



Families of EEA Nationals

5th August 2008

EEA stands for European Economic Area. EEA nationals and their family members enjoy special privileges in relation to immigration within the EEA. This information sheet gives some general information about this.

For some time, the Home Office has argued that the family members of EEA nationals can only have the benefit of these privileges in the UK if the family member had first joined the EEA national in another EEA country (e.g. the EEA national's home country) according to the immigration laws of that country. The European Court of Justice (ECJ) has now ruled that the Home Office is wrong. This information sheet provides information about this.

The European Economic Area (EEA)

The EEA is made up of the 27 Member States of the European Union plus Iceland, Norway and Liechtenstein. An EEA national means someone who is a national of one of these 30 countries.

Switzerland is not part of the EEA. However, by agreement between Switzerland and the European Union (EU), Swiss nationals and their families generally enjoy the same benefits as EEA nationals and their families.

Special privileges for EEA nationals

The laws of the European Union (EU Law) aim to promote free movement of EEA nationals throughout the EEA. Where an EEA national wishes to move to an EEA country of which he or she is not a national (e.g. a British citizen wishes to work in the Czech Republic; or a Greek national wishes to study in the UK), his or her entitlement to do so will be subject to EU law. The immigration laws of the individual EEA country cannot reduce or restrict this entitlement to free movement.

EU law provides that an EEA national may be excluded from an EEA country of which he or she is not a national in limited circumstances. These circumstances change depending on how long he or she has been in the country. However, in broad terms, the only reasons that can justify excluding or removing an EEA national are reasons of public policy, public security or public health.

Special privileges for family members of EEA nationals

Where an EEA national moves to another EEA country under EU law this is often referred to as exercising his or her Treaty rights. In these circumstances, EU law allows him or her to take or be joined by his or her family. The reason for this is that EU law recognises that excluding those family members will in many cases effectively prevent the EEA national from exercising his or her free movement rights – someone will not usually want to move to another country if this means being separated from his or her family.

In EU law, family members include:

- a person's spouse
- a person's registered partner (if the law of the EEA country to which the EEA national moves recognises such partnerships as equivalent to marriage)
- a person's direct descendants (e.g. children or grandchildren) who are under the age of 21 years or dependant on him or her

ILPA information service

funded by JRCT

www.ilpa.org.uk/infoservice.html

Steve Symonds

ILPA legal officer

020 7490 1553

steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

- the direct descendants of a person's spouse or registered partner who are under the age of 21 years or dependant on the spouse or registered partner
- a person's direct relatives in the ascending line (e.g. parents or grandparents) who are dependant on him or her
- the direct relatives in the ascending line who are dependant on a person's spouse or registered partner

The Home Office interpretation of these provisions

As indicated above, the Home Office has interpreted EU law to mean that family members can travel within the EEA with or to join an EEA national if, but only if, the family members have first entered the EEA under the immigration laws of one of the individual EEA countries.

The following is provided by way of example. A British citizen travels to India and marries an Indian national. She returns to the UK. She travels to Germany in order to work. She would like her husband to join her in Germany. However, he has never been to Europe. According to the Home Office interpretation of EU law, her husband would need to satisfy German immigration law in order to join her in Germany. Alternatively, she could return to the UK and he would need to satisfy UK immigration law in order to join here there.

This interpretation of EU law has been found to be wrong.

The Home Office interpretation is adopted in UK immigration law by regulation 12(1)(b) of the Immigration (European Economic Area) Regulations 2006. However, the correct interpretation (see below) must be applied by the Home Office and courts in the UK. This is because the relevant EU law (Council Directive 2005/85/EC) has direct effect – in other words, it can be relied upon directly by individuals before the courts of any EU country; and it takes precedence over any laws of that country.

The correct interpretation of these provisions

On 25 July 2008, the European Court of Justice (ECJ) gave judgment in the case of *Metock & Ors v Ireland* (Case C-127/08). This case concerns the right of a British citizen, working in Ireland, not to be separated from her husband (a national of Cameroon, and refused asylum seeker) whom she married in Ireland. (The case also concerns the rights of four other families in Ireland where one of the family members is an EEA national exercising Treaty rights in Ireland who wishes to be joined by, or not be separated from, his or her non-EEA national partner).

The judgment of the ECJ clearly shows the Home Office interpretation (described above) to be wrong. The ECJ judgment shows that the spouse of an EEA national exercising Treaty rights (i.e. the EEA national is in an EEA country other than his or her own country):

- may join or stay with that EEA national unless his or her exclusion is permitted under EU law
- cannot be excluded from that country under that country's immigration laws if those laws are more restrictive than EU law

It does not matter when or where the marriage took place. It does not matter how the person entered the EEA or entered the particular country.