

Ireland – Immigration Update on EU Treaty Rights

July 2008

The European Court of Justice has recently overturned a High Court ruling that limited the free movement of non-EU family members of EU nationals into Ireland. The implications of the judgment are highlighted in this bulletin.

Background

A foreign national (who is not a citizen of the EU) is required to register with the Department of Justice, Equality and Law Reform and obtain a residence permit in order to reside legally in Ireland.

The European Communities (Free Movement of Persons) Regulations 2006 brought into effect in Irish law the European Directive 2004/38/EC. This protects the right of citizens of the European Union and their family members to move and reside freely within the EU member states. The Irish legislation implementing the regulations allows a non-EU spouse of an EU national to reside and work legally in Ireland, **provided the couple were residing in another EU member state directly prior to relocating to Ireland.**

In light of the conditions attached to the EU directive, as interpreted in Irish legislation, it appears to discriminate against the non-EU spouse of an EU national where the couple were not residing within the EU prior to their arrival in Ireland.

High Court Appeal

As a result of the apparent anomaly, an appeal was brought to the High Court. However, the

High Court upheld the requirement that a non-EU spouse of an EU national would not be granted permission to reside in Ireland (nor clearly would he/she have a right to work) under EU Treaty Rights legislation unless the couple could provide evidence of having lived together in another EU member state prior to coming to Ireland.

European Court of Justice

An appeal against this ruling was lodged to the European Court of Justice (ECJ) and the ECJ recently overturned the High Court ruling.

The ECJ ruled that a non-EU spouse of an EU national may move and reside legally with the EU national in any EU state without having previously resided in another member state. The ECJ found that Irish legislation was not compatible with the aim of the EU directive which is to protect the right of EU citizens and their family members to move and reside freely within the EU member states.

The ruling may have implications for previously unrecognised foreign marriages as the ECJ held that a non-EU spouse of an EU national can enjoy the benefits of EU Treaty Rights, regardless of when and where the couple married.

For more information, please get in touch with your usual PwC contact, or any of the following:

Ursula Quinn t: + 353 (0) 1 792 8788 e: ursula.quinn@ie.pwc.com
Eva Byrne t: + 353 (0) 1 792 8622 e: eva.byrne@ie.pwc.com
Anne Bolster t: + 353 (0) 1 792 6209 e: anne.bolster@ie.pwc.com
Mary O'Hara t: + 353 (0) 1 792 6215 e: mary.ohara@ie.pwc.com

PricewaterhouseCoopers, One Spencer Dock, Dublin 1

www.pwc.com/ie/hrs

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