

Invisible Pathways

A critique of the Irish immigration system
and how it can contribute to people
becoming undocumented

2009

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Crosscare’s long term vision statement “Faith in Action”, which was adopted in 2008, identifies the promotion of social justice as a vital component to creating an inclusive society in modern Ireland. One core element of our new mission statement is to “*challenge inequality and prejudice through the development and promotion of evidence based solutions to intractable social problems*”. Invisible Pathways adopts this approach in detailing hard evidence gained from our practical, front line experience in working with the thousands of people who attend our Migrant Project each year at Cathedral Street. We hope this report will act as an inspiration, guide and reference tool for immigrants, NGO’s and State service providers. We also hope that it will build on the effort and good will that exists across these organisations and will assist us all to generate improvements to our developing immigration system.

Conor Hickey - Director

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Foreword

This is a comprehensive and thought provoking report. It is also a very timely report coming, as it does, during a period when the Houses of the Oireachtas are deliberating on the Immigration, Residence and Protection Bill which proposes a thorough overhaul of the immigration system in Ireland. As Ombudsman, my jurisdiction in relation to asylum and immigration is limited by the terms of the Ombudsman Act, 1980. However, when outline policy proposals were formulated by the Department of Justice, Equality and Law Reform during the gestation period of the current Bill, my Office was asked to comment on them, given my Office's experience in dealing with public administration matters generally. In my submission on the matter I welcomed the Department's consultation process and I also endorsed the Department's view of the objectives and principles which would underpin the immigration system of the future. Among these were:

- the protection of human rights;
- ensuring the fair treatment of persons;
- the achievement of reasonable standards of clarity and transparency; and
- the provision of satisfactory standards of service.

What gives this Crosscare report added credibility and authority is the series of stories it tells of the experiences of people who have had to negotiate their way through all the various elements of our complex immigration system. Thus, the report's conclusions and its recommendations for improvements are well grounded in the day-to-day reality of people who are obliged to engage with the various immigration processes and procedures. In doing so, it graphically illustrates the case for an administrative system which is fair, humane, open and accountable and comes up to the mark in terms of the principles set out by the Department itself in its initial policy proposals. The report is an important contribution to the ongoing debate on Irish immigration policy and is recommended reading for all those involved in influencing, formulating and implementing that policy.

Emily O' Reilly
Ombudsman
February 2009

Executive Summary

Crosscare Migrant Project provides an information and advocacy service to people migrating to and from Ireland including returning Irish. It also aims to effect positive change in migration related policy. The *Invisible Pathways* report analyses and critiques the Irish immigration system based on our clients' experiences of interacting with the system over the last 5 years. The report examines the main processes of the immigration system that people may go through or may be required to go through. It does not consider the asylum system. Specifically, the report draws attention to issues with the system that can contribute to people becoming undocumented. Such issues may only contribute in a small way to someone becoming undocumented or they may be the main causes. They are often unintended by the system but also at times clearly intended. The report is premised on the belief that the immigration system should in no way contribute to someone becoming "preventably undocumented" be it for one day or 10 years.

The structure of the report is as follows:

Some relevant and *Key Contexts* are set before the main body of the report. The main body of the report consists of three chapters. The first, titled *Processes*, is the largest chapter of the report. It comprises sections outlining the main processes and procedures of the immigration system from entry to the naturalisation process. In each section, the process is briefly described, current weaknesses highlighted and specific and practical recommendations made. The two subsequent chapters, *Managing Change* and *Interface Assessment*, highlight different sets of issues with the system. The chapter on *Core Issues and Implications* briefly consolidates the issues raised in the report under five core issues and highlights implications. The *Conclusion* recaps the frame of the report and issues overarching recommendations.

Invisible Pathways highlights some fundamental issues with the Irish immigration system that can be categorised under the following headings:

- Inaccessibility of various immigration status options
- Lack of clarity and transparency in application processes and procedures

- Inadequate or no responses by various agencies of the system to people's status applications or requests for information
- Non-adherence to customer charters
- Inadequate planning, consultation, and dissemination of immigration policy and procedural changes

The implications of these issues are serious. The most significant implication is their capacity to contribute to someone becoming undocumented. Other interlinked implications include: the growth of rumour and misinformation, the over reliance on discretion in decision making and adverse affects on internal and intra-agency co-operation within the system. There are also more direct implications for the service user such as the damaging of trust in the system and reluctance to give feedback to the system. On a wider note the deficits of the system trickle down to the quality of service that other public and private agencies offer to people.

There are over 90 specific recommendations (most of which are cost neutral or cost saving) on how to improve the system in this report. Such improvements can be categorised as:

- **making immigrant status options more visible and accessible**
- **making the status pathways more defined, delineated and supported**
- **instigating policy and procedural change more carefully**
- **significantly improving the quality of system interaction with the immigrant at the level of interface by eliminating non-responses and focusing on the quality of the interaction**

Our recommendations are consistent with the key messages of the OECD Review of Irish Public Services. These recommendations can be partly facilitated by proactive and sincere imbuing of customer charters into organisational practice. Ultimately sustained and real improvements to the system can most effectively be facilitated by increased and genuinely valued service user involvement in the development of the system.

1. Introduction

Over recent years, the main issue people bring to CMP's immigration information and advocacy service relates to difficulties they experience in trying to navigate and understand the immigration system. The Irish immigration system is complex. But many of the state systems that people interact with are just as complex, but cause much less confusion. So what causes this confusion and frustration with the immigration system?

Informed by tens of thousands of interactions with the immigration system by people who have used CMP's service over the last five years, this report examines all the main processes of the immigration system that people may go through or may be required to go through. The report does not consider the asylum system, although some of the issues covered are the same as those faced by asylum seekers. Specifically, the report draws attention to issues within the system that can contribute to people becoming undocumented. Such issues may only contribute in a small way to someone becoming undocumented or they may be the main causes. They are often unintended by the system but also at times clearly intended. The report is premised on the belief that the immigration system should in no way contribute to someone becoming "preventably undocumented" be it for one day or 10 years. In the 2007 MRCI report on irregular migration in Ireland, the inflexibility of the immigration system is cited as one of the reasons people stay undocumented in Ireland. On the European context PICUM (2006: 8) states that:

the majority of undocumented migrants may have been documented at one point, that very few undocumented migrants understood the process of how they became undocumented, and that the major irregularity comes from the bureaucratic procedure.

Two points of definition are necessary. What constitutes an ‘undocumented immigrant’ is open to wide interpretation. The phrase in itself is misleading as the vast majority of ‘undocumented immigrants’ that CMP deal with do have documents of some sort relating to their identity, nationality and/or past permission to reside in or enter the State. In this report, ‘undocumented immigrants’ generally relates to non-EEA¹ citizens residing in Ireland without official permission. By ‘preventably undocumented immigrants’ we refer to people who have presented or attempted to interact with the immigration system to gain status or retain status but who, due to failure of the system, have no option but to remain undocumented. It is these ‘preventably undocumented immigrants’ that are the main focus of the report.

The fundamental problem with modern immigration systems across the world is that it is seen as a necessity to strip incoming migrants of some basic human rights (at least for a period of time). And the Irish system is no different in this respect. The Irish system can take away the rights related to family, employment, and, in some cases, liberty. CMP believe the most effective immigration systems – in terms of their capacity to facilitate integration – are those that grant rights to the new immigrant which are closest to those enjoyed by citizens and also those systems which create a clear, transparent pathway for immigrants to gain equal status as citizens. At present, some aspects of the Irish system not only fail to provide a clear pathway to citizenship; they actually obstruct people from gaining legal status.

The comprehensive revision of immigration legislation enabled by the Immigration, Residence and Protection Bill 2008 offers Ireland the chance to create an immigration system that grants strong rights to new immigrants and their families in primary legislation. Based on the current stage of the Bill (just prior to Report Stage) it is clear this opportunity has not been grasped and thus it seems the rights granted to new non-EEA immigrants will remain at some distance from those enjoyed by Irish citizens. This failure in legislation places further responsibility on the immigration system to deliver a

¹ The EEA is the European Economic Area. It consists of all EU member states plus Norway, Iceland and Liechtenstein. While Switzerland is not in the EEA it has a very similar agreement with Ireland as other EEA countries, for immigration purposes.

fair, clear and transparent service. In addition to effectively facilitating the limited sets of rights that the Irish system has assigned to various categories of immigrant, the immigration system must also make the pathway to full and equal rights as clear, understandable and swift as possible. In addition to core rights, immigrants also have the right to an understandable, transparent and fair immigration service. While this report concentrates on rights to levels of service, these cannot be fully divorced from the more fundamental rights to open employment and family life around which the particular service operates. For example poor information on, or poor access to, a particular type of residency or entry permission can effectively end up denying a person a right to family life.

This report is being written at a time when immigration legislation in Ireland is undergoing a major overhaul. On publication of the Immigration, Residence and Protection Bill in January 2008, the then Minister for Justice stated that ‘...The overall strategy involves not only legislative change but major organisational improvements..., so as to improve the delivery of service to our client base...’² In this context, it is hoped that that the recommendations of this report come at an opportune time and that those with the power to change the immigration system will initiate and facilitate our recommendations. The current slowdown in inward migration and the revision of immigration legislation offers a unique and timely opportunity to implement the recommendations in this report. Furthermore, it is hoped that the report will contribute to the ongoing debate about the right to an adequate standard of public service provision.

² From http://www.inis.gov.ie/en/INIS/Pages/Launch_of_new_Immigration_Bill on 13/2/09

Report Outline

Some relevant and *Key Contexts* are set before the main body of the report. The main body of the report consists of three chapters. The first, titled *Processes*, is the largest chapter of the report. It comprises sections outlining the main processes and procedures of the immigration system from enquiries about entry to the naturalisation process. In each section, the process is briefly described, current weaknesses highlighted and specific and practical recommendations made. The two subsequent chapters, *Managing Change* and *Interface Assessment*, highlight different sets of issues with the system. The chapter on *Core Issues and Implications* briefly consolidates the issues raised in the report under five core issues and highlights the implications. The *Conclusion* recaps the frame of the report and issues overarching recommendations. There are over 90 specific recommendations and more than 20 short case studies throughout the report.

2. Key Contexts

There are a number of key relevant and motivating contexts in which this report is set:

- 2.1. The stage in Ireland's migration story
- 2.2. The PA Report
- 2.3. The Fitzpatrick Report and the Task Force on Customer Service
- 2.4. The OECD public service review
- 2.5. Report of the Task Force on the Public Service 2008
- 2.6. Integration and the immigration system
- 2.7. The Immigration, Residence and Protection Bill 2008
- 2.8. The undocumented migrant debate

2.1. The stage in Ireland's migration story

People have immigrated to Ireland for hundreds of years. In 1935 – 13 years after the establishment of the Irish Free State – the first piece of legislation to regulate non-Irish citizens was introduced in the form of the Aliens Act. Although the 1990s are remembered for the first large significant inflow of people to modern Ireland, throughout the 20th century, people immigrated to Ireland in small numbers from various parts of the world. People have also emigrated from Ireland for hundreds of years. The waves of mass emigration from Ireland in the nineteenth century continued to a lesser extent in the 1950s and 1980s. Even during the strongest years of the Irish economy in the late 1990s and early 21st century, as many as 20,000 people emigrated annually.

This brief context underlines the fact that both emigration and immigration are, and have been, a part of the Irish story for a long time. The story of migration in Ireland has never been a zero sum game with both emigration and immigration occurring at the same time for many decades. While acknowledging that migration levels will fluctuate, in the same way that emigration never stopped when the economy was at its peak, there is no evidence to suggest that immigration will not continue to be a part of Irish life even in

times of recession. It is important that Ireland develops an immigration system that stands the test of time.

2.2. The PA Report

In September 2006, PA Consulting completed a review of the Asylum and Immigration functions of the Irish Naturalisation and Immigration Service (INIS). See section 5.1 for more on the INIS. It is important to note that the review was not of the immigration system per se. It was a quantitative and qualitative assessment of the operation of the asylum, immigration and citizenship areas of the Department of Justice and associated offices (Office of the Refugee Applications Commissioner, Refugee Appeals Tribunal, Reception and Integration Agency and the Refugee Legal Service), which included a review and assessment of the utilization of resources including staff resources and the operation of current processes and procedures. *Invisible Pathways* aims to outline how inadequate service levels can contribute to people becoming undocumented. Some excerpts from the PA report support this thesis:

- . *Lack of transparency – Customers find it very difficult to understand the decision-making process and outcomes*

- . *Helpline availability – It is extremely difficult to access the Helpline, and a consistent answer is not always obtained from the staff member who deals with the call*

- . *Email – Variable customer response times for emails, if at all (e.g. Citizenship does not respond to emails). Email is a common method of providing a speedy response to customers in a number of other jurisdictions, including the UK, Australia and New Zealand (2006:74).*

Despite the report being completed in 2006, in CMP's experience the above three issues persist into 2009. The following are also relevant recommendations from the report:

- . *Improve the quality and consistency of decision-making across the system*
- . *Develop a strong 'performance' culture*
- . *Develop a strong 'client-centred' culture (2006:78).*

The report also recommends

- . *Immediate determination of customer performance targets for all services, telephone calls, e-mail response times where none currently exist*
- . *Access to an internal review mechanism for customer (2006:100).*

A particularly alarming finding, especially for those people whose situation is not straightforward, who may be undocumented, or on the brink of becoming undocumented, was that 'there is a sense that staff do not want to deal with the more problematic cases' (2006:135). A contributory factor to this situation is most likely the fact that, 'There are no documented manuals or guidelines for staff to follow, and training has tended to be delivered in an ad-hoc manner recently (with the exception of an internal initiative to deliver 2 hours focused staff training) (2006:137)'. The issue of processing delays is also vital in the context of preventing people from becoming undocumented.

There are few target service times for immigration processes, other than residence permits for EEA nationals which must be processed within six months, and Business Permission with an internal target of two months for completion (2006:136).

2.3. The Fitzpatrick Report and the Task Force on Customer Service

In November 2006, the Government commissioned Fitzpatrick Associates, Economic Consultants, to undertake a comprehensive review of the Customer Charter process in the Irish Civil Service. The evaluation reviewed all elements of the Charter process since its introduction and focused on the extent to which the Customer Charters were fulfilling their objectives and sought to identify the benefits accruing as a result.

'Evaluation of Customer Charters' was approved by Government and published in June 2007. It features a number of core recommendations intended to inform the next phase of development of Quality Customer service, including identifying mechanisms for strengthening commitments to improved service provision and delivery across the Public Service. In approving publication of the Fitzpatrick Report, the Government also approved the establishment of a special Task Force on Customer Service. The Task Force, chaired by the Secretary General of the Department of Justice Equality & Law Reform, will bring forward proposals to address specific customer service commitments in the Programme for Government, which will then be considered by the Implementation Group of Secretaries General. It was proposed that the Task Force would produce two interim reports during 2008 before submitting its final report to the Implementation Group of Secretaries General in early 2009. Customer Charters are referred to later in the report in the Interface Assessment chapter.

2.4. The OECD public service review

In April 2008 the first ever OECD review of the entire Irish Public Service was published. The report examines how Ireland compares with other OECD countries, and makes recommendations for the future direction of the Public Service. The following are some relevant recommendations from the OECD report, which focus on particularly relevant themes for this analysis of the immigration system - transparency, trust and accessibility.

Adopting a citizen-centred approach also depends on making the Public Service more open to feedback on policy and services from citizens, users and other stakeholders to help set service priorities...In order for the Public Service to keep up with, and tap into, these larger social forces, it should promote transparency as a value that will make the Public Service more dynamic and increase the public's trust... (2008:34).

In relation to how other OECD countries have improved service delivery:

These efforts have been shaped by three trends: 1) achieving a greater service focus by better understanding user needs, organising services around those needs, and clarifying what users can expect from the Public Service; 2) putting services online and making them more accessible and convenient; and 3) associating citizens and other stakeholders with government as partners to improve the quality of both public services and public policy (2008:184).

The following two excerpts underline the important role the public service can play in promoting participation, a key element of integration. As the public service that new immigrants have most interaction with, and the one that defines peoples' status in the country, the immigration system has significant responsibilities in this context.

...in order to re-establish trust with citizens, government needs to be more open and inclusive. The level of openness in government can be evaluated along three dimensions. Firstly, transparency – that the actions of the Public Service, and the individuals responsible for those actions will be exposed to public scrutiny and challenge. Secondly, accessibility – that the Public Service and information on its activities will be readily accessible to citizens; and thirdly, responsiveness – that the Public Service will be responsive to new ideas, demands and needs.

Each of these three dimensions of openness has practical implications from the point of view of those outside government looking in. From the public's perspective, an open government is one where citizens, businesses and civil society organisations have the ability to request and receive relevant and understandable information, the capacity to obtain services and undertake transactions, and the opportunity to participate in decision making (2008:216).

2.5. Report of the Task Force on the Public Service 2008

In November 2008, the Task Force on the Public Service developed an action plan in response to the OECD review, called *Transforming Public Services. Citizen Centred – Performance Focused*. From the action plan it is clear that the government has decided to adopt some of the key messages of the OECD report. There are particular messages that are especially relevant for *Invisible Pathways*. Two of these are the need to deepen citizen engagement and further develop e-government. The central message of the report is that, ‘...the route to better services and outcomes lies in the enhanced performance of individual public servants, of individual organisations and of the Public service as a system, against clear targets’(4:2008).

2.6. Integration and the immigration system

Lack of definition has led to a vague integration debate. For CMP an integrated society is one where there is equality of opportunity and outcome for all people regardless of social background or origin. Such a level of equality can most effectively be obtained by starting at a baseline of equal access to human rights for all people. This is not the case in Ireland or many other countries which experience inward migration as immigrants are usually granted a lower level of rights than citizens. All integration efforts are constrained by this severely limiting reality. The immigration system that takes least rights from new immigrants and has the clearest and swiftest pathway back to equal rights for immigrants (via naturalisation or a strong form of long-term residency) is the system that does least damage to efforts at creating an equal and integrated society.

The public at large interacts with the state and its constituent bodies in order to access their various human rights (to education, healthcare, social security etc). Uniquely for immigrants one of the most important state bodies they interact with is the immigration system. It is also important to note that as a key part of the framework through which a person enters and starts life in a new society the immigration system has a huge influence on that person's potential to become a fully included member of that society.

The quality of the interaction with the immigration system has an impact on his/her view of Ireland, his/her view of how much Ireland wants and welcomes them and ultimately his/her desire and capacity to integrate. A crucial element of this interaction, particularly for immigrants who may be new to the country is the element of trust between the immigrant and the state body. In the previously referenced OECD report on improving Irish public services the need to establish greater trust between service users and government with greater transparency, accessibility and responsiveness is seen as crucial. If adopted by the immigration system these values can also foster immigrant integration. Immigrants in particular are required to be transparent, accessible and responsive – it is time that the State played its role in the two way process of integration by adopting these values.

To date, much of the integration debate has centred on immigrants who are not in the most vulnerable situations. There has been inadequate attention given to those people who are furthest from the ideal of integration. A first priority for any integration agenda must be to ensure that the system that brings a person into Irish society must in no way contribute to that person becoming preventably undocumented. Being undocumented is perhaps furthest from the ideal of integration and it is those people who are furthest from this ideal who should receive priority in terms of integration efforts and resources.

2.7. The Immigration Residence and Protection Bill 2008

This report is being written at a time when immigration legislation in Ireland is being comprehensively overhauled. The Immigration, Residence and Protection Bill was published in January 2008. The then Minister for Justice, Equality & Law Reform, Brian Lenihan, described the Bill as follows:

This is landmark legislation. It gives us a unified code of immigration law that will enable us to manage non-EU inward migration and complements the existing law governing the free movement of EU citizens...The clarity and transparency this Bill brings to the whole area of immigration will benefit the State as well as those who want to come to this country and possibly settle here...This Bill is part of a strategy of change management in the operation of the Irish Naturalisation and Immigration Service (INIS)...The overall strategy involves not only legislative change but major organisational improvements, including a substantial IT development programme, so as to improve the delivery of service to our client base, whether visa applicants throughout the world or migrants resident in the State³.

Despite the large size of the Bill the details of the rights that accrue to various categories of immigrant were not detailed in proposed primary legislation and it would appear that such rights will continue to be framed and facilitated by regulations, administrative practices and discretion. Such continuing reliance on these processes in the immigration system further underlines the importance of adequate levels of service. The Bill is also seen as a part of a reform process which includes ‘...part of a strategy of change management in the operation of INIS...major organizational improvements...so as to improve the delivery of service to our client base...’ While a huge opportunity has been

³ From the Press Release dated 29/1/08 from

http://www.inis.gov.ie/en/INIS/Pages/Launch_of_new_Immigration_Bill

missed to enshrine the rights of immigrants in primary legislation, much can still be improved in the operation of the immigration system to improve access to various rights and to ensure that the system in no way contributes to situations whereby people become undocumented. This report contains detailed recommendations on how to improve not just the service delivery of INIS but of all aspects of the immigration system.

2.8. The undocumented migrant debate

Prior to the late 1990s when the issue of undocumented immigrants entered public debate in Ireland it generally referred to only one issue – that of undocumented Irish immigrants in the USA. As the State’s efforts to alleviate this situation in the USA continued, so the issue of undocumented in Ireland also began to grow. The situations faced by undocumented immigrants in Ireland have been most effectively portrayed by the MRCI. The emergence of undocumented immigrants has seen the development of a new form of extreme social exclusion in Ireland. Undocumented immigrants are the group which the State provides for least and the situations they face with no right to work or to social security are some of the most isolated. Every effort must be made to ensure that no State body contributes in any way to a person becoming preventably undocumented.

There have been promising signs that the State is beginning to realise that the system itself is at fault for the situations of some undocumented immigrants in Ireland after a report in the Irish Times of September 2008 stated that:

The Government is to set up a programme to regularise the status of undocumented migrant workers in Ireland who previously held Work Permits. Senior officials told unions and employers at social partnership talks last week that the scheme will be aimed at foreign national workers who have become undocumented through "no fault of their own"⁴.

This came after extensive efforts by the MRCI on its Bridging Visa campaign, which CMP supports. While a scheme to regularise undocumented immigrants is to be

⁴ *Plan to regularise status of migrant workers*, Irish Times 22/9/08.

welcomed it is important to remember that many of the issues with the system that contribute to people becoming undocumented still persist. More people will become undocumented through no fault of their own if the immigration system itself does not undergo change across a range of areas. In this context regularisation schemes should operate in tandem with systems changes and not just as one-off isolated initiatives. A final relevant and developing context is EU proposals for sanctions on employers who employ undocumented migrants. The potential implications of such sanctions are not clear as yet. There are some provisions to assist people to recoup unpaid wages but the measures also have the potential to make life even more difficult for undocumented immigrants. The legislation is expected to be implemented by 2011.

3. Processes

This chapter of the report examines the various immigration processes that a person may be required to go through in Ireland or before entering the country. The section is structured as follows. For each of the processes a brief description is given. This is followed by relevant criticisms, i.e. weakness or deficits that can contribute to someone becoming undocumented. The chapter is comprised of nine sections. At the end of each section or sub-section there are recommendations for change and improvement in the particular processes that has been analysed.

3.1. Entry

- 3.1.1. Visa required nationals
- 3.1.2. Non-visa required nationals

3.2. Family member status

- 3.2.1. Family members of Irish citizens
- 3.2.2. Family members of EU citizens
- 3.2.3. Family members of non-EEA citizens
- 3.2.4. Dependency

3.3. The Employment Permits system and Long-Term Residency

- 3.3.1. Works Permits
- 3.3.2. Green Card Permits
- 3.3.3. Long-Term Residency

3.4. Students

3.5. General permission

3.6. Transitional measure for new EU citizens

3.7. Without Condition as to Time

3.8. Business permission

3.9. Naturalisation

3.1. Entry

This section outlines some key issues with entry processes for non-EEA nationals. EEA citizens cannot be refused entry to Ireland unless one of the exceptional conditions outlined in Section 4 of Statutory Instrument No. 656 of 2006 applies. This report is largely concerned with non-EEA nationals, as they are the group that is subject to the ‘immigration controls’ and the majority of the restrictions of the immigration system. The following is an excerpt from the INIS website regarding requirements for entry into the State for non-EEA nationals:

Non EEA nationals are required to seek leave to enter the State by reporting to an Immigration Officer at an Irish port of entry. The onus is on the individual to have all documentation relating to their reasons for entering Ireland for presentation to the Immigration Officer to gain entry. The Immigration Officer may grant leave to enter to a maximum period of three months. They may, depending on the documentation presented grant a lesser period than three months.

Should the non EEA national wish to remain in the State beyond the period granted by an Immigration Officer on arrival in the State, they will be required to obtain the permission of the Minister for Justice, Equality and Law Reform... Visa Required nationals who enter the State on foot of a C Visit Visa cannot have their permission to remain in the State extended. They must leave and reapply from outside the State should they wish to return⁵.

A non-EEA national will face one of two processes when trying to enter Ireland. Which process he or she follows depends on whether he/she is a national of a visa required

⁵ From <http://www.inis.gov.ie/en/INIS/Pages/WP07000022> on 22/1/09

country or a non-visa required country. The above notice is applicable to visa required and non-visa required nationals.

3.1.1. Visa required nationals

A visa is in effect a form of permission to formally request entrance to the country which granted the visa. It also signifies that the visa holder has gone through verification processes in relation to his/her bona fides. A visa is not permission to enter; this is granted (or denied) at point of entry. A visa is usually attached in sticker format to a person's passport.

Process summary

Depending on the country the applicant is residing in, he/she will submit their application online or via hard copy. INIS's visa processing system has undergone significant modernisation in recent times with a substantial number of applications now being made online. There are forms on www.inis.gov.ie for visa applications. Notably there are also multi-lingual guides in English, Arabic, Chinese, French, Russian, Turkish and Urdu on completing online visa applications. A general list of documents required in a visa application and more specific lists for specific types of visas are also listed on the website. The decision to grant or refuse a visa is posted on the INIS website. Reasons for refusal are categorised under set headings. There is an appeal process if the visa is initially refused.

On presenting to an immigration officer at point of entry with a visa the person can still be refused entry into the country and/or can be searched and detained. Permission to land can be refused in accordance with section 4.3 of the Immigration Act 2004, which sets out the various reasons for refusal – this is relevant for visa required and non-visa required nationals.

Relevant criticisms

Reasons for refusal of a visa can be vague despite the categorisations provided.

For example what has been particularly frustrating for some CMP clients is repeated citing of the following two reasons for refusal without explanation as to why such a reason was arrived at or how an applicant might satisfy requirements for an appeal or future application:

- The granting of the visa may result in a cost to public funds
- The granting of the visa may result in a cost to public resources

Such repetition of vague reasons with no explanation of how such a reason was arrived at or how a requirement might be satisfied in the future can disillusion people and alienate them from the visa application process.

Nuria-Case Study 1

Nuria is an Irish citizen originally from Morocco. In 2006 she married Hamid in Algeria. She had known Hamid since they were children but since she left Morocco they had lost touch. However, they got back in contact in 2002 and subsequently Hamid tried twice to get a visa to visit Nuria. Applications and appeals were refused with the reasons being that the visa may result in a cost to public funds and resources. However, they kept in touch and even though Nuria was in a low paid job she managed to visit Hamid twice a year. Their relationship developed and they decided to get married. However, even though Hamid is married to an Irish citizen he is still being refused a visa to enter Ireland to live with his wife.

In practice the process of refusing entry at a port can on some occasions be carried out without adequate explanation. Language barriers can also cause confusion and miscommunication which can lead to deciding officers making inadequately informed decisions. In addition a long standing and growing concern is some of the practice of immigration officers at point of entry especially when a decision is made to refuse a person entry or to detain the person. There were two examples well publicised in September 2008 of a Nigerian priest and an Indian man who had won a Tourism Ireland trip to Ireland who complained of ill-treatment at point of entry. CMP has also had clients unhappy with their treatment at point of entry but did not wish to make a formal

complaint in case it adversely affected their application for status or future prospects of gaining entry.

Any process where there is a lack of transparency or explanation and which is not framed by clear, detailed and publicly available guidelines can fail to gain 'buy in' and engagement by people who are required to go through the process. The process of entering the State is no different in this respect.

3.1.2. Non-visa required nationals

Process summary

A non-visa required national does not require a visa to enter Ireland. This also means that they do not have the option of getting the pre-clearance that a visa offers. A non-visa required national's first engagement with the Irish Immigration system is very often at point of entry in Ireland. While the non-visa required national does not require a visa to enter Ireland this does not mean that they cannot be refused entry.

Relevant criticisms

There is no specific information on the INIS website for non-visa required nationals who wish to enter Ireland. The following is from the INIS website:

Do I need a Visa?

The "Ireland Visa Requirements" document consists of two lists – Schedule 1 and Schedule 2.

Schedule 1 lists those countries whose nationals do not require a visa to enter Ireland.

Therefore nationals of all countries not mentioned on Schedule 1 will require a Visa prior to seeking entry to Ireland.

Schedule 2 refers to Transit Visas. Nationals of all countries listed in Schedule 2 require a visa to transit through Ireland.

A Transit Visa does not permit the holder to leave the port/airport. You can only transit to your onward connection and you must have a valid visa (if required) for your final destination.

Schedules 1 & 2 can be found in S.I. No. 657 of 2006⁶.

Apart from this note and the information on entering cited at the start of this section there is no information directed specifically at non-visa required nationals. Currently the immigration system is operating on the assumption that non-visa required nationals are aware of the documentation they may be asked to produce and requirements they may be asked to fulfil at point of entry. The system is assuming that all potential visitors and/or immigrants from non-visa required countries are actually reading the information for visa required nationals and applying it to their own different situation. In CMP's experience not all visitors and immigrants understandably do this and as a result can face unnecessary barriers and indeed absolute blockages in their attempts to enter the country.

This situation also puts people in the awkward, vulnerable and embarrassing situation of going through a questioning and perhaps a detention and searching process at point of entry that could have been avoided if they had been informed about the details of entry requirements. What is crucial for this report is that such experiences confuse and alienate people from the system.

David and Salome-Case study 2

David (62) and Salome (58) are South African citizens. They travelled to Ireland to visit their two daughters who are both studying. On presentation at immigration control they were asked if they have documentation to show that they would be returning to South Africa at the end of their visit. They did not possess such documentation even though David works in a university and they both own a house in South Africa. Neither was aware that they could be asked for such documentation. They were threatened with detention for several days but were eventually directed to return to South Africa within a week and their passports were confiscated. David and Salome were shocked and upset at what had happened to them. David remarked that 'Had we known that we could have been asked for such papers we could have brought them. But we were not informed and now we have wasted all this money and time off from work for nothing'.

⁶ From [http://www.inis.gov.ie/en/INIS/Pages/Do I need a Visa](http://www.inis.gov.ie/en/INIS/Pages/Do_I_need_a_Visa) 22/1/09

The following table gives a breakdown of the number of people who were refused leave to land in Ireland and were subsequently removed from the State in recent years. CMP believes that if non-visa required nationals were better informed and prepared for entry to Ireland then some of these removals would not be necessary. There are no figures available to clarify what percentage of these people are non-visa required nationals. At the very least questions need to be asked of the effectiveness of pre-departure information provision if there are up to 16 people being refused leave to land in Ireland daily.

Details of persons refused leave to land pursuant to the provisions of Immigration Act, 2004, at ports of entry to the State, in the years 2004, 2005, 2006, 2007 and 2008 (to the end of July) are set out in the following table. A breakdown distinguishing between those who were or were not in possession of a visa is not available. The figures provided detail the number of persons refused leave to land who were removed from the State and those who made application pursuant to Refugee Act, 1996 and were consequently permitted entry to the State⁷.

Year	No of persons removed.	No. of persons who made application for asylum.	Total
2004	4,477	440	4,917
2005	4,433	460	4,893
2006	5,366	519	5,885
2007	5,854	477	6,331
2008	2,998	163	3,161(to 31 July '08)

⁷ From Parliamentary Question 33116/08 downloaded from <http://debates.oireachtas.ie/DDebate.aspx?F=DAL20081002.xml&Node=2206#N2206> on 26/1/09

CMP has also observed that the lack of targeted information for non-visa required nationals has led to some people believing that they had the right to reside and work in Ireland after they entered.

The *Relevant criticisms* from the last sub-section on refusing entry are also applicable to non-visa required nationals

Recommendations

- **Clearly visible information needs to be created and disseminated on entry procedures and requirements for non-visa required nationals. This information needs to be available not just on the INIS website but also on the Department of Foreign Affairs and relevant embassy sites. The information should include all the documentation and requirements that can be sought from a person who wishes to enter Ireland for various reasons. While much of the information will be the same as that for visa required nationals, the system should be operating on the principle that there should be clear, recognisable and delineated entry pathways for all categories of immigrant and potential immigrant and visitor. A recent report by the IHRC (2009:115) recommends that visa required nationals should also be, ‘...advised in advance that they should bring a copy of relevant documentation with them to ensure that the absence of specific information does not result in them being mistakenly refused leave to land in the State’**
- **Collection and collation of basic data on people who are refused leave to land and their circumstances e.g. Did they have or did they need a visa? What information did they have about entry requirements? Such data could indicate particular deficits in the mechanisms that are designed to prepare people for entry to Ireland**
- **If people are refused a visa they should be told in detail exactly why they fell short of the visa requirements. If people repeatedly do not get specific reasons they may not understand why they are being refused, become disillusioned with the process and consider circumventing the official process**

- **Via the proposed ‘Bond System’ for visas in Section 13 of the IRP Bill only those with long-term residence permission, Irish citizens or EU citizens resident in Ireland for 5 years would be able to act as guarantor for a Bond (financial or otherwise) that can be required to accompany a visa application. This will serve to further punish those who are economically and socially on the margins of society, thus exacerbating social exclusion and division. It also has the potential to alienate potential visitors from the system if a bond is unattainable**
- **Officers discharging their duties at point of entry have no detailed written protocol or set of guidelines to refer to (apart from the very broadly worded relevant pieces of legislation) when they are making a decision to refuse a person entry, after they refuse entry and if they decide to detain that person. Such practical and tailored written protocol would help to facilitate the highest standard of service, to ensure that a decision to refuse entry is taken only after a series of clear methodical and publicly stated steps have been taken in attempting to verify bona fides and to ensure that a refusal decision is carried out with the highest respect for human dignity in mind. The IHRC (2009) report has highlighted a number of procedural deficits at point of entry that could be overcome by more detailed guidelines for officers**
- **Access to interpreters at point of entry is also vital for deciding officers to make accurate decisions and for people to fully understand the questions and requirements that are being asked of them. Interpreter services should be used if there is any lack of clarity in communication between the deciding officer and the person trying to enter. CMP accepts that interpreter services are used and available at point of entry but CMP has had a number of cases where people state that they did not fully understand what the officer had told them**
- **Decisions to refuse entry should be subject to independent scrutiny. While it would play a number of other vital roles the introduction of an Immigration**

Appeals Tribunal is needed in this regard. Such a tribunal is detailed by the Immigrant Council of Ireland in their submission on the Immigration Residence and Protection Bill (IRP) 2008⁸

⁸ See http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-JusticeEDWR/Reports_2008/submission09a.doc

3.2. Family Member status

The rights of entry and residence of family members of immigrants who are living in Ireland are varied. Some family members of immigrants in Ireland obtain their permission to enter, live and work in Ireland independently of the Irish resident. For example they may have permission to reside and work as EU citizens. This section is largely concerned with those immigration sub-systems that relate to family members of immigrants who do not have independent permission to enter, reside and work in Ireland. This section has four main subsections:

- 3.2.1. Family members of Irish citizens
- 3.2.2. Family members of EU citizens
- 3.2.3. Family members of non-EU citizens
- 3.2.4. Issues related to dependant status

Each of the categories from 1 to 3 is broken down into categories and it is at this stage that specific pathways are examined.

3.2.1. Family members of Irish citizens

Non-EEA family members of Irish citizens have no stated right in law to reside in Ireland with their Irish family members. CMP view this as an unsatisfactory situation and our calls for appropriate changes in the legislation are outlined in our submission to the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights on the Immigration Residence and Protection Bill (see www.migrantproject.ie). Residency can be granted to family members of Irish citizens through administrative measures.

3.2.1.1. Spouses of Irish Citizens

How the spouse of an Irish citizen gets permission to enter, reside and work in Ireland will depend on a number of factors. Namely whether they are residing in the country or yet to enter and if they are a visa required national or not.

Process summary for the spouse of an Irish citizen already resident in Ireland

On presentation to a local immigration officer a spouse of an Irish citizen may face two possible scenarios:

He/she can be granted residency immediately by the officer by the granting of a permission to remain that is usually a Stamp 4⁹. Typically this stamp will have an expiry date before which the person must again present to the local immigration officer for renewal of the permission

Or

If he or she is not granted a Stamp 4 he/she can be directed by the officer to write to the INIS and request Stamp 4 residency based on marriage to an Irish spouse. The processing of this request can take up to 12 months, during which time the spouse does not have permission to work. The officer generally decides to recommend this option if he/she feels that the application warrants closer formal examination by INIS.

⁹ For more information on immigration stamps see <http://www.inis.gov.ie/en/INIS/Pages/Stamps>

Relevant criticisms

The criteria that an immigration officer takes into account when deciding whether to grant status or refer the case to INIS are not publicly stated. This can lead to confusion and disillusionment on behalf of the immigrant. It can also lead to a weak application being made by the person regardless of the strong case he/she may have.

The procedures that the Spouse of an Irish national needs to follow if he/she is applying for residency were for the first time outlined on the INIS website while this report was being completed. However, there continue to be no specific guidelines for other non-EEA family members of an Irish national and no detailed qualifying criteria

The 12 month waiting period for processing of formal applications with INIS is of a length that forces some people to work without permission.

John and Ying-Case Study 3

John (an Irish citizen) and Ying (a Chinese citizen) got married in China in 2008. They wanted to live in Ireland together. On presenting to the Irish embassy for a visa Ying was told that there would be no problem with her getting residency and work rights in Ireland, now that she was married to an Irish citizen. Ying was granted a C-visa and not informed of the possibility of as D-visa. Just to be sure John and Ying checked the INIS website but found no relevant information. They assumed there would be no delays or problems after arriving in Ireland. They tried to contact the INIS helpline on three occasions without success. After entering and on presentation to her local registration office, Ying was told to apply formally to INIS for permission to remain. John and Ying were quite shocked at this especially when they heard it could be 12 months before Ying had the right to work. Ying was given no guidance on how to apply for such residency and her application was refused based on lack of information. Ying was out of status for 3 months after this refusal but CMP assisted her with an appeal which was successful.

Process summary for the spouse of an Irish citizen resident in another country - Visa required national

A visa required national who is the spouse of an Irish citizen will need to apply for a visa in order to request entry into the country. It is possible that the applicant for the visa will be granted a C-visa or a D-visa. A C-visa can only facilitate temporary (up to 90 days) permission to reside in Ireland. It is usually granted to those visa required nationals who are coming to Ireland for the purposes of a visit or holiday. A D-visa is a form of pre-clearance that shows the person has already been through some checks that indicate that residency may be granted to the individual.

If the spouse of an Irish citizen is granted a C-visa then after arrival in Ireland they will face the process described in the previous section regarding spouses who are already resident in Ireland. In CMP's experience those who apply for such residency with a C-visa appear to be more likely to be referred to INIS to make a formal written application than those with a D-visa. If the spouse of an Irish citizen is granted a D- (reside) visa then after arrival in the State they will face the same process described above for residency but are much more likely to be granted residency immediately by the immigration officer.

Relevant criticisms

Knowledge of D-reside visas is not adequately widespread among Irish embassies and consulates abroad. CMP has had direct communications with people working in embassies and consulates on a number of occasions who did not know that there was a D-type visa for spouses of Irish citizens. Spouses who are granted a D-type visa are more likely to be able to participate in the labour force sooner than C-type visa holder who more frequently has to go through the 12 month processing period of the written application to INIS. It is more likely that someone waiting 12 months for the application to be processed will have to seek employment before they have permission to do so.

The criteria that are used to decide whether someone should be granted a C or a D visa are not published.

Process summary for the spouse of an Irish citizen resident in another country - Non-Visa required national

The first direct contact the immigrant will have with Irish immigration authorities may well be at the point of entry. At this point the person declares his/her reason for entering Ireland. It is likely that if this is the person's first time entering Ireland as the spouse of an Irish citizen and they intend to apply for residency on this basis then their Irish spouse will be with them. At this stage if entry is granted, the immigration officer at point of entry will refer the non-Irish national to the local registration office where the couple will be expected to present together and where they go through the process described above in relation to the *Spouse of an Irish citizen already resident in Ireland*

Relevant criticisms

Although it can generally be easier for non-visa required nationals to enter the country, non-visa required nationals can in some cases actually face a disadvantage compared to visa required nationals in that they can not get a D-reside visa. Therefore they can be faced with the same process after arrival of applying for residency as a visa required national with a C- type visa. It is arguable that in similar circumstances a visa required national with a D-type visa has a stronger chance of immediately being granted residency by an immigration officer than a non-visa required national. Also see Section 3.1.2 on issues for non-visa required nationals.

The uncertainty that people face when applying for residency due to the lack of guidelines and criteria has resulting implications on a family's ability to plan and in some cases return to live in Ireland.

3.2.1.2. Partners of Irish citizens

Process summary

The only relevant publicly available piece of information for partners of Irish citizens at the time of writing is:

De Facto Relationships

Non EEA nationals who wish to remain the State and are in a de facto relationship with an Irish National must be in a position to provide evidence of a durable attested relationship of at least 2 years. The following documents must be provided to General Immigration, INIS...

- . Copies of current passports of both parties*
- . Evidence of finances of both parties*
- . Evidence of relationship of at least 2 years duration (i.e. tenancy agreement, utility bills, bank statements, etc)*

Subject to the immigration status of the non EEA national permission to remain may granted. This permission will exempt the non EEA National from work permit condition. The above is not an exhaustive list, and you may be asked for additional documentation in support of your application¹⁰

¹⁰ From <http://www.inis.gov.ie/en/INIS/Pages/WP07000278> 12/2/09

Tara and James-Case Study 4

Tara (27) met James (29) when he was on a working holiday visa in Ireland. James is Australian and Tara is Irish. A relationship developed and James was successful in getting a Work Permit. After the couple had been together for 2 years James was laid off and they tried to explore his options to stay in Ireland. After several failed attempts to contact INIS James was told there were no options for him outside of the Work Permit system despite his relationship with Tara. James spent some time out of status and as the couple could not find a way for both of them to legally live in Ireland they left Ireland for Australia in 2008. This situation occurred before INIS published and changed the policy for partners of Irish citizens

Relevant criticisms

Unlike spouses of Irish citizens partners of Irish citizens do not have the stated right to apply for residence through their local immigration officer. It would appear that policy requires all applications to go through INIS

When applying for a visa partners of Irish citizens are required to produce evidence of medical insurance, this is not the case for spouses of Irish citizens

3.2.1.3. Children of Irish Citizens

At the time of writing non-EEA children under the age of 16 do not have to register with the Garda National Immigration Bureau. There are plans afoot to lower registration age significantly. Apart from adoption there are a number of situations whereby children of Irish citizens may not be Irish citizens themselves, for example:

- The Irish citizen parent may have been granted citizenship through naturalisation after the child in question was born and the child may not be eligible for citizenship through birth

- The Irish citizen parent may have been granted citizenship through descent after the child in question was born

Process summary

There is no formalised and recognisable process whereby the non-EEA child of an Irish citizen can be granted residency in Ireland. CMP has had cases whereby children of naturalised Irish citizens have been granted residency and work rights after they leave school and student permission is no longer possible for them. However this process has not been formalised or publicly expressed.

There have also been cases of Irish (by descent via Foreign Births Register) parents on immigrating to Ireland find that they cannot get residency status for their sons and daughters who are not Irish citizens.

Relevant criticisms

While it does not affect children under registration age there is a clear deficit in available pathways for children over registration age that have at least one Irish parent. There is a danger especially for children who reach registration age in Ireland that they will 'age-into' undocumented status or inappropriate status.

3.2.1.4. Parents of Irish Citizens

Following the Irish Born Child Scheme of 2005 there is no longer a formal mechanism whereby parents of Irish children can claim residency in Ireland on that basis. The situation of parents of Irish citizens is also relevant to people who become Irish citizens by naturalisation. After becoming Irish citizens and establishing Ireland as their home many people pursue the possibility of their parents coming to Ireland to reside so that mutual family support can be provided.

Process summary

There is no formalised and expressed process but a non-resident parent of an Irish citizen can apply for a visa to enter Ireland, with a view to residing in Ireland although in CMP's experience this is not often granted. The parent can present to the GNIB (Garda National Immigration Bureau) and may be referred to INIS but again residency is rarely granted. For more on the GNIB see section 5.2.

Relevant criticisms

The absence of a formalised and expressed process.

Dimitri and Pamela-Case Study 5

Husband and wife, Dimitri and Pamela are naturalised Irish citizens. They have three children aged 8, 5 and 3 who are also Irish citizens. Pamela's parents live in Russia and are retired. They were both teachers. They have visited Ireland 4 times since Dimitri and Pamela moved to Ireland and now they want to move to Ireland permanently. Pamela emailed a detailed description of her and her parents' situation to INIS twice and did not receive a response. Eventually she spoke to an official in INIS to see if there was some way that her parents could come to Ireland to live permanently. She was referred to the Employment Permits system.

Recommendations

- **There needs to be one unified coherent system for all non-EEA family members of Irish citizens to apply for residency in Ireland. As with the rights granted to EU citizens in Ireland who have activated their Treaty Rights there should be a clear pathway for non-EEA spouses, partners, children, parents or other dependants of the Irish citizen to apply for residency in Ireland**
- **As with the EU Treaty Rights process such a system should be underpinned by clear legislation and clear statements of entitlement. While this was not provided**

for directly by the Immigration Residence and Protection Bill it is still possible in secondary legislation

- **The criteria used in deciding whether to grant a family member of an Irish citizen (intending to live in Ireland with their Irish family member) a C or a D-reside visa should be published**
- **Such a system would have a clear and transparent application procedure with standardised application forms and a maximum processing time of 3 months**
- **The option for status to be granted by an immigration officer should be retained and all criteria that such an officer can take into account should be published and they should be consistent with formal application requirements to INIS. Reasons for refusal in these situations should be provided in writing**
- **A formal right to appeal refusals of all types of residency by should be established**
- **Via its embassies and consulates the Department of Foreign Affairs needs to ensure that visa required spouses of Irish nationals travelling to Ireland with a view to residing in Ireland are informed of the possibility of applying for a D-type visa**
- **The creation of a pre-clearance option whereby non-visa required spouses of Irish citizens can go through verification procedures before they leave for Ireland. Such procedures could enable the fast-tracking of residency after arrival in Ireland – thus cutting down their waiting times in Ireland where they have no entitlement to work**
- **The current higher entry and residency application requirements for partners of Irish citizens compared to spouses of Irish citizens should be abolished**

3.2.2. Family members of EU citizens

Ireland is obliged to comply with Directive 2004/38/EC1 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the European Union and their family members to move and reside freely within the territory of the Member States. Ireland transposed this directive into domestic legislation initially via S.I. 226 of 2006 and then via S.I. 656 of 2006 - European Communities (Free Movement of Persons) (No. 2) Regulations 2006. This was altered by S.I. 336 of 2008. The EU directive outlines:

(a) 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;

(b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;

(c) the limits placed on the rights set out in (a) and (b) on grounds of public policy, public security or public health.

A specific unit was set up in the INIS to process applications submitted under this directive and associated S. I. – the EU Treaty Rights Section. Initially, in terms of the process, the application procedure was quite clear in that standardised application forms were available, requirements were specified and maximum processing time was provided. Initial applications for residency under EU Treaty Rights appeared to be granted in line with the Directive. Prior to attempts by INIS to curtail rights under Directive 2004/38/EC1 in 2007 this process was one of the more coherent and accessible pathways and one of the processes least likely to contribute to someone becoming undocumented.

Process summary

Applications can be made directly to INIS on a standardised application form. Guidelines are also available on the INIS website and the application must be processed within 6 months.

Relevant criticisms

Currently the EU1 application process is generally functioning well. However, what led to this stage was a sequence of events that questions the Immigration system's commitment to integration and to preventing people from becoming undocumented. The Irish government decided to follow a very narrow and ultimately incorrect interpretation of the EU Directive. Without warning, in 2007, applicants to the EU1 process were informed by INIS that their application was not valid as the non-EEA national was not previously resident in another EU country. Not only was there no reference to this new requirement in the application form for EU1 status, there was no reference to this in the EU Directive. This unannounced change of policy led to hundreds of people facing undocumented situations. Some CMP clients became undocumented as at the time of application they had every reason to believe that they would be granted EU1 status within 6 months, thus many people did not renew student or Work Permit permissions.

However, the European Court of Justice ruled in July 2008 that Ireland's interpretation of the Directive was incorrect. The INIS subsequently accepted applications in line with the Directive and previously rejected applications based on the previous interpretation have also been processed. The system is currently one of the more clear, efficient and accessible processes. The Department of Justice made representations at the Justice and Home Affairs Council meeting of September 2008 with a view to gaining support for revisiting the Directive and making it more restrictive. Such representations have since been rejected by the Commission.

Recommendations

- **The EU1 process is one of the clearer more defined and delineated pathways to residency in the Irish immigration system. Much could be taken from it and adopted by other processes in the system in terms of accessibility and the strong rights associated with it, clear application forms, clear and broad definitions of qualifying family members, guidelines and deadlines for processing. Evidence that the process is being used to gain residency by people involved in ‘marriages of convenience’ is weak. Safeguards to protect against such actions can be put in place without sacrificing any of the EU1 process or the rights associated with it**

The actions of knowingly and without warning putting people into undocumented status should be taken as an example of how not to implement and/or change policy and practice. Incorrect legal interpretation by INIS aside - prior notification, consultation and reasonable and prepared alternatives were not part of the actions of INIS that led to so many people becoming undocumented.

3.2.3. Family members of non-EEA citizens

This report does not cover the pathways involved to refugee status and refugee family reunification in Ireland. Therefore the processes through which non-EEA family members of non-EEA citizens in Ireland gain residency can be categorised as follows:

3.2.3.1. Spousal/Dependant Work Permit scheme

3.2.3.2. Dependant children of Employment Permit holders

3.2.3.3. Family members of Long-Term Residents

3.2.3.4. Family members of people with Leave to Remain

3.2.3.5. Family members of people with 'Without Condition as to Time' status

3.2.3.1. Spousal/Dependant Work Permit scheme

The Spousal/Dependant Work Permit Scheme is for spouses and dependant unmarried children under the age of 18 who have been admitted to the State as family members of Employment Permit holders. The scheme allows eligible people to apply for Work Permits without a labour market needs test being undertaken. Prior to the formal introduction of the scheme in 2007 such permits had only been available since 2004 on a restricted basis, largely to 'higher skilled' Employment Permit holders.

Process summary

The process can begin with the entry of the spouse or dependant and the issues raised in Section 3.1 on entry are also relevant for this process. The entry process is considerably easier for family members of Green Card Permit holders compared to family members of Work Permit holders. For visa required nationals there is a specific category of visa and there are specific guidelines for applying for a visa for family reunification of Employment Permit holders. Once in Ireland access to the labour market is facilitated by:

- Allowing people to apply for a Work Permit in respect of all occupations

- Not requiring the employer in question to undertake a labour market test (by advertising the job with FÁS/EURES and with newspapers in advance of making a Work Permit application)

And

- Exempting the application from a fee

Relevant criticisms

In order for a spouse and/or family to get a visa or permission to enter Ireland if the qualifying sponsor is a Work Permit holder he/she must have an income above the threshold which would qualify the family for payment under the Family Income Supplement (FIS) Scheme administered by the Department of Social and Family Affairs. This is a particularly unfair rule that penalises the lower paid even further and discriminates on the basis of income and family status.

The introduction of the Spousal/Dependant Work Permit Scheme was a positive policy development. It opened labour market participation to thousands of people who otherwise were dependant on a family member. However, Spousal/Dependant Work Permits come with many of the same faults as a standard Work Permit. See Section 3.3 for an analysis of the Employment Permits System.

The main criticism of the scheme is that it was simply not introduced soon enough. The lack of a realistic pathway into the labour market for thousands for people for many years has significantly limited people's opportunities for integration. Despite living in Ireland for many years many spouses and dependants have only recently got the opportunity to participate in the labour market and integrate more with Irish society.

One key weakness of the Spousal/Dependant Work Permit Scheme is that there is lack of knowledge of the process among employers. Many employers simply do not know of the lack of restrictions in applying for a Spousal/Dependant Work Permit. In CMP's experience there are two failures when this happens: failure by the employer to ascertain the facts regarding Spousal/Dependant Work Permits and failure by various State

agencies and Departments to disseminate accurate, detailed and consistent information on the Spousal/Dependant Work Permits Scheme. While the DETE (Department of Enterprise, Trade and Employment) are primarily responsible for the provision of such information CMP believes that this situation is also the result of lack of adequate coherence and communication between and within DETE, INIS and GNIB. CMP clients receive conflicting information from these three organisations not just in relation to the requirements and exemptions related to Spousal/Dependant Work Permits but also for the necessity (or not) of a Stamp 4. CMP has seen that some employers also get mixed messages from relevant State agencies and this would partly explain some employers' reluctance to engage with prospective employees who try to explain that the Spousal/Dependant Work Permit Scheme can facilitate legal permission to work in Ireland.

There is inadequate availability of information of the Spousal/Dependant Work Permit Scheme in appropriate languages. For spouses or dependants of Employment Permit holders English language skills are not and should not be a factor in them gaining permission to enter and reside in Ireland. CMP has observed that spouses of Employment Permit holders in Ireland have been unaware of their options under the Spousal/Dependant Work Permit Scheme as their English language skills would not have been adequate to access the only information on the scheme which is currently only in English.

It is not stated on the Spousal/Dependant Work Permit Guide that it is possible to obtain such a permit for part-time work.

The time taken for a Spousal/Dependant Work Permit to be processed (usually several weeks) is often a huge disincentive for an employer to take on an employee.

Recommendations

- See recommendations under Section 3 on the Employment Permit system
- In terms of family members of Work Permit holders who may or may not be allowed to enter Ireland - rather than penalising people for being low paid and having children, a much more equitable financial requirement should simply stipulate that the qualifying sponsor who is a Work Permit holder is being paid at least the minimum legal wage for the industry he/she is working in. If this level of income sees the family qualifying for Family Income Supplement then the issue is the minimum wage in question not the size of a person's family. A person should not be penalised on the basis of a legal full-time wage that is inadequate to support his/her family nor should he/she be penalised for having a number of family members that rule out reunification under the current rules
- Information on the Spousal/Dependant Work Permit scheme needs to be made available in various languages
- A more comprehensive and detailed multi-language Spousal/Dependant Work Permit guide is required
- Spousal/Dependant Work Permits need to be processed within a week if their potential is to be maximised in terms of getting people to participate in the formal labour market

Tommy and Maria-Case Study 6

Tommy arrived in Dublin in 2008 to join his wife Maria who had been working as a nurse for over a year. Tommy and Maria are from the Philippines. Tommy is eligible to apply for a Spousal/Dependant Work Permit. However he found this very difficult. One prospective employer called the local immigration Garda who told the employer it is not possible to get a permit for a supermarket worker. By the time Tommy gets a chance to explain to the employer that this was not the case the position has been filled. Tommy eventually finds another interested employer but that employer is discouraged by the application procedure when he discovers it can take more than 5 weeks to process a Spousal/Dependant Work Permit. Tommy is offered part-time work by another employer but refuses it as he believes that Spousal/Dependant Work Permits are only for full-time work. Only on presenting to CMP does he discover in 2009 that he could have got a permit for the half time job.

3.2.3.2. Dependant children of Employment Permit holders

Dependant children of non-EEA migrant workers in Ireland face an anomaly in the system that presents them with great uncertainty once they finish formal education even though they and their parents may have lived in Ireland for many years.

Process summary

On registration in Ireland many dependant children of non-EEA migrant workers have been issued with Stamp 2 status. Stamp 2 status confers a very limited set of rights and is usually only used with adult international students who come to Ireland for the core purpose of studying. Once the person has finished formal education the Stamp 2 is not renewed, with resulting confusion as to what Stamp or type of permission the person is then entitled to apply for. Such confusion has led to people spending significant periods of time in undocumented status. It is also important to note that time spent in Ireland on Stamp 2 status does not formally count as 'reckonable residence' in an application for Long-Term Residency or citizenship. The Spousal/Dependant Work Permits Scheme is available, on an exceptional basis, to dependants who have reached the age of 18. These

applications are dealt with on a case-by-case basis and can only be considered for dependants who arrived in the State while still minors.

Relevant criticisms

The key issue with this process is that dependant children do not come to Ireland for the core purpose of study. They come to Ireland so that their family unit can be together. Their need to attend school and college is a consequence of this primary purpose of coming to Ireland. When such people (who may have lived in Ireland for years with their family) try to consolidate their status in Ireland with an application for Long-Term Residency or citizenship their applications can be rejected as their Stamp 2 does not formally count for reckonable residency in these application procedures. A Stamp that a dependant child receives should be one that opens a clear and easy pathway to permanent residency. Stamp 2 clearly does not facilitate this.

A Stamp 3 is the obvious currently available alternative and indeed it is a Stamp 3 that many dependant spouses and minors have received, some of whom have since become Irish citizens. However, a regular Stamp 3 also has its deficiencies in that its holder has no right to work unless he/she qualifies for the Spousal/Dependant Work Permit Scheme.

The scheme is described as only being available on an exceptional basis to dependants who have reached the age of 18 and who arrived in Ireland when they are minors. Apart from this 'exceptional basis' option there is no clear and reasonably accessible pathway for dependants who arrive in Ireland after they turn 18. They face the same barriers to finding work as a non-EEA national with no family living in Ireland or no history of living in Ireland.

Vikram-Case Study 7

Vikram came to Ireland from India with his parents and two younger sisters when he was 15 years old. He was given a Stamp 2 and did his Leaving Certificate and has since completed an engineering degree in university. After he finished university he presented to his local immigration Garda as his Stamp 2 was about to expire. As Vikram's studies were finished the Garda refused to renew the Stamp 2 and told Vikram that he should write to INIS to ask for permission to remain. Vikram got extremely concerned that he would have to leave his family behind in Ireland if he was not given permission to remain. Vikram became undocumented and presented to CMP who assisted him in writing to INIS. The positive reply took 9 months. He was granted a Stamp 3. However, now Vikram finds it very difficult to get a Work Permit even though he can apply for a permit under the Spousal/Dependant Work Permit scheme.

Recommendations

- **At the time of writing there were indications that INIS was considering the introduction of a new Stamp that would be more appropriate for dependant minors. CMP believes that a Stamp 3 permission with the same work rights as a Stamp 2 would be an appropriate form of Stamp for dependant minors – i.e. a Stamp that would provide work rights and reckonable residence for Long-Term Residency and citizenship purposes. The option to apply for a Spousal/Dependant Work Permit would be retained**
- **In the meantime the current practice of granting Stamp 3 to dependants of Employment Permit holders should be made a more identifiable and recognisable option for people**
- **Time spent in Ireland by dependants of Employment Permit holders on a Stamp 2 should be made formally reckonable for citizenship and Long-Term Residency processes until a more suitable Stamp is decided on for people in such situations.**

While it appears this is happening in some Long-Term Residency cases a formal policy statement for both Long-Term Residency and citizenship is needed

- **Dependants of Employment Permit holders should be eligible to apply for the Spousal Work Permits scheme regardless of age and regardless of when they arrived in the State**

3.2.3.3. Family members of Long-Term Residents

Non-EEA nationals with Long-Term Residency Status have been residing in Ireland for at least five years and more likely a minimum of 7 years (due to lengthy processing times). However, they have no stated right to have their immediate family members join them even after this length of time living in Ireland. Also see Section 3.3.3 for an analysis of the Long-Term Residency process.

Process summary

The Spousal/Dependant Work Permit Scheme is the main process open to family members of ‘Long-Term Residents’ who are not already in the State. The deficiencies in relation to the entry process for spouses of Employment Permit holders also apply to Long-Term Residency.

The dependants of a Long-Term Residency applicant, who have been legally resident in the State for over five years (i.e.: 60 months) may also apply for Long-Term Residency. However, this particular long-term permission does not exempt the dependants from Employment Permit requirements.

Relevant criticisms

The main weakness in the options for family members of Long-Term Residents is that there is no specific and stronger process outside of the Spousal/Dependant Work Permit Scheme. With the restrictions on the Spousal/Dependant Work Permit Scheme this can mean that even if the person has been living and working in Ireland for seven years or

more his/her family may still be refused permission to enter, reside and/or work in Ireland.

Also see Section 3.2.3.1 for relevant criticisms

Recommendations

- **The opportunity to open a pathway in primary legislation via the Immigration, Residence and Protection Bill to family reunification for Long-Term Residents appears to have been missed. However, it is still possible to significantly improve the current arrangements by adopting secondary legislation to facilitate family reunification for Long-Term Residents. This could be done in a similar way to the EU1 process, with clear, stated and strong rights, identifiable and accessible application processes and maximum processing times. Rights accruing to Long-Term Residents and family members of Long-Term Residents should be in line with those granted under the EU1 process**

3.2.3.4. Family members of people with Leave to Remain

See Section 3.5 for a summary and analysis of the Leave to Remain process. This particular section deals with the processes and pathways that non-EEA family members of people with Leave to Remain in Ireland can follow in order to enter and reside in Ireland.

Process summary

There are no legislative rights for family members of people with Leave to Remain to join him/her in Ireland. However, requests can be submitted and it is at the discretion of the Minister that such permission is granted. In CMP's experience permission is generally only granted to people when the Irish resident can prove that he/she has adequate resources to support the applying family members.

There is no clearly identifiable and specific entry pathway for family members of people with Leave to Remain.

Relevant criticisms

The greatest weakness of the family reunification process for people who have been granted Leave to Remain in Ireland is that there is no identifiable and easily accessible process open to people. While it is possible to apply, there are no specific and distinguishable routes for family members of people with Leave to Remain in Ireland to pursue reunification. The invisibility of existing options has in CMP's experience led some people to consider entering Ireland through unofficial routes.

Regardless of how long the person has lived in Ireland there is no assurance that his/her family will ever be allowed to enter the country.

The difficulties outlined in Section 3.1 in relation to the entry process are exacerbated by the fact that even for visa required nationals who have Leave to Remain in Ireland there are no specific guidelines for applying for a visa for their family members to enter and reside in the State.

The other major fault of the existing options for family reunification is that the bar can be unattainably high. The qualification process appears to give primacy to the ability of the Irish resident to fully financially support all his/her family members should they be granted residency in Ireland – regardless of how long he or she has been living in the country and regardless of how long he or she has been working. This is an unfair rule which punishes more marginalised and lower earning people and not only curtails their ability and opportunities to integrate with Irish society but also closes the door on family members who wish to enter via a legal route.

Some spouses of family members who have been granted Leave to Remain are only granted Stamp 3 dependant status. See section 3.2.4 for issues on Dependant Status.

Abdul and Rema-Case Study 8

Abdul (36) is an Egyptian citizen who has been granted Leave to Remain on humanitarian grounds. Abdul has been living in Ireland for 10 years and has been working in a minimum wage job for the past 4 years since he got the right to work. Abdul got married two years ago to Rema, an Egyptian woman, but she has been refused a visa to join her husband in Ireland three times on financial grounds.

Recommendations

- **The establishment of a right to family reunification and a formal and identifiable entry and residence pathway for family members of people who have Leave to Remain status**
- **Those with Leave to Remain status should be eligible to apply for Long-Term Residency which should involve strong family reunification rights as outlined in Section 3.2.3.3.**
- **Those granted family reunification should be granted status on a par with their family member in Ireland**
- **In relation to visa and entry requirements for family members, as with the Spousal/Dependant Work Permits Scheme - rather than penalising people for being low paid and having children, a much more equitable financial requirement should simply stipulate that the qualifying sponsor is being paid the minimum legal wage for the industry he/she is working in. If this level of income sees the family qualifying for Family Income Supplement then the issue is the minimum wage in question not the size of a person's family. A person should not be penalised on the basis of a legal minimum wage that is inadequate to support his/her family nor should he/she be penalised for having family members that rule out reunification under the current rules**

3.2.3.5. Family members of people with ‘Without Condition as to Time’ status

See section 7 for a description and analysis of the main process.

Process summary

There is no specific process to follow regarding family reunification for someone who has been granted a ‘without condition as to time’ (WCATT) permission.

Relevant criticisms

The fact that there is no specific process or stated reunification right for family members of holders of WCATT status is the key weakness. That someone can live and work in Ireland for 8 years or more and in effect have the right to reside indefinitely without the right to have their family members reside with him/her is an unacceptable and anomalous situation.

Recommendations

- **Provided that an adequate right and route to family reunification for Long-Term Residents was provided and provided that long-term residence status is not an overly exclusive status (indications are that the Immigration, Residence and Protection Bill will make it harder to attain) there would be no need for a separate pathway for family reunification for people with WCATT status**

3.2.4. Dependant status

With almost all of the previously mentioned types of status in this section on family member status the incoming family member can not only be dependant financially on the Irish resident, their legal status in the country can be contingent on their ongoing relationship. This extra layer of dependency can put ‘dependant’ family members in very vulnerable situations in instances of relationship breakdown and domestic abuse or violence.

Process summary

It is possible in practice to approach a local immigration officer and/or apply to INIS for independent permission to reside in the State if that family member is suffering domestic abuse.

Relevant criticisms

Information about the above option is not disseminated.

The mechanisms that are present are ad-hoc and very discretionary. Formalised applications procedures and/or guidelines do not exist.

Even if people are aware that there is an option to apply for permission independently, the lack of available criteria and guidelines discourages people from making the application and identifying themselves to the authorities when they have no idea of the likelihood of getting the status especially when he/she may actually be undocumented.

The implications can be that people remain in domestic abuse situations and/or become undocumented partly due to the lack of knowledge of a possible independent status option.

Grace-Case Study 9

In 2005 Grace (34) got residency in Ireland based on the fact that her husband is Irish. They had a son Mark who was born in 2006. Grace is from Guatemala. Not long after Mark was born Grace's husband became verbally and then physically violent towards her. Grace had initially been given status for two years, after which she and her husband were to present to the local immigration officer in order for her status to be renewed. Grace's husband then also refused to assist her in renewing her status and Grace became undocumented. Grace searched for information on what her options to remain in Ireland would be if she decided to leave her husband. She could see no options outside of the Employment Permit system and this was not an option as she was the full-time carer of Mark. She continued to stay in the abusive relationship for another year before she approached CMP who assisted her in getting temporary independent permission. In describing her situation before she contacted CMP Grace said, 'I was in a trap and could see no way out. If I stayed then I faced his anger every day. If I left I would have lost my son and I would have had no place to go and I would stay undocumented'.

Recommendations

- **A visible and clear pathway should be opened for people with dependant immigration status in Ireland if they are suffering domestic abuse or if their relationship ends. This pathway should offer at a minimum, the same rights and status that the person had as a dependant**
- **All the processes and legislation of the Irish immigration system that facilitate family reunification should include mechanisms which formally allow for the continuation of a dependant's status in certain circumstances. This is already allowed for in Irish legislation on EU Treaty Rights. The following is a note on Statutory Instrument 656 of 2006¹¹, 'The death of the EU citizen, his/her departure from Ireland, divorce, annulment of marriage or termination of partnership will not affect the right of family members who are not nationals of a Member State to continue residing in Ireland, subject to certain conditions'.**

¹¹ Taken from <http://www.inis.gov.ie/en/INIS/SI656of2006.pdf/Files/SI656of2006.pdf> on 22/1/09

3.3. The Employment Permits system and Long-Term Residency

A non-EEA national seeking to work in Ireland can gain such permission through a number of channels which have been established under the Employment Permits Act 2006. The Work Permit and Green Card Permit channels are the most commonly used. The administrative scheme that facilitates Long-Term Residency status is currently only an option for people who have been on Work Permits, Green Card Permits, Working Visas or Work Authorisations¹². The Spousal/Dependant Work Permits Scheme is examined in section 3.2.3.1.

3.3.1. Work Permit

3.3.2. Green Card Permits

3.3.3. Long-Term Residency

3.3.1. Work Permits

Process summary

The Employment Permits Acts 2003 and 2006 allow for the issuing of a Work Permit for those occupations with a the salary of €30,000 or more where Green Card Permits are not available and, in very limited circumstances, in the salary range below €30,000. Applications for Work Permits are made to the Department of Enterprise, Trade and Employment, via standardised application forms. While the level of ownership of the permit is no longer as concentrated with the employer as it was pre-2007, a prospective employee must have a job offer and the employer's co-operation in applying for a Work Permit. A labour market test is required, showing that the employer could not get an EEA national to do the job.

Once the permit is issued to the employee, if he/she is not in the State then he/she will need a visa if visa required or otherwise he/she will present to an immigration officer at

¹² New Working Visas and Work Authorizations are no longer issued. They have been replaced by the Green Card Permits.

port of entry. After entry the prospective employee will register at the local immigration office where he/she will be given the appropriate permission to work.

If the prospective employee is already in the State then they will need the appropriate permission to reside (signified by a specific immigration stamp) in the State in order for the permit to be issued. After which they present to their local registration office with the permit to get the appropriate permission to work.

Relevant criticisms

The Work Permits system is a vacancy driven system. The core premise of granting the permit is that there is an employer in Ireland that has a vacancy for a particular type of employee that he cannot fill with an Irish or other EEA citizen. Once the non-EEA citizen has legally entered Ireland based on this job offer and been granted permission to work the employee is expected to work for this employer only. This requirement hands a considerable degree of power to private employers over the immigration status of employees. This becomes particularly problematic when the employer infringes the employee's employment rights and exploits him/her. The employee's capacity to fight this situation is significantly reduced as the employer can say that he/she will refuse to co-operate in the renewal of the employee's permit if he/she makes a complaint about his/her conditions and treatment. Understandably employees in such situations can feel compelled to leave their employer which very often will mean that sooner or later their permission to be in Ireland will expire and they will become undocumented.

In such circumstances it is possible for an employee to find another employer to apply for a new permit, but in practice and considering the added barriers for an employer to employ someone on a Work Permit such an employer can be very difficult to find. Even if the employer has refused to co-operate in the renewal of the employee's status, the employee may feel that he/she has few options to find work in Ireland and thus stays for longer and longer in an undocumented situation. The core of the issue is that, apart from the State's say in the matter, a person's permission to be in the country is to a degree outside of his/her control. The fact that this level of control is surrendered to one

employer lays the basis for the problems with this system. In CMP's experience it remains the most mainstreamed and accepted mechanism of the immigration system which contributes to people becoming exploited and undocumented.

A more comprehensive critique of the Work Permit system is given in Kelly (2004) although there have been some improvements to the system since the Employment Permits Act 2006. For example the number of times that a Work Permit holder has to renew his/her permit before he/she has equal work rights to Irish citizens has been reduced thus reducing susceptibility to becoming undocumented. There is now also an increased level of mobility within the system for people who have had an Employment Permit for more than 12 months although this information has not been publicised adequately and many Work Permit holders remain unaware of it.

The various guides to Employments Permits that are available from the Department of Enterprise, Trade and Employment lack basic important information:

- . the guides do not tell people their options if the employer refuses to co-operate in the renewal of their permit or if the employee becomes undocumented through no fault of their own
- . they do not directly address prospective permit applicants with various types of status who may already be in the country
- . they do not advise employees what to do if they are being exploited
- . they do not tell people about their options if they are made redundant (although this information is on the DETE website)
- . crucially they do not tell people about their options for applying for Long-Term Residency and Citizenship
- . there is inadequate detail on the unlimited Work Permit process
- . unlike the visa application process there are no multi-lingual guides for employees, this is especially important for the Spousal Work Permits Scheme

- . there are also deficits in relation to the information provided to the employer not least of which is the absence of information on the penalties for infringing Employment Permit and employment rights legislation
- . there is inadequate information about the level of mobility Employment Permit holders have in terms of when regular application requirements are waived and the industry in which a person can pursue a new permit
- . the Spousal/Dependant Work Permit guide does not explain that such a permit is available for part-time work

Jamal-Case Study 10

Jamal worked as a Manager for a retail chain on a Work Permit for a number of years. Towards the end of Jamal's 3rd Work Permit he approached his employer about renewing the Work Permit. The employer said that this would be no problem. The day before Jamal's status expired he enquired again and the employer said he had sent in the form and fee some weeks back. Jamal became suspicious and checked with the Employments Permits Section of the Department of Enterprise, Trade and Employment. They had not received the renewal application. Jamal again approached his employer and the employer became angry saying he had delivered the application himself and Jamal 'simply had to wait'. Jamal was unsure of what to do at this stage but he needed to continue working. He could not find information from any official sources as to what his rights or options were. Jamal's treatment at work and his conditions deteriorated at this time aswell, but he did not feel he could argue anymore with his boss for fear of loosing his job. When Jamal approached CMP he had been out of status for 18 months. In co-operation with the GNIB, INIS and DETE Jamal was eventually re-documented after being out of status for 24 months.

Recommendations

- **Minimising employer involvement in a person's immigration status is the key to improving the problematic nature of the Employment Permit system. There are arguments for totally removing the employer from the process and developing quota based system or US style lottery system. A lottery based system would set minimum qualifying criteria and allocate residency rights and equal work rights to Irish citizens unconnected to any employer. These systems however have not seen the demise of vacancy based permit systems. States in general view such immigration as primarily an economic necessity – employers need particular skills sets and in order for the economy to remain competitive these skills gaps need to be filled as soon as possible. The vacancy driven Employment Permit system is the most expedient way of doing this. On the basis that the vacancy driven nature of the system will not change, the length of time that the Work Permit holder is required to be bound to the employer on his/her permit should at be brought in line with that of the Green Card Permit holder i.e. The Work Permit system should mirror the Green Card Permit system in terms of allowing the permit holder to apply for long-term residence permission after two years**
- **It should be made formal stated policy that if an employer infringes an employee's employment rights that employee should be eligible to apply for a new permit without restriction**
- **While the Employment Permit system operates as it currently does (with employer involvement required in the granting and renewal of the permit) there needs to be a formalised, publicly expressed and permanently available pathway back into the system for people who have fallen out of status through no fault of their own. In this context CMP supports MRCI's Bridging Visa Campaign. While there are currently arrangements between INIS and DETE to facilitate such people, the process that people can go through should be clarified in writing and posted on the websites and in the offices of INIS, DETE and GNIB in a variety of languages. CMP believes that while some people are being**

brought back into the system via this mechanism, it needs to be publicised and detailed so that the information and the pathway is open to others who need it who may not be able to access the support offered by NGOs with advocacy services

- **Employment Permit holders who have been made redundant are currently granted a period of 3 months to apply for a new permit, this period should be formally extended to 6 months. This would be a very clear measure that would prevent people from becoming undocumented**
- **The guides available for all types of Employment Permit need to be revised in light of the criticisms of the guides outlined**

3.3.2. Green Card Permits

Process summary

Applications for Green Card Permits are made to the Department of Enterprise, Trade and Employment, via standardised application forms. Conditions need to be fulfilled such as salary level (which is a higher required level compared to Work Permits), job specification and employee qualifications. Unlike Work Permit applications no labour market test is required. A Green Card Permit is supposed to allow a more direct path to long-term residence permission¹³ and the employee can apply for family reunification immediately. Once the Green Card Permit is issued to the employee, if he/she is not in the State then he/she will need a visa if visa required or otherwise he/she will present to an immigration officer at port of entry. After entry the prospective employee will register at the local immigration office where he/she will be given the appropriate permission to work. If the prospective employee is already in the State then they will need the appropriate permission to reside (signified by a specific immigration stamp) in the State in order for the Green Card Permit to be issued. After which they present to their local registration office with the Green Card Permit.

¹³ As described in the Immigration, Residence and Protection Bill, 2008.

Relevant criticisms and Recommendations

- See previous sub-section for relevant criticisms and recommendations on the **Employment Permit guides**

3.3.3. Long-Term Residency

The current Long-Term Residency scheme is an administrative scheme introduced in May 2004 and is focused on people who have been legally resident in the State for over five years on the basis of Work Permit/Work Authorisation/Working Visa/Green Card Permit conditions. Such persons can apply to INIS for a five year residency permission. In this context successful applicants are exempt from Employment Permit requirements.

The dependants of the aforementioned, who have been legally resident in the State for over five years, may also apply for Long-Term Residency. This particular long term permission does not grant an exemption from Employment Permit requirements to any such dependants.

The current administrative scheme that processes Long-Term Residency application is to be replaced following the enactment of the Immigration Residence and Protection Bill 2008. On the whole this is a positive development as the right to what is being called *long-term residence permission* and *qualified long-term residence permission* is being enshrined in primary legislation. It appears that long-term residence permission will have stricter qualifying criteria than the current Long-Term Residency. For the purposes of distinguishing between the two processes the current process will continue to be referred to as Long-Term Residency whereas the planned process will be referred to as it is in the Bill, long-term residence permission.

Process summary

The applicant submits a copy of all his/her Work Permits (current and previous), a copy of his/her Certificate of Registration and a copy of his/her passport including all endorsements. The applicant must prove 60 months of reckonable residence in Ireland.

Relevant criticisms

The major weakness of the current process is the length of time taken to process an application. At the time of writing it was taking at least 18 months and in many cases 24 months to process a Long-Term Residency application. The longer someone is reliant on the Employment Permit system the more likely he or she is going to become undocumented.

In addition to this long processing time, many people were given inaccurate estimates as to how long it might take to process their application. Previously in 2006 and 2007 some applicants were told that the process would take no longer than 6 months. Some applicants quit their jobs after six to seven months (some were in exploitative situations) only to be left waiting for over 12 months without the right to work as applications ended up taking 18 months to process.

There is a distinct lack of transparency in the processing of Long-Term Residency applications with people being informed over 12-18 months after they applied that they are required to produce a police clearance certificate from every country they have ever lived in. This requirement is not stated up-front as part of the application process. After the request for police clearance (which can take a considerable amount of time to obtain) the processing time and the amount of time spent in the Employment Permit system was lengthened thus increasing the chances of becoming undocumented.

The status of Long-Term Residency plays a key role in providing people with more stable status in Ireland, thus promoting integration and lessening the possibility of someone becoming undocumented. However it is not widely available to many people who would benefit from it. For example, people with Leave to Remain status and family members of Irish citizens.

There are indications in the Immigration, Residence and Protection Bill that long-term residence permission will be available to a wider category of immigrants but that the qualifying criteria will be more exclusive. As mentioned in CMP's submission on the Immigration Residence & Protection Bill making Long-Term Residency more exclusive is a seriously retrograde step which may lead to more people becoming undocumented and damage integration possibilities.

Elena-Case Study 11

Elena (32) from Russia was working on her 5th Work Permit. She was not getting the correct rate of pay in her job and she was also being harassed by her boss. However, she decided to stay in the job for as long as she could as she knew it would be difficult to get a new Work Permit. She also knew that she would soon be eligible for Long-Term Residency. When she became eligible she tried to find out how long the application process would take, she wanted to leave her employer as soon as possible. She eventually got through on the INIS helpline and was informed that the application should take no longer than 6 months to process. Elena was very disappointed at this as she wanted to leave her employer as soon as possible. Elena left her job 4 months later with the knowledge that her application for Long-Term Residency would be processed in two months. However 2 months, 6 months and eventually 18 months passed without response and Elena was asked by INIS to provide police clearance for the application. Elena was very frustrated because she had been undocumented and without the right to work for 16 months and now she was being asked for extra documentation. Elena got these documents and her application was finally processed 18 months after she was told it would be.

The following recommendations also apply for the planned long-term residence permission described in the Immigration, Residence and Protection Bill 2008

- **Processing times need to be cut dramatically as currently someone can be resident in Ireland for 7 years before they get granted Long-Term Residency. In particular those applicants who have been made redundant since they have applied for Long-Term Residency should have their application fast-tracked so that finding a way back into the workforce is made as accessible as possible and to prevent people from becoming undocumented**
- **Long-Term Residency needs to be made more widely available and the rights associated with it need to be formalised**
- **The process of applying for Long-Term Residency should be more transparent and structured. All requirements should be detailed accurately at the point of application, not 12 months after the application is made. Standardised application forms are required along with detailed guidelines and accurate maximum processing times no longer than 6 months – as with the EU1 process**
- **The granting of Long-Term Residency or long-term residence permission should also involve the granting of a right to residency to immediate family members. Such a right should be facilitated with identifiable and accessible application processes and maximum processing times**

3.4. Students

According to official GNIB figures in February 2008 there were 28,765 non-EEA nationals registered with the GNIB on 'Stamp 2' status and 2,497 on 'Stamp 2A' status, most likely making students the largest non-EEA 'immigrant category' in Ireland¹⁴.

Non-EEA nationals can apply for permission to remain in Ireland on student conditions. Since April 2005 if a person proposes to enter a course of study of more than 12 months duration in an approved college then he/she can be granted a Stamp 2 status which entitles that person to work 20 hours per week during their studies and full time during normal holiday periods. If the course is not full-time or if the college is not approved a person can be granted a Stamp 2A which does not grant any rights to work.

Process summary

How a non-EEA national enters and prepares for entry into Ireland if they intend to pursue studies in Ireland will depend on whether they are a visa required national or not. See Section 3.1 this report on the general issues with entry pathways for visa required and non-visa required nationals.

For non-visa required nationals¹⁵ the process involves 3 steps:

- a. Find and enrol in an approved school
- b. Present to immigration at port of entry
- c. After entering, register presence in the State

From the student's country of origin he/she can find and enrol in an Irish college, travel to Ireland and seek permission to enter for the purposes of study. Once admitted he/she must register with the GNIB.

It is also possible for a person to enter on other grounds (e.g. tourist permission) and request a change of permission/status to student conditions after enrolling in an approved

¹⁴ Downloaded from <http://debates.oireachtas.ie/DDebate.aspx?F=DAL20080219.xml&Node=H17&Page=45> on 11/2/09

¹⁵ Information taken from the ICI factsheet for International Students 12/08/08

college. However as stated in the ICI factsheet, ‘...the Department of Justice, Equality and Law Reform may require that you leave and re-enter the State’.

For visa required nationals¹⁶ the process involves four steps:

- a. Find and enrol in an approved school
- b. Apply for a student visa
- c. Present to immigration at port of entry if granted a visa
- d. After entering register your presence in the State

The process is similar to that for a non-visa required national in terms of step a., c. and d. the main difference being the visa application process. The visa application is quite a rigorous procedure which is outlined with detailed guidelines and requirements on the INIS website.

Relevant criticisms

As with the problems highlighted with the entry process in Section 1, for non-visa required nationals there are no specific and targeted entry guidelines apart from information that states that no visa is required. On one webpage on www.inis.gov.ie on Entry into the State it is stated that:

Non EEA nationals are required to seek leave to enter the State by reporting to an Immigration Officer at an Irish port of entry. The onus is on the individual to have all documentation relating to their reasons for entering Ireland for presentation to the Immigration Officer to gain entry¹⁷.

The nature of the required documentation is not specifically detailed for non-visa required nationals. In addition there are no official statistics on the number of non-visa

¹⁶ Ibid

¹⁷ From <http://www.inis.gov.ie/en/INIS/Pages/WP07000022> 22/1/09

required nationals who have been refused entry to Ireland for the purposes of study. This lack of a clear and defined pathway for non-visa required non-EEA students can lead to misunderstandings in relation to the conditions of their student permission. Such misunderstandings lead to people being refused entry, sometimes after paying non-refundable fees, sometimes after leaving a job in their home country, and occasionally under the impression that because they got an offer from a college this almost guaranteed entry. People can also have less than full understanding of the conditions of their permission after entry and can become undocumented after an immigration officer refuses to renew permission after a breach of the conditions of the permission they did not fully understand.

There are no official multi-language guides on the student permission process even though there are multi-language guides for the online visa process. Many students come to Ireland to study English so it cannot be assumed that all such students can fully understand the English language student visa guidelines.

In April 2007 a new graduate scheme was started to allow non-EEA third level graduates to remain in Ireland for the purpose of seeking employment and applying for a Green Card Permit or Work Permit. The scheme grants the student a one-off six month extension of their student permission after they receive their exam results. However the scheme is restricted in that it is only open to the small proportion of non-EEA graduates. For students who have lived and worked in Ireland for a number of years and who may even have started a family here the graduate scheme may not be an option.

Family reunification for children of students resident in Ireland is generally not facilitated after the issuing of the following notice on the INIS website in July 2008:

First time students presenting for registration with the Garda National Immigration Bureau in autumn 2008 will be asked to confirm that they are neither accompanied by children nor do they intend to have their children join them later on. If they are unable to meet this requirement they will not

be registered unless the placement of the child in education has been expressly approved in writing by the Department of Education and Science or the Department of Justice, Equality and Law Reform¹⁸.

The overall situation regarding family reunification rights for students is vague. The circumstances under which someone can apply for permission for their child to accompany them have not been detailed. Such vagueness causes confusion and misunderstanding. There is no clear policy on spouses or partners of students. Nor is there clear policy if a child is born in Ireland and resides in Ireland up to the age when he/she is required to attend school.

The use of the student by the Irish immigration system is a clear example of treating people as economic units; their right to family life in Ireland is not being facilitated. Locked doors for all family members of people who have been invited to come to Ireland for a period of years are a recipe for creating situations where people feel they have no reasonable option but to become undocumented.

A further potential means of limiting the rights of students were proposals in 2008 to introduce Work Permits for students. While students would not enter the regular Work Permit system they would be required to undergo additional administrative processes every time they wish to change employer, making the system more complex and thus more likely to lead people into undocumented situations.

While it is possible for a non-visa required national to change permission/status to student conditions after initially entering on different grounds – the circumstances where this is possible are not clear.

¹⁸ From <http://www.inis.gov.ie/en/INIS/Pages/WP08000025> on 12/2/09

Jenna-Case Study 12

Jenna (23) is a Brazilian citizen, who paid €3,000 for a management course in a college in Dublin. When she presented to immigration control she was refused entry on the basis that she did not have proof that she had the means to support herself. At the time Jenna had no way to proving the amount of money that she had in her account as she did not expect to be asked about it. She had a confirmation letter from the recognised college that she had been accepted on the course and proof that the fees had been paid. However, Jenna was required to return to Brazil within a week. She discovered that the cost of a second return flight to Dublin would mean that she would not have adequate savings in her account and so she could not attend the course and lost 75% of the fees she had paid.

Recommendations

- **The INIS has indicated that the requirements for non-visa required non-EEA students are the same as for visa required students. Non-visa required students would benefit greatly from this information being targeted, packaged and easily available to them before they enter Ireland and during their student permission in Ireland. It should be made available in writing and in appropriate languages on the INIS website, Irish embassies and consulates globally, via immigration officials at port of entry and via local registration offices. It is notable that guidelines for completing visa application forms are available in Chinese, French, Russian, Turkish and Urdu yet there are no published guidelines in any language apart from English for people who wish to be granted student permission in Ireland, even though thousands come to Ireland every year to study English**
- **Family members of students in Ireland should have access to family reunification. The policy of restricting the entry of student's children is simply unfair and leads to an entrenching of the non-EEA student as an**

economic/educational unit with dispensable family rights. With over 28,000 non-EEA students in Ireland their contribution to Irish society is considerable and this should be recognised by at least opening formal and identifiable pathways to family reunification for all students

- **When students finish their studies in Ireland they often face a closed door if they wish to remain in Ireland. This is even after living and working in Ireland for many years, sometimes with their family. While the Graduate Scheme is a useful pathway for some students to follow, the qualifying criteria are too restrictive. CMP suggests that at minimum students who have been studying in Ireland for 3 years or more should be entitled to apply for the Graduate Scheme**

3.5. General Permission or ‘Leave to Remain’

Leave to Remain is a form of permission to stay in Ireland granted by the Minister for Justice, Equality and Law Reform, as an exceptional measure.

Generally people apply for Leave to Remain if: 1). their claim for asylum has not been successful and they are issued with a ‘Section 3 letter’¹⁹, 2). they are issued with a Section 3 letter for other reasons or 3). if their circumstances do not fit with one of the more mainstream mechanisms of staying in Ireland. In the third circumstance the Leave to Remain option is taken up by people who are not catered for by a process that is specific to their reasons for staying in Ireland.

Process summary

There are two different processes involved depending on whether your application for Leave to Remain is in response to a Section 3 letter or not. The following is from the ICI Factsheet on Leave to Remain ²⁰

Section 3 response:

‘...you should complete the enclosed forms, in particular the address notification form, and include more detailed information on separate pages if necessary.

Your application must be returned to the Repatriation Unit...within 15 working days from the date of the letter. This application should be sent by registered post’.

Applications outside of the Section 3 process:

If the application is made outside of the ‘Section 3’ process, there are no specific application forms to be completed. Your application should be a detailed letter setting out your immigration history in Ireland and the reasons why you believe you should be allowed to remain in the State and/or not required to return to your own country...the application should be sent to the General Immigration Division.

¹⁹ A ‘Section 3 letter’ is a notification of intention to deport. It refers to Section 3 of the Immigration Act 1999, which sets out the possible responses to such a notification.

²⁰ http://www.immigrantcouncil.ie/pdf/9471_leavetoremainenglish.pdf

Relevant criticisms

A very significant problem in the processing of both types of Leave to Remain applications is the time delays involved. CMP has had many clients who were waiting for their Leave to Remain application to be processed for years, in one case a man was waiting for over 4 years. Coupled with this time delay the applicant can find it very hard to get feedback from the Department on how the application is progressing.

The waiting period involved, the lack of information and the perceived lack of action on processing an application can be very disillusioning to some applicants to the point where he/she is convinced that the Department has forgotten about their application and that they would be better off 'dropping off the official radar' and making whatever life they can for themselves as an undocumented immigrant. It is important to remember that many people who make Leave to Remain applications do not have the right to work. Being deprived of this right for an extended period of time that can accumulate to a number of years is exceptionally hard for people to deal with and in their desperate need to work and in their disillusionment with the Department's lack of response to their application they abandon hopes of being granted Leave to Remain and legal status in Ireland. CMP believes that no human being should be allowed to become trapped in such a seemingly hopeless situation – deprived of some of the most basic of human rights for months and years on end with no indication as to when this deprivation might end.

For the Section 3 process the 15 working day response period can be an inadequate time period for an applicant to respond in a comprehensive and informed manner. If the applicant needs legal advice and assistance in drafting such a letter then an adequately experienced solicitor or other advocate may not be available within the time period. Sometimes applicants will not have strong written English language skills and if this is combined with a lack of informed guidance in writing the letter a weak application can ensue.

Lack of support and knowledge on how to make a Leave to Remain application in response to a Section 3 letter can make the person feel overwhelmed especially when the 15 working day time limit has already started to elapse when they receive the letter.

While recognizing NGOs efforts in this regard CMP believes that the poor availability of information and guidance for people on how to respond to a Section 3 letter is a contributory factor in leading some immigrants to remain in Ireland undocumented. Such people are in an exceptionally vulnerable situation.

Outside of the Section 3 process information about the Leave to Remain option is not readily available through the immigration system. Consequently there is a considerable lack of knowledge among immigrants about the existence of this Leave to Remain option. Immigrants in particular situations are not being presented with appropriate pathways and thus they can often believe that there is no option to remain in Ireland but to do so in an undocumented status.

Ahmed-Case Study 13

Ahmed is an Algerian citizen who applied for Leave to Remain in 2001. Ahmed waited 5 years for a response to his application. Ahmed has estimated that he rang INIS 100 times during this time and on the 5 occasions he got through to someone he was given no indication as to how long his application would take to process. In the two years prior to receiving the response Ahmed's mental health deteriorated and he took anti-depressant medication for over a year. Ahmed did not have the right to work during this 5 year waiting period.

Recommendations

- **Wider dissemination and display of information and guidelines on how to apply for Leave to Remain should be made available on all relevant government websites (INIS, GNIB, DETE) and public offices (GNIB and District Offices)**
- **Detailed guidelines on how to respond to a Section 3 letter should be posted on the INIS website**
- **The response period for a Section 3 letter should be extended to 20 working days**
- **A maximum processing time for all Leave to Remain applications of no more than 6 months**

The recommendations for improvement of other immigration processes are all linked to the Leave to Remain option. It is arguable that the Leave to Remain process is used by many people due to the failure of other immigration mechanisms to offer them a reasonable residency pathway appropriate to their circumstances. It remains an unclear option and as part of the Section 3 process an option that many people are rushed into only to be left waiting for an inordinate amount of undefined time in limbo.

The Leave to Remain process could serve as a useful complement to more established mechanisms of gaining residency in Ireland provided these mechanisms are more sophisticated and responsive and provided that the Leave to Remain option was made more transparent and was accompanied by detailed and more widely and easily accessible application guidelines and supports.

3.6. Transitional measures for new EU citizens

EEA citizens would never traditionally be classified as undocumented in another EEA country. However the response of Ireland (and some other EU countries) to the accession of Romania and Bulgaria to the EU in 2007 created a type of status in between that of a non-EEA national and other EEA nationals which has led to the development of a whole new set of grey areas of semi-compliance with immigration requirements. The effects in terms of access to rights of this quasi status have parallels with non-EEA people in undocumented status, although there are fundamental differences in terms of the strength of the right of an EU citizen to be in Ireland.

On January 1st 2007 Romania and Bulgaria joined the EU. Romanian and Bulgarian citizens and their family members are governed by the same entry and residence requirements as all other EU citizens²¹. However, for the first two years following the accession, access for Bulgarian and Romanian workers to the labour markets of the EU-25 Member States depended on the national law and policy of those States, as well as the bilateral agreements they may have with Bulgaria and Romania. At the end of the first two years following accession each of the EU-25 Member States was required to formally notify the Commission whether they intended to continue with national law measures for a maximum of three more years or whether they will apply the Community law regime of full free movement of workers. In December 2008, the Irish Government announced its decision that, from 1 January 2009, it would continue to restrict access to the Irish labour market for nationals of Bulgaria and Romania.

In principle, five years after the accession, the transitional arrangements should end. There is, however, a possibility for an EU-25 Member State to ask the Commission for authorisation to continue to apply national measures for a further two years but only if it experiences serious disturbances on its labour market (or the threat thereof).

²¹ These requirements are detailed in S.I. 656 of 2006.

For those Romanians and Bulgarians who were not resident in Ireland for 12 months prior to accession they are faced with a set of rights that are similar to those for non-EEA nationals in terms of the requirement to initially go through the Employment Permits system.

Process summary

Bulgarian and Romanian nationals continue to require a permit to take up employment in Ireland and the job is subject to the requirement for a labour market test. However, those who were already in the State on a valid Employment Permit or other permission to remain for an uninterrupted period of 12 months or longer prior to the 31st December 2006 will not need an Employment Permit and they are granted open access to the labour market. The Employment Permit system gives preference to Bulgarian and Romanian nationals over non-EEA nationals.

Relevant criticisms

For those who fit into the above criteria the essential issues relate to the same previously mentioned problems of the Employment Permit system, although to a significantly lesser extent as the Employment Permit is only required for one year after which open access to the labour market is granted. However, there are a number of categories of people who do not fit the above criteria who have found themselves in various unsatisfactory situations.

This situation was not helped by a lack of prepared and detailed guidelines for Romanian and Bulgarian citizens in various situations in Ireland and abroad, in relation to their right to access the labour market in Ireland when January 2007 arrived. The rights of Bulgarians and Romanians still required clarification well into 2008.

CMP still has Romanian and Bulgarian clients with full (previously had 12 months legal residence permission or Employment Permit) or partial (students) rights to access the labour market and reside in Ireland who face barriers gaining employment and accessing their rights in terms of housing and social welfare. Some employers and indeed State services still request a Stamp 4 or a Work Permit from such people. This misconception

on behalf of employers and State services is in CMP's view partially as a result of the delay by the immigration system in clarifying the exact rights and requirements associated with Romanians and Bulgarians. Their rights should have been clarified, detailed and published well before 2007.

While it is now possible to get a letter from DETE explaining a person's right to work, this knowledge is not widespread and it has not been publicised and disseminated adequately.

CMP also has had clients who were refused entry into vocational orientated third level courses on the basis that the person would not have free access to the labour market after completion of the course.

Some Romanians who had made a claim for asylum prior to 2007 and had not received a final decision on their application still remain in Ireland with no clarity in relation to their right to work or reside in Ireland. The official line of INIS is that such people's claims are terminated but some were not notified of this nor did they receive guidance or support from INIS on what their other options were after accession. CMP also had a client who had submitted an application for Leave to Remain some years before 2007 and has never received a response.

There are no formalised family reunification pathways for family members of Romanian and Bulgarian citizens living in Ireland. This has led to family members of such Romanians and Bulgarians entering and staying in Ireland but not accruing the same work rights of their family member for 18 months. This has led to the anomalous situation whereby if the dependant family member were a non-EEA national then he/she would most likely gain equal rights within 6 months of arriving in Ireland under the EU Treaty Rights process.

Adrian and Jane-Case Study 14

Adrian (a Romanian citizen) married Jane (an Irish citizen) in 2007. They were living in London at the time but decided to move to Ireland. There were no problems with Adrian entering Ireland as he was now an EU citizen. However, they experienced great difficulty in getting official confirmation about Adrian's rights in Ireland. Jane had done some research in 2006 before they got married and found out that, as a non-EU citizen, it was possible for Adrian to apply for residency and unrestricted work rights as the spouse of an Irish citizen. She expected that Adrian should at least be able to do this after 2007 when Romania joined the EU. The couple found it very difficult to get consistent information about Adrian's rights from INIS, DETE and GNIB. Some sources said he needed a Work Permit, some said he could apply for residency based on marriage to an Irish citizen and another said he could apply for EU Treaty Rights status. The couple spent almost a year in this state of uncertainty before they approached CMP. After some time and repeated correspondence, an official from the INIS confirmed that Adrian had unrestricted work rights. However, Adrian continued to face difficulty in getting employment as some employers wanted to see an official statement of policy.

Recommendations

- **The removal of transitional measures on Romanian and Bulgarian nationals is the only comprehensive and sure way of eliminating all the previously mentioned issues with the measures**
- **Based on the government's decision in December 2008 to retain the transitional measures the following recommendations are made:**

Full and detailed information on the residency and labour market access rights of all categories of Romanian and Bulgarian nationals and their dependants should be available on the INIS and DETE website on official

department documents. While the currently available information is significantly improved since 2007, it is still less than complete

The option of getting written conformation from DETE on individual Romanian's or Bulgarian's level of access to the labour market should be formalised, publicised and disseminated

The spouse and/or dependants of Romanian/Bulgarian workers who no longer require a Work Permit should also be granted immediate and open access to the labour market

- **CMP does not agree in principle with the imposition of transitional measures for nationals of new EU states. CMP believes that this goes against the spirit of the EU particularly the core value of free movement of workers. Should transitional measures be imposed on other EU states in the future the INIS and DETE must ensure that detailed and accessible guidelines and procedures are in place at least 3 months prior to that country joining the EU**

3.7. Without Condition as to Time (WCATT)

There have been some indications that the WCATT scheme will be discontinued after long term residence permission as described in the Immigration, Residence and Protection Bill 2008 has been introduced. The WCATT scheme is included in this report for its capacity to encapsulate particular issues with the immigration system. There is very little information available on this type of status, but it appears in effect to carry at least the same rights as a Stamp 4 permission with duration similar or longer than Long-Term Residency.

Process Summary

The following is taken from the INIS website:

If you have completed 8 years legal residency in Ireland excluding student conditions you may qualify for a "Without Condition as to Time" endorsement. In order for this office to ensure that you qualify for a "Without Condition As To Time" endorsement you are required to submit the following original documents:-

- 1. All expired passports in respect of yourself, since arriving in the State*
- 2. Your current passport²²*

The scheme also known as Stamp 6 entitles non-EEA nationals with at least eight years of legal residency in Ireland (excluding students) to apply for permission to live here without any condition attached, up to the expiration of their current passport.

²² From http://www.inis.gov.ie/en/INIS/Pages/Without_Condition_As_To_Time_Endorsements on 12/2/09

Relevant criticisms

Many CMP clients who have been eligible for the scheme were unaware of its existence. Those that were aware have been very confused and unsure about what is involved in this status with some people unsure if it ruled them out of applying for naturalisation. The confusion and lack of information on this type of status prevents eligible people from applying for a status that offers more stability and permanency than most other types of immigration status.

There are no detailed published qualifying criteria or associated rights.

Recommendations

- **Clear and detailed guidelines, criteria, application forms and maximum processing times for WCATT need to be established by INIS**
- **These guidelines need to include details of the rights attached to the status, including details on family reunification options – also see section 3.2.3.5**

3.8. Business permission

Process summary

Certain categories of non-EEA nationals in Ireland do not require permission from the Minister to conduct a business. These categories include:

- persons who have been granted refugee status by the Minister for Justice, Equality and Law Reform
- dependant relatives of EEA nationals exercising a valid right to reside in Ireland
- persons who have been granted permission to remain in the State on one of the following grounds:

persons with permission to remain as the spouse of an Irish national

persons with permission to remain in Ireland on the basis that they are the parent of an Irish born child (an Irish citizen)

persons who have been granted temporary leave to remain in the State on humanitarian grounds, having been in the asylum process

Non-EEA nationals outside these categories need to satisfy various requirements such as submitting a business plan that proposes to transfer capital of €300,000 to the State and must create employment for at least 2 EEA nationals. Some criteria can be waived if the applicant has been legally resident in the State for at least five years in an employed capacity.

Relevant criticisms

The current Business Permission requirements place considerable barriers in front of skilled entrepreneurial non-EEA nationals who wish to start or get involved in setting up a business in Ireland. The hurdle is so high that it discourages and prevents small business development, by only allowing businesses that can transfer capital of at least €300,000 to the State.

The current form of Business Permission works against the Employment Permits (particularly the Green Card Permit system) system and the international student system. These systems encourage skilled individuals to come to Ireland to work and/or study but the Business Permission system fails to offer adequate options in order to retain such people, who may wish to start a business.

Accessibility of information on and knowledge of Business Permission is also a key problem. CMP has had clients who went through a variety of processes in starting up a business and invested money without realizing that they needed a specific type of immigration status to start a business. People assumed that because they successfully went through a number of State sanctioned processes in setting up a business and because they had legal permission to be in the State, that they had permission to set up a business and thus neglected to renew their immigration status and so became undocumented.

CMP has had clients who were interested in starting a business and were eligible to apply for exemptions from the required criteria for business permission but were totally unaware of this option.

Gao-Case Study 15

Gao is a Chinese citizen who came to Ireland on a Working Visa to work in the I.T. industry. Outside of his day job Gao started to develop a business idea and with the help of an accountant friend they set up a small business. Indications were very promising that the business would do well. Gao had already gone through some official processes for starting up a business and assumed everything was done correctly. The business began to grow and he took on two employees both of whom were Irish. However, Gao knew that he could not sustain his day job and keep an eye on the business so he made enquiries about how to stay in Ireland to focus solely on looking after his business. Gao found it difficult to find information but when he found out about the requirements for business permission he was very disheartened. He knew that he would not be able to fulfil the requirements and he had also invested a large amount of his own money in the business. Gao wound down the business and he is currently working in an IT Management role as an employee.

Recommendations

- **The current form of Business Permission is not conducive to the creation of small and new business opportunities for non-EEA nationals. More accessible schemes for entrepreneurs and people who simply wish to be self-employed and/or sole traders need to be created urgently**
- **Information on how to apply for Business Permission should be displayed in a more accessible fashion on the websites of INIS and the Department of Enterprise, Trade & Employment**
- **All those who are exempt from Business Permission conditions should be notified of such when they gain the status that grants the exemptions e.g.: permission to remain as the spouse of an Irish national**

3.9. Naturalisation

Process summary

To summarise people who accumulate 5 years ‘reckonable residency’ in Ireland in the 9 years prior to their application are eligible to apply for Irish citizenship. There are other requirements in relation to age, good character, intention to reside in Ireland and making a declaration of fidelity to the State. The Minister for Justice has the power to waive one or more of the conditions in certain circumstances. Applications for adults are through Form 8, which is accessible via the INIS website.

Relevant criticisms

There are consistently inadequate resources committed to the processing of naturalisation applications, which can leave people waiting for a final response to their application for up to three years. With adequate resources in place the procedures and checks that are carried out as part of processing a naturalisation application should take no more than 6 months. For this report one of the relevant consequences of the delay is that people spend an unnecessarily long amount of time (up to 2-3 years) with more unstable status and are thus more susceptible to becoming undocumented.

Apart from the above-mentioned requirements and the specifics of ‘reckonable residency’ there is inadequate detail on requirements that need to be met in order to be granted citizenship. CMP has had clients who satisfied all the stated requirements and yet were refused citizenship. Added to such decisions is that reasons for refusal are not always provided. When some reasons for refusal are given they relate to requirements that were not stated or available to the applicant prior to applying. Not only is this a waste of public resources it is a furtive and disingenuous approach to the application process which effectively tells the applicant at the end of the process that there was a rule he/she was not told about that makes him/her ineligible.

It is also has been stated in refusal letters that appeals against refusals are not possible; this is even in situations where full reasons for refusal are not clear.

One particular reason given for refusal that is not presented at the outset of the application or is published on any INIS resources is the accessing of public funds via the social welfare system. CMP maintains that it is a person's right to access social protection. This right is provided to many people in Ireland and protected by law created by the Oireachtas if they have an entitlement to do so. That accessing this right provided for in domestic legislation should disqualify someone from Irish citizenship is at odds with any sense of justice, fairness and respect for rights. It is also important to note that access to the right to social protection has been significantly restricted since the introduction of the Habitual Residence Condition in 2004.

George-Case Study 16

George (34) is a US citizen who has been working on an Employment Permit in the IT industry in Ireland since 2000. In 2003 he was made redundant. George found a new employer within a year. In 2005 George applied for Irish citizenship. In 2007 George received a letter from the INIS saying that he had been refused naturalisation. There were no reasons provided in the letter. After extended efforts to get written reasons from INIS he was informed that his application had been refused because he had accessed social welfare. George said that, *'I was absolutely dumbstruck when I read the reason for refusal. It was not stated in the application criteria that I could be refused for this reason'*.

Recommendations

- **Adequate resources should always be in place to ensure that naturalisation applications are processed within a six month period. Not only does this remove people from unnecessarily vulnerable types of immigration status as soon as possible, it is also one of the strongest and tangible actions that the State can take to facilitate integration**

- **All requirements that an applicant needs to fulfil should be published in detail with the application form. That such basic procedure is not followed is simply unacceptable and taints the process that can lead to the privilege of Irish citizenship. This process should be 100% transparent. Not only is it a waste of public resources for the INIS to allow people to apply for citizenship when it could have been determined by the applicant themselves prior to applying that they would not fulfil the criteria, it can also be a very misleading process for the applicant. The applicant can be told at the end of the process that there was a rule he/she was not told about that prevents him/her from being granted naturalisation**
- **As with the visa process all possible reasons for refusal should be stated prior to application. There needs to be more detail in the application guidelines on issues that can be used to refuse a person naturalisation. For example, it should be stated clearly in application guidelines how offences such as minor traffic offences are considered in the application process**

Accessing one's right to social protection is an unjust reason for refusing a person citizenship. Along with specific qualifying conditions for each type of payment social welfare payments can only be granted if the person has satisfied the habitual residence condition or if he/she has contributed considerably to the social insurance system and thus is eligible for a contribution based payment. It is also worth noting that a person will not be entitled to jobseekers allowance or benefit unless he/she is actively seeking employment. The Social Welfare system has its own checks and balances in place to ensure that those who receive a payment are entitled to the payment. The Immigration system undermines the validity of such checks and balances by the refusing citizenship to people who have accessed their right to social protection.

CMP is also concerned that requirements for English language proficiency for people applying for naturalisation will be introduced before a well resourced, accessible and effective English language training system is established in Ireland, thus making naturalisation even more exclusive and inaccessible.

4. Managing Change

Change is a regular part of life for immigrants and the immigration system. This section looks at two types of change that are relevant to this report, how an immigrant can change status in Ireland and how the immigration system deals with change in its own legislation, policy and procedure. Many of the issues and recommendations from the *Processes* chapter could be viewed with the analytical frame of ‘changing status’ – as most of the processes covered involve changes in status. Most of the issues covered in the *Processes* chapter relate to what we refer to as ‘standard status changes’ in this complementary chapter. Recommendations on the issues discussed are given at the end of each of the two sections.

4.1. *Changing status*

Even the most sophisticated immigration systems and the sub-systems within them are generalised mass responses to many different individual circumstances. The manufactured categories of ‘Work Permit holder’, ‘residency based on marriage to an Irish national’ or ‘non-EEA student’ (and the restricted set of rights associated with these categories) are sustained by the individual and the system for some amount of time. However, it is rarely socially or personally sustainable and never desirable for members of a fair and just society to be maintained in a situation of diminished rights compared to other members of such a society. Such situations are antithetical to creating opportunities for people to integrate with society.

When a person enters Ireland as a ‘foreign national’ they surrender a number of their human rights. This is the crux of most immigration systems and it is central to the reasons why some non-EEA immigrants remain marginalised in Irish society compared to Irish citizens. It is CMP’s view that the ideal way to introduce new members to society is with the same rights as citizens. In the context of the reality of the immigration system it is vital that routes of progression that allow people to regain their rights are clear and accessible and if the basis for their residency permission has changed that there are

reasonable and recognisable routes for people to follow to stay in the State on a documented basis. There can be a number of general situations which will lead an individual to pursuing a change in status. These situations can stem from a natural wish to improve status or a person's circumstances may have changed that demands that they change status.

4.1.1. Standard status changes

There are a number of formalised and publicised methods for a person to regain rights surrendered on entering Ireland as a foreign national and registering with a particular type of permission. Appendix 1 details some of these standard status change pathways.

For example: Work Permit→Long-Term Residency→Citizenship **or**
Student Permission→Graduate Scheme→Employment Permit→ Citizenship

These routes are quite linear and rigid and issues arise when individuals' situations do not and cannot fit the prescribed route. CMP has observed that the situations that lead to someone becoming undocumented usually involve an attempt at a change or renewal of status in Ireland, i.e. where the arrow is located in the above pathways. An immigrant will generally need to interact with one or more agencies of the system if they require a change in status. When such an interaction involves poor service levels on behalf of the agency, vulnerability to becoming undocumented can be exacerbated. This issue is covered in more detail in the next chapter. Criticisms of various standard change of status processes are covered throughout the process analysis chapter of this report, for example: issues with the Employment Permits system, the Long-Term Residency process, naturalisation and issues relating to dependant status.

Ali-Case Study 17

Ali obtained an unlimited work permit with his employer of over 5 years last year. He also applied for Long-Term Residency at the same time. Ali was recently made redundant. He has had a two job offers since then but they have fallen through as he still requires a work permit that the employers were unwilling to apply for. He knows the prospects of getting a new permit are slim. Even though he is now entitled to Long-Term Residency he knows he could be waiting another 18 months for the application to be processed. He expects he will have to access Jobseekers Benefit in order to survive while his application is being processed. He has written to and called the Long-Term Residency section who have told him he has to wait and go through the standard process for Long-Term Residency.

4.1.2. Non-standard status changes

For those people whose need and/or request to change status does not fit into one of the standard options, it is possible to present to one's local immigration officer and explain the need and request for a change of status. It is also possible to write to INIS and formally request a change of status. However, neither of these options is adequately signposted or accessible. An example of such a change would be a person here on student permission changing status to residency based on marriage to an Irish national. The sole publicly accessible piece of information is a brief and somewhat misleading notice on the INIS website:

Change of status:

In the case of a non visa required national it is open to you to seek to change your immigration status with your local Immigration Officer, outlining details of your future intentions in the State. You should be in a position to provide documentary evidence of the proposed change to your immigration status.

Should a visa required national wish to change their status they must first leave the State and apply for the appropriate visa at their nearest Irish Embassy or Consular Office should they wish to return outlining the purpose of their journey²³.

What is somewhat misleading about this notice is that it is possible for a visa required national to change their status and remain in Ireland – via the standard status change routes mentioned. However, visa required nationals do appear to come up against more resistance if they try to change their status in a way different from the standard options. The result of the lack of identifiable and accessible options is that when a person’s circumstances change, the unofficial route to staying in the country appears the only identifiable option as information on official options are not readily available or visible.

The GNIB via the local immigration officer play a key role in dealing with unforeseen and unplanned personal circumstances in which people may find themselves. The power to grant temporary status to people in such circumstances is a powerful and effective tool in ensuring that people do not fall out of status. However, such a facility should not contribute to a shortcoming in the publishing of information about various options open to people in different circumstances that may be out of status or at risk of falling out of status. For example, the mechanism where by INIS can grant a former Employment Permit holder temporary status if they have been exploited and as a result become undocumented.

²³ Downloaded 22/1/09 from <http://www.inis.gov.ie/en/INIS/Pages/WP07000279>

Malik-Case Study 18

Malik is a Pakistani citizen who worked in an Indian restaurant as a Work Permit holder for 2 years. Malik's conditions of employment were extremely bad. He worked 80 hours a week and was paid the equivalent of €3 per hour. Malik eventually left the employer. His health was very poor due to the work conditions. Malik's permit had expired by the time he had recovered and he was out of status for 11 months before he presented to CMP's service where he was assisted in getting temporary permission to stay in the country, while he looked for a new employer to apply for a Work Permit for him. Malik said that 'If I knew there was a way to regularise after I left my employer, I would not have been out of status for almost a year'. Malik successfully took a case against his former employer to the Labour Relations Commission.

- **The non-standard options and mechanisms to apply for a change of status should be clearly identifiable, explained in more detail and accessible via the INIS, DETE and GNIB websites and an information leaflet should also be widely available, especially in Garda stations which have local immigration officers. Also see recommendations under section 5.2**
- **On registering with the GNIB for the first time information on all standard and non-standard status change options should be provided. Also see recommendations in section 5.2. for other documentation that should be supplied at registration**

4.2. Policy changes

The previous sub-section outlined some of the difficulties that people face if there are changes in their personal circumstances or if they wish or need to change immigration status. Such difficulties rarely occur in a static context. The immigration legislation, policy and procedure that frame the system the immigrant is interacting with are in a constant state of change. However, the manner in which change is initiated and implemented in the immigration system is open to question. There have been frequent examples of unannounced policy changes that appear not to take the impact on the person into account, particularly in terms of the capacity of a policy change to make someone undocumented. This part of the report examines some policy changes in the immigration system. This section is of particular importance in changing economic conditions which can affect immigration policy and procedures and the lives of immigrants whose status is often connected to their employment.

4.2.1 The Irish Born Child Scheme - IBC/05

The Policy Change

Previous to February 19th 2003 a total of 10,584 people were granted residency in Ireland on the basis of their Irish children²⁴. Also on this date and following the judgment on the Lobe & Osayande case²⁵ by the Supreme Court, the Minister for Justice, Equality & Law Reform no longer accepted new applications for Leave to Remain in Ireland on the basis of parentage of an Irish child. It is not within the scope of this report to examine all the State actions that led to the IBC/05 scheme. The focus is on the manner in which the residency pathway was removed from people and how the policy change was implemented.

The Government refused to accept new applications for residency based on the parentage of an Irish citizen from February 19th 2003. It also stated that the previous procedure for granting residency would not be applied to the 11,493 cases of people who had already

²⁴ Coakley & Healy, (2007).

²⁵ Ibid.

submitted an application. What followed was a period of almost 2 years of uncertainty before an announcement in 2004 that the Irish Born Child scheme would be introduced in 2005. This period included some of the darkest days in Irish immigration history when by late 2004, 37 parents of Irish children had been deported. Irish children had also been removed from Ireland by the Irish State.

Between January 15th 2005 and March 31st 2005 it was possible for non-EEA parents of Irish children born before January 1st 2005 to apply for residency. The IBC/05 scheme included a statutory declaration which required the applicant to accept a number of conditions. The applications were submitted via standardised DJELR (Department of Justice, Equality & Law Reform) forms and the initial period of residency (if granted) would be for two years. On January 31st 2007 procedure for the renewal of IBC/05 residency status were announced by the DJELR. Applications were required to be submitted one month before the person's residency status expired. If renewed successfully the period of residency granted was three years.

Consequences of the Policy Change

Underlying the IBC/05 scheme were deliberate actions by Government that led to the removal of people's opportunity to attain legal and/or stable status in the country, as already described above. It is important to note that there was significant and effective co-operation between the DJELR and the NGO coalition CADIC (Coalition Against the Deportation of Irish Children) on the IBC/05 scheme and its renewal phase. Without this successful co-operation and the information disseminated by CADIC on the process, the IBC/05 scheme would have been a much more difficult experience for many more people. The following issues relate specifically to the IBC/05 scheme:

- . The major criticism of the IBC/05 scheme in the context of this report is that it was introduced two years late. Before the DJELR decided not to process the already received 11,493 applications the scheme should have been set up so that there would simply have been no period of uncertainty and limbo for so many thousands of people – many of whom had no right to work. The delay that

followed the decision of February 2003 caused immeasurable uncertainty and hardship in the lives of those involved. That people could be dropped from a legitimate process and left in limbo for so long was indicative of the lack of strategic planning involved

- The renewal scheme for IBC/05 was opened too late in January 2007. A minority of people fell out of legal status before their renewal was processed and in February the IBC Unit instituted a policy of ‘temporary extension’ to residence permits for people in order to keep them in legal status and process their applications. The IBC Unit did not directly inform all relevant applicants of this temporary extension option, and consequently people became undocumented. Despite the temporary nature of this undocumented status it did impact seriously on some people, for example, CMP had a client whose employer refused to continue to employ her as her status expired due to the delay in opening the renewal process

4.2.2. Transitional measures for new EU citizens

Issues in relation to the rights of Romanians and Bulgarians are dealt with in the previous chapter in Section 3.6. However, the subject warrants reference in this section, as the issues addressed in Section 3.6 were a direct result of a policy change and the way that change was implemented. The recommendations at the end of this section have been partly drawn from the issues faced by Bulgarians and Romanians since 2007.

4.2.3. Students’ children

The Policy Change

In spring 2008 local immigration officers began to inform people with student permission that if they could not prove that their children resident in Ireland had left the State or were in private secondary education in the next academic year that their student status would not be renewed. CMP asked for written clarification of this policy change and was

informed that the policy would be clarified by the end of July. In the meantime the policy change continued to be communicated verbally (as above) via local immigration offices. It is maintained by INIS and GNIB that this was not a change in policy but an implementation of existing policy. On the basis that such a policy was not previously communicated to people or publicly available in written form, CMP has classified it as a policy change.

Consequences of the Policy Change

The key issue with this policy change was the inadequate advance warning of the change and when the actual policy was published in writing it was far too late. A verbal policy was communicated initially by the GNIB which gave little consideration to people's family circumstances or plans that they had made for their life in Ireland together in the years to follow. Then on July 29th the actual policy was published, which was significantly different from what was being communicated verbally.

The written policy is as follows:

Where non-EEA students have enrolled their children in State schools and the child was already in education for some or all of the 2007-2008 school year, and the parent can demonstrate that they have partially completed their own course, the child will be permitted to remain in education until the completion of their parent's course, provided that the parent's course completes on or before July 2010. Parents may not enrol in new courses or transfer between courses. Where the parent's course ends in the middle of a school year, the parent's registration cannot be extended solely for the purpose of allowing the child to finish the year.

First time students presenting for registration with the Garda National Immigration Bureau in Autumn 2008 will be asked to confirm that they are neither accompanied by children nor do they intend to have their children join them later on. If they are unable to meet this requirement they will not be registered unless the placement of the child in education has been

*expressly approved in writing by the Department of Education and Science or the Department of Justice, Equality and Law Reform*²⁶.

CMP had a number of clients whose family life was thrown into disarray and confusion by the above policy change and how it was initially communicated. They preferred for the stories to remain fully confidential.

4.2.4. EU Treaty Rights

See Section 3.2.2 of the *Processes* chapter of this report for details of the EU Treaty Rights process.

The Policy Change

In 2007, without prior notice, the INIS decided to change the criteria for eligibility for EU Treaty Rights status for non-EEA family members of EU citizens in Ireland, based on a clause that had been inserted in S.I. 656 of 2006. The policy change became evident through individual refusal letters where the reason given was failure to comply with a previously uncommunicated requirement relating to proof that the non-EEA citizen had previously lived in another EU country.

After the 2007 policy change INIS issued notice of intention to deport (in accordance with Section 3 of the Immigration Act) to many failed EU1 applicants. While INIS refused EU1 status to applicants who could not prove residence in another EU country it did eventually grant a lesser status to some applicants who appealed the refusal. The criteria for such status were unstated.

On July 25th 2008 the European Court of Justice ruled that Ireland's requirement for previous residency in another EU country was unlawful. Soon after this decision the INIS began reviewing refusals of status on this basis and granting residency.

²⁶ From <http://www.inis.gov.ie/en/INIS/Pages/WP08000025> on 12/2/09

The consequences of the policy change

The decision to change this policy without notice and in the middle of hundreds of live applications threw the lives of thousands of people into chaos. Where previously people had been given the impression that they could build family life in Ireland, now they were being told that non-EEA family members would not be granted residency in Ireland through the EU Treaty Rights process unless he/she had resided in another EU country

Not only were people who had submitted applications prior to the change in policy affected, those people who submitted applications after the change in policy were also affected as the new residency requirement continued to be very poorly communicated. The consequences of this change in policy were deeply disruptive as it actively and without notice forced people into undocumented situations.

In short the process failures in the EU Treaty Rights application procedures were:

- a. No warning of a policy change for prospective applicants
- b. No notification to ‘live applicants’ that the rules had been changed in the middle of the process
- c. Little regard or foresight in relation to the consequences for the families involved
- d. Very poor information dissemination of the main policy change and the ensuing requirements
- e. No immediate offers to families of reasonable alternatives for status

What was particularly discouraging about the EU Treaty Rights situation was that the immigration system was actively and knowingly putting people out of status via actions that were subsequently found to be contrary to European law. The criticisms and recommendations of this report are made in the knowledge that the system itself and those in control of it have knowingly and unnecessarily pushed people into undocumented status in the past.

Kasia and Amir-Case Study 19

Kasia (a Polish citizen) and Amir (an Indian citizen) met in their place of employment, a supermarket in Galway. Amir was a business student and worked in the supermarket part-time and Kasia had been living and working in Ireland since 2003. After two years the couple got married and they had a baby boy Peter. Amir completed his studies after which time his student permission expired. Amir and Kasia had difficulty making ends meet after the arrival of their son, but they were not too concerned as they knew that Amir should be getting confirmation soon that he would be granted a Stamp 4 based on marriage to an EU citizen – a status they had heard about through friends 5 months ago. Amir would then be able to work full-time. The couple were shocked when they received a letter from INIS stating that Amir would be not eligible for the status as he had not lived in another EU country. This condition was nowhere to be seen in the application form or notes. What followed was a period of 12 months where Amir was undocumented and without the right to work. This caused considerable hardship for the family who had planned to make their life in Ireland with their son Peter who is an Irish citizen. After the European Court of Justice ruled that the Irish government's decision to restrict EU treaty rights status was contrary to EU law in July 2008, Amir was finally granted a Stamp 4, but since then jobs have been harder to find and the family continue to struggle financially.

Recommendations on policy changes

- **NGO's should be consulted in advance of policy changes. This will flag potential weakness and implications of the change that may not have been considered by the relevant Department**
- **Policy decisions should be published in detail and disseminated on INIS, DETE and GNIB websites well in advance of their proposed implementation date. There should be a specific and identifiable link on these homepages for new developments**

- **The GNIB should publish all circulars sent to local officers that relate to general policy and procedural changes and clarifications**
- **All proposed changes in immigration policy and their implementation plans should be proofed for their capacity to make people undocumented**

5. Interface assessment

This section gives a brief assessment of the key public access mechanisms of the immigration system. A more thorough analysis of each interface is required but the scope of this report only allows an outlining of the key issues. This assessment is done in the context of processes already covered, which in CMP's view are inadequate in a number of ways. This context has very significant implications for how the interfaces of the system are able to act effectively. It is difficult to fully divorce the processes the system is supposed to facilitate from the interfaces themselves but there are clear issues with some public access mechanisms of the system that need to be underlined. Customer Charters are referred to in this chapter to underline how some interfaces fail to meet their own standards. The interfaces are categorised as follows:

5.1. The INIS

5.2. The GNIB

5.3. The Employment Permits Section of the Department of Enterprise, Trade & Employment

5.4. Irish embassies and consulates abroad

5.5. Implications for other public and private actors

The Interface assessment is composed of a number of brief discussions on the shortcomings of particular interfaces followed in each case by a number of recommendations for the improvement of a particular interface. It concludes by touching on some of the less immediate and recognisable implications of these deficits in Section 5.5.

5.1. *The INIS*

Summary Description

The Irish Naturalisation & Immigration Service (INIS) was established in 2005 in order to provide a ‘one stop shop’ in relation to asylum, immigration, citizenship and visas. The INIS is responsible for administering the administrative functions of the Minister for Justice, Equality and Law Reform in relation to asylum, immigration (including Visas) and citizenship matters. The INIS also facilitates a whole of government approach to immigration and asylum issues which enables a more efficient service to be provided in these areas²⁷.

The bulk of the INIS is located in Burgh Quay, Dublin 2 in the same location as the GNIB. In 2008 the Citizenship Division of INIS moved to Tipperary. INIS does not have a public office apart from a limited facility of the Visa Section which has public offices in Burgh Quay. This is largely for the purpose of granting re-entry visas to people already registered with the GNIB.

Relevant Criticisms

In 2007 CMP conducted an analysis of the INIS telephone, postal, walk-in and internet service for clients²⁸. The INIS customer and information provision service remains inadequate. Most CMP clients continue to find it extremely difficult to access the helpline and still do not get responses to e-mail and queries and applications. Letter based queries or applications are not always responded to. When clients do manage to get in the queue for the helpline they are frequently cut off after waiting for an hour on the phone. There have been some improvements in the issuing of acknowledgment letters and there have been improvements in the information available on the website. However, there are many information deficits mentioned in this report that have not been addressed by the website mode of publication. The following are the recommendations from CMP’s 2007 report:

²⁷ From www.inis.gov.ie 22/1/09

²⁸ See <http://www.migrantproject.ie/images/Analysis%20of%20INIS%20Customer.pdf>

- *Opening times for the INIS telephone helpline should be extended to bring them into line with the INIS Customer Charter*
- *Access to staff personally dealing with applications should be made available to all service users*
- *All applications should be acknowledged and receipted, and assigned section specific reference numbers*
- *Detailed information and application forms for all categories of migrants should be produced in plain English and made easily available & accessible*
- *All application and information forms should be dated and published in a standardised format*
- *Applicants for all types of status/visas should be able to check the progress of their application online*
- *Appropriate detailed and up-to-date guidelines should be made available to all INIS staff, and information on all policies and procedures should be communicated internally to all sections of INIS*
- *Policies and guidelines on all immigration matters should be made freely available and communicated externally in a standardised fashion to State and non-State bodies, including employers, support organisations and frontline service providers.*

The service provided by INIS still falls considerably short of the Department of Justice, Equality and Law Reform Customer Charter. Problems with the INIS remain

one of the main reasons why people come to CMP's information and advocacy service. Such problems relate to inability to access basic information, non-responses to requests for information and inordinate delays in processing applications. The following service commitments outlined in the Charter are consistently not adhered to by INIS as a matter of practice:

Telephone enquiries

We will be available to answer telephone calls during normal office hours (9:15am - 5:30pm Monday to Thursday [5:15pm on Friday]).

We will identify ourselves and our area of work.

Written Communications

We will acknowledge the majority of written communications within 5 working days of receiving them, and provide a final reply within 20 working days. In cases where there is going to be a delay, we will explain this to our customers by an interim reply before the 20 day period is up. Our staff will provide our customers with full contact details and a reference number (where applicable).

Personal Callers

We will be available to meet by appointment with our customers during normal office hours and where it is necessary, we will try to be flexible about our own availability at times outside these hours²⁹.

These shortcomings and those outlined in CMP's 2007 report not only have a huge impact directly on the immigrant but they also feed down to other public services that rely in some way on the INIS for the information and/or service they provide to immigrants.

²⁹ From <http://www.inis.gov.ie/en/INIS/Pages/WP07000010> on 12/2/09

James-Case Study 20

James, a Canadian citizen has estimated that in the 7 years he has been living in Ireland he has called the INIS helpline over 100 times, he successfully got through to someone only 6 times and on 3 of these occasions he got a satisfactory answer to his question. He had basic information queries in relation to long-term residency and citizenship requirements.

Emmanuel-Case Study 21

Emmanuel, a Nigerian citizen has e-mailed INIS 5 times in relation to his citizenship application and has never received a response.

At the time of writing the Citizenship Section e-mail address is no longer available.

Recommendations

- **Non-response to e-mails or letters and the failure to issue timely acknowledgement letters are basic problems that need to be eliminated immediately. They are exceptionally basic functions that can prevent people from becoming undocumented, particularly for example when a local immigration officer requires written confirmation that a formal application has been made to INIS for status**
- **INIS should develop a drop-in information service**
- **In line with the Fitzpatrick Report the INIS should develop a specific Customer Charter for its unique customer base and it should include more specific commitments on formal evaluations of INIS service provision**

- **The current and any new charter should be made unmistakably visible on the INIS website and in its public offices. The Charter should be posted, e-mailed or handed to every service user of INIS. Such a Charter should be fully adhered to by INIS (including the commitment to be available to meet customers directly) as should all the recommendations from CMP’s 2007 report**
- **The Charter should be published in a variety of languages**
- **A simple mechanism should be organised to count unanswered calls, dropped calls and ‘on hold’ waiting times on the INIS helpline. Statistics from this mechanism should be posted on the INIS website on a monthly basis. As with other public services, callers should be given an approximate answer time or queue position while they are on hold**
- **In every interaction with a service user INIS should make the person aware of the customer feedback mechanisms**
- **Every person who is a current user of the INIS should be sent a request to give feedback anonymously on their experience of the INIS service as part of a more thorough analysis of the INIS service. After such an analysis an annual survey should be conducted on a smaller scale**
- **While the INIS is involved in a Customer Liaison Forum with NGOs this is no substitute for directly representative customer panels which should be established immediately by the random selection of various categories of INIS client**

5.2. The GNIB

Summary Description

The Garda National Immigration Bureau (GNIB) is responsible for all State immigration-related Garda operations. The Bureau carries out deportations, border control and investigations relating to illegal immigration and human trafficking. The most relevant functions for this report relate to GNIB's functions in relation to registration, renewal of status or the granting of temporary permissions or changes in status. According to official GNIB figures as of 14th February, 2008 there were 138,232 non-EEA nationals registered in Ireland. There are also functions in relation to entry which are critiqued in the *Entry* section (3.1) of the *Processes* chapter. The number of people that the GNIB interact with in terms of the entry process are significantly larger compared to the number of non-EEA nationals registered in Ireland.

The Head Office of the GNIB is at Burgh Quay in Dublin City Centre and it serves the Dublin Metropolitan Area. The other large permanent GNIB presence is at the entry points in Dublin Airport. Full-time or part-time immigration officers are located at head offices of Garda Districts throughout the country. There are more than 80 Garda Districts throughout the country. Policy and procedural updates are e-mailed from head office to district office around the country. The immigration functions of district offices have a degree of autonomy from GNIB headquarters.

The local immigration officer is very often the only accessible public face of the immigration system. Thus the nature of a person's interaction with their local officer(s) has a significant impact on the person's view of the immigration system as a whole.

Relevant Criticisms

The local immigration officer is often required to play the role of information provider. In CMP's experience these information requests sometimes fall more clearly within DETE's or INIS's remit but the immigrant is very often unable to access the required information through DETE or INIS. In such circumstances information provided by immigration officers is not always accurate or adequately detailed. People regularly present to CMP's

service when they do not fully understand what an immigration officer has told them. The language barrier has also proven to be an issue in some such cases.

There are also issues with responses from GNIB Head Office to correspondence sent to the GNIB by CMP clients. There have been a number of occasions when CMP clients whose immigration status was precarious have not received any response from GNIB head office to a letter or e-mail they have sent. Such people are very reluctant to complain about this as they are fearful such a complaint would adversely affect their future interaction with the service and thus their status in the country.

Immigration officers can face particular difficulties when they are faced with various complex human situations and only have partial and incomplete information on what immigration policy and procedures apply in different situations. This lack of written policies and procedures for a whole variety of circumstances, queries and requests leads officers to depend on their own discretion too often. CMP believes that there should always be a level of discretionary power for immigration officers but that this should only be exercised on an exceptional basis not in cases of foreseeable circumstances, queries and requests where it is possible for INIS and/or GNIB to draw up written policies and procedures. Very often an officer's only guidance is broad and vague legislation and the Garda code which has no tailored guidelines for immigration issues.

In CMP's experience unwarranted and aggressive threats of deportation have also led to some people being fearful of interacting with the GNIB and have left people unwilling to approach the GNIB if they have a relevant immigration issue. According to the Garda Public Attitudes Survey 2008, while 79% of people in the survey sample found Gardaí at the local station to be 'Very approachable/Approachable' 9% of people in the survey sample of 10,000 people found Gardaí at the local station to be 'Unapproachable/Very Unapproachable'. This 9% has serious implications for non-EEA nationals whose immigration status may be at risk or if they have become undocumented through no fault of their own. If the 9% statistic is transferred to the non-EEA population registered with the GNIB (138,232 as of February 2008) then it would show 12,440 immigrants who might find Gardaí at the local station 'Unapproachable' or 'Very unapproachable'. A

more representative figure would be arrived at if all people registered with the GNIB were questioned anonymously as part of a more focused survey on non-EEA experiences of the GNIB service.

In CMP's experience weak customer service skills of some officers have damaged individual immigrant's relationship not just with a local officer but with the system as a whole. When this is coupled with inconsistent responses and discrepancies in the information provided by different government agencies in the system people can be very uncertain and fearful about approaching their local office with an issue about their status. This perception of inapproachability is a barrier that GNIB can improve as in CMP's view it is contributory to people becoming preventably undocumented and/or staying preventably undocumented. The reality of the GNIB's role in deportations must also be kept in mind in this context.

Dalmar-Case Study 22

Dalmar is a Somali citizen who has Leave to Remain in Ireland on humanitarian grounds. Every year Dalmar goes to his local immigration Garda to renew his status. Dalmar says he dreads this experience as he does not always know what the officer is saying and he often appears angry with Dalmar. Dalmar is unwilling to make a complaint about the Garda as he is afraid that the Garda will find out it was him that complained and Dalmar is fearful his status will not be renewed.

Katerina-Case Study 23

Katerina is a Ukrainian citizen. She applied for a renewal of her Work Permit. There were delays in processing Work Permits and Katerina called the Employment Permits section of the DETE and they told her it will be some weeks before the permit would be processed. Katerina presented to her local immigration officer as her status had just expired. He refused to issue a temporary stamp on her passport and so she became undocumented. He directed her to write a letter to INIS in order to get confirmation that she had permission to reside in the State. She did this. Katerina returned after 2 weeks, the permit still had not been processed. The Garda threatened to deport Maria and told her not to come back until she had confirmation from INIS that she had permission to be in the State. Maria never received a response from INIS but after the intervention of CMP she was granted a temporary stamp by the GNIB and her permit and permission were renewed.

GNIB's current and potential role is important in that they have accommodated people who were out of status or in a precarious immigration situation back into the system for example former Work Permit holders who have been exploited by their employer and international students whose college was shown to be involved in improper practice, thus was taken off the register of recognisable colleges for Stamp 2 purposes.

Note: The GNIB have offered to deal directly with cases that CMP has used as a basis of the criticisms of its service in this report. However of those cases that were not already brought to the GNIB's attention, the service user concerned did not wish to make a formal complaint as they were concerned that it would adversely affect any future interaction with the immigration system.

Recommendations

- **A nationwide independent anonymous survey of peoples' experiences of the GNIB service should be conducted to elicit and collate issues with the service and to generate improvements to the service**

- **An ongoing anonymous service feedback mechanism should be organised, publicised and made accessible on a nationwide basis at all local immigration registration offices**
- **Immigration officers across the country should continue to be formally consulted on areas they feel they need more guidance and support**
- **Non-responses to correspondence to all Garda immigration offices nationally should be eliminated**
- **At registration all people should be given the Garda Customer Charter in an accessible language, along with their change of status options as mentioned earlier in Section 4.1.2**
- **In line with the current general Garda Charter commitments, a specific charter should be drawn up for the GNIB in the context of non-EEA nationals being a *specific group whose special circumstances deserve particular consideration and support*. This is also supported by recommendations in the Fitzpatrick Report which found that Customer Charters need to address the specificities of their target group. The Charter also needs to include more specific commitments on formal evaluations of GNIB service provision**
- **Previously mentioned process and interface related recommendations relating to INIS would also significantly facilitate improved service by GNIB**
- **The current (and any future) Garda Customer Charter should be fully adhered to by the GNIB. Particular attention should be given to the commitment to, *...respond with care and understanding to your personal, family and community needs and concerns***

- **While the GNIB is involved in a forum with NGOs on immigrant issues this is no substitute for directly representative customer panels which should be established immediately by the random selection of various categories of GNIB client**

5.3. The Employment Permits Section of the Department of Enterprise, Trade & Employment

Summary description

The main role of the Employment Permits sections of the Department of Enterprise, Trade and Employment is to process applications for Employment Permits. Between 2000 and 2007 the section processed between 23,000 and 47,000 new or renewal applications on an annual basis. The Employment Permits Section is located in Adelaide Road in Dublin 2. It does not have a public office.

Relevant Criticisms

CMP client experience of the service provided by the Employment Permits Section is significantly better than their experiences with other aspects of the system.

CMP clients have difficulties accessing the Employment Permits helpline although they are not of the same magnitude of difficulty faced in trying to access the INIS helpline. E-mails to the section are all generally responded to eventually although there is considerable scope to improve response times.

The lack of a public office for Employments Permits Section is a clear area where improvement can be made.

There are however some serious deficits with the Employment Permits Section interface with its public. These relate to the lack of information already mentioned in the report in relation to deficits of the Employment Permits system – Section 3.3.

Recommendations

- **The previously mentioned information deficits should be immediately rectified by posting the relevant information on the Employment Permit Section web pages, including the information in all Employment Permit guides and informing all service users of newly published information**

- **As with the INIS and GNIB and in line with the Fitzpatrick Report, the Employments Permits Section should develop a specific customer charter more suited to the specific needs of its customer base. The Charter also needs to include more specific commitments on formal evaluations of Employments Permit Section service provision. Such a charter should be published in a variety of languages**
- **The Department of Enterprise, Trade and Employment Customer Charter should be fully adhered to by the Employment Permits Section of DETE**
- **A public access office should be opened where people can meet officials face to face**
- **The Employment Permits section should develop a customer feedback panel immediately by the random selection of various categories of service user**

5.4. Irish embassies and consulates abroad

Summary description

The Department of Foreign Affairs, through its Embassies and Consulates around the world, provides services to Irish people who require assistance when abroad. They also help to facilitate non-Irish people to travel and immigrate to Ireland.

Relevant Criticisms

Irish embassies and consulates abroad are not the formulators of Irish immigration policy and procedure. They are however crucial disseminators of information. INIS is the primary policy maker and information disseminator and unfortunately the gaps and deficiencies in the policies, processes and information dissemination under INIS's remit are transferred globally through Ireland's international network of embassies and consulates.

Daria-Case Study 24

Daria, a Ukrainian citizen married Stephen an Irish citizen in Russia in 2007. Stephen's job in Russia finished and the couple decided to move to Ireland. Stephen made enquiries about moving home with CMP and it was suggested to Stephen that a D-reside visa for his wife might be a possibility. The couple spoke to the Irish embassy in Moscow on two occasions and were told that there was no such thing as a D-reside visa. Eventually with the aid of CMP a D-reside visa was granted.

Recommendations

- **Previously mentioned process and interface related recommendations relating to INIS would allow Irish embassies and consulates abroad to improve the service they provide to prospective immigrants to Ireland**
- **There is a need for a more tailored Customer Charter for Irish embassies and consulates abroad in particular in their dealings with non-Irish nationals who wish to come to Ireland**

5.5. Implications for other public and private actors

The core issues with the immigration system trickle down and in many cases magnify if there are third or indeed fourth parties operating between the immigrant and the system. This report looks at the immigration system deficits in a somewhat narrow manner – by focusing on the direct impact of the immigration system on the person. In reality for an immigrant their immigration status has implications for various categories of human rights that frame their interactions with other public services e.g. the health service, the social welfare system, the housing system and the education system.

Lack of detail and clarity in relation to policies, procedures and details about the rights associated with various types of immigration status cause difficulties with the person's interaction with various public and private services. CMP has seen people refused mortgages, local authority housing, employment, and social welfare solely because the service provider was unable to access correct information about the person's entitlements.

6. Core Issues and Implications

This penultimate chapter consolidates the numerous issues raised in the report under Core Issues. It then outlines some of the relevant implications of these issues.

6.1. Core Issues

Inaccessibility

The process chapter of the report identified numerous status options that are not adequately identifiable and in some cases invisible. There is inadequate publication, signposting and dissemination of such options. e.g.: WCATT, general Leave to Remain, family members of Irish citizens, independent status (in cases of domestic abuse), non-visa required students, temporary permissions for undocumented and exploited former Work Permit holders and other non-standard status changes (e.g. a person going from student permission to residency based on marriage to an Irish national).

Lack of clarity and transparency

One of the strongest themes of the report is that many status options are not adequately delineated in terms of application guidelines, qualifying criteria, processing time limits, detailing of possible and communicated refusal reasons and availability and communication of appeal options e.g.: general Leave to Remain, Long-Term Residency, non-visa required entry and naturalisation.

Inadequate or no responses

One of the most frustrating, alienating and damaging characteristics of the immigration system is the prevalence of non-responses following an attempt by an immigrant or advocacy organisation to communicate verbally via the telephone or in written format via e-mail or letter with the system. Inadequate responses include failure of an official to provide adequate and/or accurate information or ‘buck passing’ the person to another section, department or agency which has no responsibility for or knowledge of the particular query. The classic systematised example of this was in 2007 when both DETE

and INIS websites both referred to each other for details on the rights of Romanian and Bulgarian nationals. Inadequate responses also involve requests for status letters (e.g.: Leave to Remain on humanitarian grounds) that take months to process, during which time the person becomes undocumented.

Non-adherence to customer charters

Some agencies of the immigration system as a matter of everyday practice (not exception) do not adhere fully to their Customer Charters. For example, INIS do not answer telephone calls between 9.15am to 5.15pm Monday to Friday nor do they acknowledge the majority of written communications within 5 working days of receiving them, and provide a final reply within 20 working days

Inadequate planning, consultation, and dissemination of policy changes

The policies that govern the rights of an immigrant naturally have a huge impact on the life of the person involved and very often his/her family members. When the policies and procedures governing and facilitating these rights are altered in any way, people have a right to be warned in advance, there should be ample time and scope for consultation on such changes and information on the decided change should be communicated in a timely fashion and in an accessible and detailed manner. To date this has not been the case with a number of significant policy changes.

6.2. Implications of issues

While all the above individual issues can have significant implications on people in their own right, it is usually an interaction of the above deficits that causes the most serious of consequences.

The most significant of these implications for this report is when **people become undocumented** as a result of one or more of the above issues

Information vacuums are a breeding ground for **rumour and misinformation**. CMP has observed people making major decisions based on incorrect information

Lack of written policies, procedures, guidelines and criteria (both for internal and external use) lead to an **over reliance on discretion** which leads to an unwarranted level of inconsistent decision making.

This over-reliance on discretion also **discourages service users from giving feedback** about their experience of the service as they feel it make adversely influence an unclear application process that they are in.

Over reliance on discretion can also **mask the need** for written and published procedure and policy

People's **trust in the system is damaged** and they become alienated from and disenfranchised with the system

The **deficits of the system trickle down** to any other public or private agency that needs to know the specific rights of immigrants - thus also undermining the immigrant's interaction with that service or organisation. CMP clients have been incorrectly refused mortgages, local authority housing, employment and social welfare because of this transfer of deficits

Efforts at promoting **internal and intra-agency coherence and co-ordination** in the immigration system are adversely affected, by the above issues.

All the aforementioned deficits in the system (in terms of approachability, accessibility, clarity, consistency, official and publicly available policy and procedure) could have **adverse implications on how victims of trafficking view the system**, and may contribute to a person's reluctance to seek help and/or approach authorities.

7. Conclusion

Through different modes of analysis this report has described the various aspects of the immigration system that act as unnecessary obstacles and pitfalls for many immigrants and it has suggested many specific and practical solutions. The *Process* analysis examines the systems failures that cause difficulty for people in even identifying the immigration status pathway that is best for them to follow. It also outlines the failures that cause difficulties in simply getting on, being on and trying to stay on a particular pathway. The *Managing Change* section underlines how changes in individual circumstances and changes in the system can be further complicating and exacerbating factors. The *Interface Analysis* focuses on the deficits in how the main agencies of the system interact with people and how this interaction can be improved. While there are numerous case studies in this report about people who became undocumented and have since become documented, the stories that are more important are of those undocumented people who have not had the assistance of an NGO in helping them back into the system and indeed those people who *will* become undocumented, either partly or wholly because of the system.

More than any other system the immigration system plays a key role in facilitating integration. A fundamental responsibility in this respect is ensuring that the system in no way contributes to someone becoming undocumented. It also needs to provide a clear, visible and understandable pathway back to a situation of full and equal rights with Irish citizens. As outlined in this report there are significant failures in both these respects. There are numerous practical recommendations in the report on how to improve on or eliminate these failures.

While the revision of immigration legislation does not appear to be strengthening the rights of immigrants and their family members as much as it could to effectively promote integration, there are still opportunities to greatly improve how the system operates. There are over 90 specific recommendations on how to improve the system in this report. The majority of these recommendations are either cost neutral or cost saving. The

reallocation of resources that might be needed to dramatically cut application processing times could be released by adopting the recommendations that make processes clearer, more accessible, more responsive and make change more planned.

The recommended improvements can be categorised as **making immigrant status options more visible and accessible, making the status pathways more defined, delineated and supported, instigating policy change more carefully and significantly improving the quality of system interaction with the immigrant at the level of interface by eliminating non-responses and focusing on the quality of the interaction.** Such changes are consistent with the key messages of the OECD Review of Irish Public Services and the PA Report and can be partly facilitated by proactive and sincere imbuing of customer charters into organisational practice. CMP has driven the establishment of regular forums between various immigration focused NGOs and the INIS and GNIB. Such forums have provided a useful space for highlighting difficulties immigrants have with the immigration system. Ultimately sustained and real improvements to the system can most effectively be facilitated by increased and valued service user involvement in the development of the system.

Appendix

Examples of Standard change of status pathways

Employment Permits

Work Permit→Long-Term Residency→WCATT→Citizenship

Work Permit→Long-Term Residency→Citizenship

Work Permit→WCATT→Citizenship

Work Permit→Citizenship

Work Permit→Green Card Permit

Green Card Permit (2yrs)→ Long-Term Residency →WCATT→Citizenship

Green Card Permit → WCATT→Citizenship

Green Card Permit → Citizenship

Work Authorisation/Working Visa→ Long-Term Residency →WCCTT→Citizenship

Work Authorisation/Working Visa → WCATT→Citizenship

Work Authorisation/Working Visa → Citizenship

Stamp 2 Students

Student Permission→Graduate Scheme→Employment Permit→Long-Term Residency
→ WCATT→Citizenship

Student Permission→Graduate Scheme→Employment Permit→ Citizenship

Stamp 3 (Dependants, Non-Economically active)

Stamp 3 →Long-Term Residency→ WCATT→Citizenship

Stamp 3 → WCATT→Citizenship

Stamp 3 →Citizenship

Stamp 3 → Spousal/Dependant Work Permit → Long-Term Residency →
WCATT → Citizenship

Stamp 3 → Green Card Permit/Work Permit → Long-Term Residency →
WCATT → Citizenship

Stamp 4

Stamp 4³⁰ → WCATT → Citizenship

Stamp 4EUFam → Permanent Residence Card

Stamp 4EUFam → Citizenship

Stamp 4EUFam → Permanent Residence Card → Citizenship

³⁰ Not granted on basis of Working Visa or Work Authorisation. If the Stamp 4 is granted on this basis then Long-Term Residency is also an option.

Bibliography

Brown, C. (2008) *Garda Public Attitudes Survey 2008*. Templemore, Garda Research

Unit. Downloaded from

<http://www.garda.ie/Documents/User/24.%20GARDA%20PUBLIC%20ATTITUDES%20-%202008.pdf> on 22/1/09

Coakley, L. & Healy, C. (2007) *Looking Forward, Looking Back. Experiences of Irish Citizen Child Families*. Dublin, Integrating Ireland. Commissioned by CADIC.

Crosscare Migrant Project (2007) *Analysis of the Irish Naturalisation & Immigration Service Customer and Information Provision Services*.

Department of Justice, Equality & Law Reform (2008) *The Immigration, Residence and Protection Bill 2008*. Dublin, Stationary Office.

Department of Justice, Equality & Law Reform (2006) *S.I. No. 656 of 2006 European Communities (Free Movement of Persons) (No. 2) Regulations 2006* Dublin, Stationary Office.

Department of Justice, Equality & Law Reform (2004) *Immigration Act 2004* Dublin, Stationary Office.

Fitzpatrick Associates. Economic Consultants (2007) *Evaluation of Customer Charters*. Dublin, Department of the Taoiseach.

Immigrant Council of Ireland (2007) *Rights and Entitlements of Migrants in Ireland. Fact Sheet 3: Rights of International Students in Ireland*. Dublin, ICI.

Immigrant Council of Ireland (2007) *Rights and Entitlements of Migrants in Ireland. Fact Sheet 4: Rights to 'Leave to Remain' in Ireland*. Dublin, ICI.

Irish Human Rights Commission (2009) *Report on an Enquiry into the Treatment of a Visitor Refused Leave to Land in the State*. Dublin, IHRC.

Irish Times 22/0/08 *Plan to regularise status of migrant workers*.

Kelly, N. (2004) *Work permits in Ireland. A recommendation for change*. Dublin, MRCI.

MRCI (2007) *Life in the Shadows. An Exploration of Irregular Migration in Ireland*. Dublin, MRCI.

OECD (2008) *OECD Public Management Reviews. Ireland. Towards an Integrated Public Service*. Paris, OECD Publications.

Official Journal of the European Union (2004) *DIRECTIVE 2004/58/EC 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*. Brussels, The Publications Office

PA Consulting (2006) *Irish Naturalisation and Immigration Service (INIS) Report on Review of Asylum and Immigration*. Dublin, Department of Justice, Equality & Law Reform.

PICUM (2006) *Protecting Undocumented Workers in Europe: Successes and Strategies, Conference Report*

<http://www.picum.org/LABOR/ETUC%20PICUM%20Conference%2023.3.2006%20Report.pdf>

Task Force on the Public Service (2008) *Transforming Public Services – Citizen Centred – Performance Focused*. Dublin, Stationary Office.

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Crosscare believes that every person is created in the image and likeness of God. This places responsibility on us to work to the highest possible standards while treating every person who uses our services and who works for or with us with care, courtesy and love. Our work is guided by four core values:
Respect, Human Rights, Integrity and Excellence.

Our programmes include: Homeless Services, Food Initiatives, Young People's Care Services, Teen Counselling, Carer Support Programme, Education, Training & Development, Drug & Alcohol Programme, Housing & Welfare Information, Travellers' Inclusion Programme, Migrant Project and Disability Awareness.