



Ireland – Immigration Update*

EU Treaty Rights & other recent developments

20th September 2007

A recent High Court ruling has highlighted a potentially significant limitation on the free movement of certain persons within the EU. Aimed at guaranteeing the rights of EU citizens and their families to live and work in Ireland, current legislation does not however extend to non-EU spouses, unless the couple lived within the EU immediately before moving to Ireland.

In light of the findings of a 2006 EU-funded study on labour mobility¹, in which 42% of employers surveyed cited spousal employment opportunities as a perceived barrier to mobility, this ruling represents a potential hurdle to companies with operations in Ireland seeking to deploy key personnel here.

EU Treaty Rights & Labour Mobility

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 regulations allow a non-EU spouse of an EU national to reside and work legally in Ireland, as the spouse of the EU national, **provided the couple were residing in another EU member state directly prior to relocating to Ireland.**

Based on this requirement, a non-EU spouse of an EU national will not be granted permission to reside in Ireland (nor clearly will he/she have a right to

work) unless the couple were living in another EU member state prior to coming to Ireland.

In contrast, a non-EU spouse of an employment permit holder (for example, a US spouse of a US national) can reside legally in Ireland, as the dependant spouse of the employment permit holder, regardless of where they lived prior to coming to Ireland.

It would therefore appear that the regulations are discriminating against the non-EU spouse of an EU national where the couple were not residing within the EU prior to their arrival in Ireland.

In light of the apparent anomaly, a recent appeal was brought to the High Court. However, the High Court ruled that the non-EU spouse must be legally resident in another EU member state prior to arrival in Ireland in order to enjoy the benefits of EU Treaty Rights.

¹ Source: PwC Managing Mobility Matters 2006 report, December 2006

An appeal has been lodged to the Supreme Court and the outcome is awaited. In the meantime, the Department of Justice, Equality and Law Reform has issued deportation letters ("Section 3" letters) to a number of non-EU spouses who were unsuccessful in their claims for EU Treaty Rights.

Irish Citizenship Applications

Due to the significant increase in the number of individuals applying for Irish citizenship in recent years, the processing time for citizenship applications is currently more than 2 ½ years. The Department of Justice, Equality and Law Reform are understood to be working towards reducing the current backlog and shortening the application processing times.

New Employment Permits Regime

Earlier this year, Irish employers welcomed the introduction of the new Employment Permits regime, in particular the re-introduction of the Intra-Company Transfer (ICT) scheme. However, early indications from global organisations suggest that the ICT guidelines are being applied in a more restrictive manner than had been anticipated.

While the new Employment Permits regime clarified many areas of uncertainty for employers, it also appears to have significantly increased their administrative burden.

Ireland is by no means unique in this regard as delays in processing visas and work permits are common in many countries, presenting problems when employees are needed on site immediately².

Parents of Irish born children

Arrangements are in place for the processing of applications for renewal of permission to remain in the State from foreign nationals who were granted permission to remain in Ireland under the Irish Born Child Scheme 2005 (IBC/05).

All applications for renewal of permission to remain must be submitted one month in advance of the date on which the individual's current permission to remain in Ireland expires. Successful applicants will normally have their permission to remain renewed for a further period of 3 years, subject to certain conditions.

²Source: PwC International Assignment Perspectives report, September 2007

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