarian grounds
- Irish citizens have no explicit right to family reunification for non-EEA family members (see Appendix 2 for more detail). Migrants who become Irish citizens do not gain any stronger rights to have their family reunification
- Those with refugee status lose their legal right to family reunification if they obtain Irish citizenship
- EEA citizens comprise the bulk of new immigrants to Ireland. However in 2007 the DJELR² downgraded the family reunification rights of EEA citizen workers in Ireland and left many non-EEA family members without stable immigration status

- People who have ‘IBC/05’ status have no stated right to family reunification³. There are approximately 17, 000 people with such status all of whom are parents of Irish citizens.
- Some of the most vulnerable immigrants – those with leave to remain on humanitarian grounds - have no explicit right to family reunification regardless of how long they have lived in Ireland
- In legislation (S.I. 656 of 2006) some categories of non-EEA family members of EEA nationals are guaranteed that the processing of their application for residency will be completed within 6 months of applying. There is no such guarantee for other categories

Recommendations

1. Clear, predictable and efficient pathways for family reunification should be available for all immigrants in Ireland regardless of their category of legal immigration status. That some categories of migrant do not have this right is inhumane and can lead to social exclusion and marginalisation for some people who are already in difficult situations. *Family units need be the core building block that our immigration system uses to contribute to an integrated Irish society.* More specifically formal and accessible family reunification options should be opened for those people who are resident in Ireland based on parentage of an Irish citizen and for those who have been granted Leave to Remain on humanitarian grounds
2. A legislative right should be granted for family members of Irish citizens to reside in Ireland regardless of the nationality of the family member. Such rights would not only provide fairness to Irish citizens whose rights are unbalanced compared to some categories of non-Irish citizens but also increase incentives for people to become Irish citizens. *Immigration and integration policy need to complement each other in this respect*
3. EU citizens comprise the bulk of new immigrants to Ireland. However the DJELR’s re-interpretation of EU directive 2004/38/EC has meant the dramatic downgrading of EU citizens’ rights to family reunification for non-EEA family members. This decision to re-interpret the directive should be reversed and *DJELR’s current court cases against these people should be dropped*
4. Similar to the regulations relating to processing periods in EU directive 2004/38/EC for residency applications by family members of EU citizens, all applications for family reunification to Ireland regardless of the nationality of the

person should be processed within 6 months. *Resources need to be put in place to facilitate defined and maximum waiting periods*

5. Along with pathways for all categories of immigrant to family reunification, accessible and detailed guidelines, procedures and forms for all people who wish to apply for family reunification are urgently needed. *The simple process of accessing information is not been adequately facilitated by INIS.* See CMP report on customer service and information provision of INIS at www.migrantproject.ie

The current system is contributing to division

Crosscare Migrant Project believes that if integration is to happen it will happen at an individual, family and community level. CMP believes that as a prerequisite for any successful attempt at integration the individual migrant needs to be facilitated to integrate. The individual's capacity to integrate is to a large extent defined by what social, economic and civil rights that person is allowed to retain on entry into their new country.

CMP believes that the level of integration achieved to date in Ireland is directly related to the level of human rights granted to migrants and that this will be the case into the future. Immigration and integration policies need to close the considerable divergence between the level of rights granted to Irish citizens in Ireland and the level of rights granted to new immigrants to Ireland. Currently there is a whole gradation of rights granted to various types of person in Ireland: from an Irish citizen at the top level to the asylum seeker who has most rights removed on entry into the country. These lower grades of rights will only continue to reinforce and exacerbate an already socially and economically divided and stratified society.

The right to family is one of the most fundamental of all rights and one which so many of us take for granted. CMP calls on all to advocate for immigration legislation that puts family reunification rights and thus integration at its core.

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Appendix 1. The rights of people to family reunification in Ireland

Refugees – have a right in legislation to family reunification under Section 18 of the Refugee Act 1996 (as amended). Processing time can take several years and commonly takes more than 12 months

EU citizens – up until 2007 non-EEA family members of EU citizens resident in Ireland could be granted residency based on S.I. 226 of 2006 which was introduced following EU directive 2004/38/EC. DJELR have this year subsequently decided to re-interpret this directive and are now refusing residency unless the non-EEA national has had previous permission to reside in another EU country – this retrospective decision has thrown the lives of thousands of people into chaos as it has prevented spouses from gaining residency in Ireland. There are a variety of such cases current being challenged in the courts and the EU Commission has given clear indications that it believes Ireland is contravening the directive. Processing time – must be completed by law within 6 months

Non-EEA nationals – Green Card Permit holders – the Employment Permits Act 2006 made provisions for the setting up of a Green Card Permit Scheme. Under this scheme the spouse of a Green Card Permit holder can apply for permission to work under the Spousal Permits Scheme – which waives the conditions of a regular work permit application. Current processing time – 4 weeks.

Irish citizens – no automatic right of residency for spouses or partners of Irish citizens. The current situation is convoluted and is carried out in an extremely inconsistent manner. It can take over 12 months for someone to have their application processed

Non-EEA nationals – Work Permit holders - Under the Work Permits scheme the spouse of someone who has held a work permit for 12 months or more can apply for permission to work under the Spousal Permits Scheme – which waives all the conditions of a regular work permit application. Current processing time – 4 weeks

People with leave to remain on humanitarian grounds

These people who are often in the most vulnerable and isolated of situations have no entitlement to Family Reunification. Requests can be made but they are rarely granted

People with ‘IBC/05’ status

Some 17,000 people applied for residency in Ireland in 2005 based on their Irish citizen child. In order to be granted this type of residency applicants were given no option but to sign away any entitlement to family reunification

Asylum seekers

No right to family reunification – unless they receive refugee status

Appendix 2. Residency Rights of non-EEA spouses of Irish citizens

- Non-EEA nationals who are legally resident in Ireland and who subsequently marry an Irish citizen can present to the local GNIB registration office and apply for permission to remain on the basis of marriage to an Irish citizens. However if the registration officer is not satisfied with the bona fides of both parties he/she can direct the couple to make a formal written application to INIS, which can take 12 months or more. In 2006 over 300 spouses of Irish nationals had to go through this process
- There are two categories of non-EEA spouses of Irish nationals who are not yet in the state: those who are visa required and those who are not visa required
 - Visa required nationals can apply for a ‘join spouse’ visa. Two types of visa can be issued: a ‘D-type’ which is granted with residency in mind and a ‘C-type’ which is only for 90 days and does not facilitate residency. Those granted C-type visas will have to make a formal application to INIS when they arrive in Ireland – this can take 12 months. There are no guidelines on what are the requirements to be eligible for a ‘D-type’ visa.
 - Non-visa required nationals inform the officer at port of entry of their intention to reside in Ireland. They can then report to their local GNIB registration office. Whether the person is granted residency at this point or whether they are directed to formally apply to INIS (and thus wait 12 months) is difficult to predict. Either way it appears that non-visa required nationals are disadvantaged compared to visa required nationals as they do not have the option of applying for a ‘join-spouse’ D-type visa.
 - In essence there remains a huge lack of clarity in relation to what non-EEA spouses of Irish nationals can expect if they want to move to Ireland with their spouse. This seriously impinges on a family’s ability to plan and to move to Ireland. The potential 12 month waiting time (which seems always to be a possibility unless one is granted a ‘D-type’ visa) is extremely discouraging to families who want to move or return to Ireland and need to work as soon as possible.

¹ Migration Integration Policy Index (MIPEX) www.integrationindex.eu/

² Department of Justice, Equality & Law Reform

³ ‘IBC/05’ is a term used to refer to a scheme set up in 2005 that allowed parents of Irish citizens (Irish Born Children – IBC) to apply for residency in Ireland. Under the IBC’05 scheme, applicants were asked to sign a statutory declaration which stated that the applicant understood applicant understood that, if they

were granted residency, this would not give them any entitlement to reunification with any other family members residing outside of the country. Despite this stated policy, the right to family life of Irish citizen children is a right protected by the Irish Constitution and the European Convention on Human Rights and Fundamental Freedoms. The Immigrant Council of Ireland and the CADIC Coalition are of the view that there cannot be a blanket refusal of family reunification and that the circumstances of each individual case must be taken into account when a decision on family reunification is made