



30.1.2015

NOTICE TO MEMBERS

Subject: Petition 0942/2013 by René Kortas (Lebanese), on licences for third country nationals to establish pharmacies in Greece

1. Summary of petition

The petitioner is a Lebanese national married to a Greek citizen and she holds residence and work permits. She has a degree in pharmacology from a Greek university and holds a licence to pursue the profession of pharmacist in Greece. Her application for a licence to establish a pharmacy in the region of Attica was rejected because she is a foreign national. She is requesting information on her employment and self-employment rights under the residence and work permits which she holds.

2. Admissibility

Declared admissible on 11 February 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 January 2015

Following an analysis of the case from the perspective of different EU legal instruments on the basis of the information provided by the petitioner, it is not possible to establish with certainty a link of her case with EU law.

In particular, as the petitioner resides in the Member State of nationality of her spouse, who has not exercised free movement rights under Directive 2004/38/EC¹, she does not fall within

¹ Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

the scope of this Directive and cannot therefore derive any equal treatment rights under this Directive's rules¹.

Moreover, as a third country national, the petitioner would not fall within the personal scope of application of Directives 2005/36/EC² and 2006/123/EC³, unless she could be assimilated to an EU national under other, specific EU Directives.

On the other hand, of relevance in her case could be the provisions concerning the status of third-country nationals who are long-term residents, which are laid down in Directive 2003/109/EC⁴. This Directive determines the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto.

According to article 4 of the Directive, Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application. Further, article 5 sets out the conditions for acquiring long-term resident status, according to which Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members, stable and regular resources and sickness insurance.

If the petitioner fulfils these conditions she is eligible to apply for long-term EU resident status. This status is permanent and includes a set of rights very similar to those enjoyed by nationals, including equal treatment in a wide range of economic and social matters.

In particular, article 11 of the Directive establishes that *"long-term residents shall enjoy equal treatment with nationals as regards: (a) access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration."*

From the information provided, the Commission cannot assess whether the petitioner's situation is covered by the Directive. If this was the case and she holds a long-term resident's EU residence permit, the petitioner should enjoy equal treatment with nationals as regards, among others, self-employed activities in accordance with the conditions set in national law.

Conclusion

Based on the information provided by the petitioner, the Commission cannot establish the existence of a link with EU law.

¹ As confirmed by settled case law of the Court of Justice of the European Union, Directive 2004/38/EC does not confer a derived right of residence on third country nationals who are family members of a Union citizen in the Member State of which that citizen is a national; see most recently judgment of 12 March 2014 in case C-457/12, S.G., paragraph 34.

² Directive of the European Parliament and of the Council of 7 September 2005, on the recognition of professional qualifications.

³ Directive of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

⁴ Council Directive of 25 November 2003 concerning the status of third-country nationals who are long-term residents.