



24.6.2010

NOTICE TO MEMBERS

Subject: **Petition 1823/2009 by Eveline Mörth-Ezeuduji (Austrian), on a residence permit for her spouse**

1. Summary of petition

The petitioner, an Austrian national, indicates that she, together with a Nigerian national to whom she has been married since 2005, lived for a period in Germany where the petitioner's spouse was issued with a German residence permit. However, when the couple returned to Austria the Austrian authorities refused him a residence permit. The petitioner wishes to know how it is possible for a residence permit to be issued without any problems in one EU Member State and withheld in another, in this case her country of origin. She is accordingly seeking the assistance of the European Parliament.

2. Admissibility

Declared admissible on 22 March 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 24 June 2010.

The petitioner, an Austrian national residing in Austria, complains that her Nigerian husband was issued a residence card when living for a short period in Germany but was refused a residence permit when they returned to Austria.

Article 21(1) of the Treaty on the Functioning of the European Union stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. The respective limitations and conditions are to be

found in Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States¹.

As provided in Article 3(1) of Directive 2004/38/EC, this Directive only applies to EU citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them. EU citizens residing in the Member State of their nationality do not normally benefit from the rights granted by Community law on free movement of persons and their third country family members remain to be covered by national immigration rules. However, EU citizens who return to their home Member State after having resided in another Member State² and in certain circumstances also those EU citizens who have exercised their rights to free movement in another Member State without residing there³ (for example by providing services in another Member State without residing there) benefit as well from the rules on free movement of persons.

In its guidelines of 2 July 2009 on better transposition and application of Directive 2004/38/EC⁴, the Commission stressed the importance of whether the exercise of Community rights in a Member State, from which the EU citizens and their family members return, was genuine and effective. In such a case, EU citizens and their family members are protected by Union law on free movement of persons. The assessment can only be made on a case-by-case basis. National authorities may notably take into account the following indicative criteria: the circumstances under which the EU citizen concerned moved to the host Member State, the degree of effectiveness and genuineness of residence (e.g. envisaged and actual residence in the host Member State, efforts made towards establishment in the host Member State including national registration formalities) and the circumstances under which the EU citizen concerned moved back home.

From the information provided it can not be detected that the Austrian authorities have violated Union law.

¹ You can download the Directive at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:229:0035:0048:EN:PDF>.

² Cases C-370/09 *Singh* and C-291/05 *Eind*

³ Case C-60/00 *Carpenter*

⁴ COM (2009) 313 final