



30.1.2015

NOTICE TO MEMBERS

Subject: Petition 1128/2012 by L. A. (Armenian/Russian), concerning alleged discrimination and recognition of her professional qualifications

1. Summary of petition

The petitioner is of Armenian Russian origin and is married to a German/Greek EU citizen. She claims that she has fallen victim to obstruction and discrimination by German authorities, as a result of which it was only with great difficulty that she was able to obtain a residence permit in Germany, her parents were not issued with a visa to assist her temporarily in bringing up her child, her doctor's degree, which she obtained in Latvia, is not recognised in Germany and she has suffered mobbing at work. The petitioner considers that she should have been issued with a residence permit immediately because she had a residence permit in Greece - where she and her husband were living before moving to Germany - and because she is married to an EU citizen who has taken advantage of the right to freedom of movement within the EU. She also considers that her professional qualifications ought to be recognised in Germany because they were recognised in Greece, where she worked as a doctor.

2. Admissibility

Declared admissible on 20 December 2012. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 27 March 2013

The petitioner, who is a third country national married to a Union citizen holding double German and Greek nationality, complains about the difficulties encountered when requesting

- a residence permit in Germany;
- a residence permit for her parents who are third country nationals in Germany and

c) the recognition of her professional qualifications in Germany.

According to the complainant, the EU citizen and his family member have been residing in Greece for an undefined period of time.

The Commission's observations

Problem concerning the residence permit of the petitioner:

According to Article 21 of the Treaty on the Functioning of the European Union, *"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"*.

In this context, Directive 2004/38/EC defines the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members and the rights conferred upon EU citizens.

According to Article 7 of Directive 2004/38/EC a Union citizen and his/her family members are entitled to reside on the territory of the host Member State for a period of longer than three months if the Union citizen is a worker or self-employed person, or if the Union citizen has sufficient resources for himself/herself and his/her family members not to become a burden on the social assistance system of the host Member State, and they hold comprehensive sickness insurance cover in the host Member State.

However, according to its Article 3, Directive 2004/38/EC shall apply exclusively to Union citizens who move to or reside in a Member State other than that of which they are nationals.

According to the petitioner, the German authorities argue that her rights have to be assessed under German law without taking into account EU law due to the fact that her husband holds German nationality in addition to Greek nationality.

However, according to the judgment of the Court of Justice of the European Union in case C-370/90 Singh,

"A national of a Member State might be deterred from leaving his country of origin in order to pursue an activity as an employed or self-employed person as envisaged by the Treaty in the territory of another Member State if, on returning to the Member State of which he is a national in order to pursue an activity there as an employed or self-employed person, the conditions of his entry and residence were not at least equivalent to those which he would enjoy under the Treaty or secondary law in the territory of another Member State.

He would in particular be deterred from so doing if his spouse and children were not also permitted to enter and reside in the territory of his Member State of origin under conditions at least equivalent to those granted them by Community law in the territory of another Member State".

Consequently, the German authorities must at least treat the husband of the petitioner as a returning national in accordance with the jurisprudence of the Court of Justice of the

European Union, and grant the petitioner and her husband rights equivalent to those granted by EU law to a Union national and his spouse enjoying the right of free movement.

The Commission is willing to contact the German authorities in relation to this issue and would thus like to request the petitioner to allow it to disclose her identity to the German authorities.

Problem concerning the residence permit of the petitioner's parents:

Article 2 of Directive 2004/38/EC defines the "family members" of a Union citizen who may benefit from the rights established by the Directive. According to Article 2 of Directive 2004/38/EC only the "*dependent direct relatives in the ascending line*" fall under the definition of family members of an EU citizen.

The petitioner does not raise the issue of having requested a residence permit for her parents due to their dependency upon her and her husband. Consequently, the issuance of a residence permit to the parents of the petitioner falls outside the scope of Directive 2004/38/EC and is of exclusive competence of the Member State concerned.

Problem concerning the recognition of the petitioner's professional qualification:

From the information available to the Commission, it seems that the petitioner's qualification in basic medicine was obtained in Latvia. The petitioner faced difficulties when requested the recognition of her qualification in Germany.

Directive 2005/36/EC on the recognition of professional qualifications applies where a national of a Member State wishes to pursue a regulated profession in a Member State other than that in which he/she has obtained the professional qualification. The Directive also applies to nationals from third countries who are members of the family of an EU citizen exercising his or her right to free movement within the European Union provided by Directive 2004/38/EC.

Therefore, it seems that the German competent authorities should apply Directive 2005/36/EC when deciding on the petitioner's application for the recognition of her basic medical diploma. In case her Latvian qualification meets the harmonized minimum training requirements of Article 24 of Directive 2005/36/EC and its title is listed in Annex V, point 5.1.1., she might benefit from the automatic recognition of her qualification. Otherwise, the so-called general system applies, where the German authorities can compare the training followed in Latvia with the German requirements. In case of substantial differences between the two trainings, the German authorities might require the completion of a compensation measure before granting recognition.

The petitioner might ask further information and assistance from the German National Contact point, the details of which can be found on the following website:

http://ec.europa.eu/internal_market/qualifications/contact/index_en.htm).

Conclusion

The Commission would like to request the petitioner to allow it to disclose her and her husband's identity to the German authorities in order to be able to seek further information concerning the issuance of her residence permit and her husband's rights as a Union citizen holding double nationality.

4. Commission reply (REV), received on 30 January 2015

Regarding the fact that the petitioner needed a visa to enter Germany and did not receive a residence card pursuant to Directive 2004/38/EC but a 3-year residence permit under national law for non-EU nationals, which was confirmed by the ruling by a German court that refused to apply EU law on free movement to the petitioner as the non-EU national spouse of a dual German/Greek national when moving from Greece to Germany, the Commission had opened an EU-Pilot procedure.

The petitioner also considers that her professional qualification, obtained in Latvia, ought to be recognised in Germany because they were recognised in Greece, where she worked as a doctor.

The Commission received the latest reply from Germany on 10 September 2014.

In its reply, the German government states that as regards the specific case of the petitioner, the national court's ruling was to their knowledge not appealed. More generally, however, it presents the measures it has already taken, and the further measures it will take, to ensure that cases such as the petitioner's will be decided in line with EU law in the future.

The German authorities confirm the Commission's legal view that EU law on free movement applies in cross-border situations, including when a Member State's own nationals return to that Member State after having genuinely and effectively made use of the right of free movement in another Member State. Reflecting this view, since summer 2013 the German visa handbook contains provisions to ensure that EU law on free movement can apply as regards entry visa for non-EU family members of an EU citizen with double nationality if the EU citizen has genuinely and effectively made use of the right to free movement.

Furthermore, the Commission is informed that similar amendments as in the German visa handbook will be presented in the course of 2015 to the General Administrative Regulations on the Freedom of Movement Act. They will ensure that also the residence rights in Germany of such family members are determined by EU law on free movement if the EU citizen has genuinely and effectively made use of the right to free movement.

From the information available to the Commission it seems that regarding the recognition of the petitioner's qualifications, Directive 2005/36/EC on the recognition of professional qualifications should be applicable. The professional obtained her professional qualification in one of the Member States, in Latvia, and moreover she can benefit from Directive 2005/36/EC as a family member of an EU citizen as provided by in Directive 2004/38/EC. Accordingly, the German authorities shall assess her application in accordance with the Directive.

Under Article 51(2) of Directive 2005/36/EC the procedure for examining an application shall lead to a duly substantiated decision by the competent German authorities within three months after the complete application was submitted. This deadline may be extended by one more month in the cases referred to in the Directive. The national decision, or failure to reach a decision within this deadline shall be subject to appeal under national law.

Conclusion

It appears from the information that, in response to the EU-Pilot procedure opened by the Commission, Germany has already taken measures to ensure that dual EU nationals who

genuinely and effectively make use of their right to free movement of persons will benefit from family reunification rules of EU law as regards entry into Germany. Further measures are planned for 2015 regarding their residence in Germany. This should ensure that EU law is correctly applied in cases such as the petitioner's. The Commission will remain vigilant to this important matter.

Should the petitioner face further difficulties with the recognition of her professional qualification, she might consider appealing the German competent authorities' decision individually.