

Family Reunification: a barrier or facilitator of integration?

Ireland Country Report



European Commission

DG HOME AFFAIRS - Unit B1: Immigration and Integration

Rue du Luxembourg 46 - LX46 02/178 - B-1049 Brussels/Belgium

Family Reunification – a barrier or facilitator of integration?



Country Report Ireland – October 2012

Authors: Hilkka Becker, Senior Solicitor
Catherine Cosgrave, Senior Solicitor
Melanie Labor, Research Assistant

Chapter 1

Introduction

This report outlines the current legislative and administrative policies/procedures governing applications for family reunification in Ireland, including applications for family members living overseas and in-country residence applications where family members may have met and formed family life in Ireland. It attempts to explore the impact of the process and application of family reunification on families when living in Ireland. On the basis of in-depth interviews with a range of stakeholders, as well as existing published research, the report also documents the experiences and views of individuals, including both migrants and Irish citizens, who have applied for family reunification. Furthermore, the views of service providers and legal practitioners regarding current legislation and policy/procedures governing family reunification and related-residence permit applications are also encompassed in the report.

Research Methodology

A mixed-methods approach, incorporating elements of both quantitative and qualitative research was adopted for this report. Several sources of data and information were used:

- Semi-structured interviews with individual migrants who applied for and have been granted or refused family reunification. Semi-structured interviews were also held with NGO service providers, legal practitioners and a number of representatives from Government Departments;
- Focus groups; and
- Desk based research / literature review / online resources.

The interviews conducted contained a quantitative element to gather information such as nationality of family members, immigration status and length of time living in Ireland at the time of applying for family reunification, length of time the application took to process, whether the application was granted or refused and the family members applied for.

The interviews also contained a qualitative element, focusing on individuals' motivations for applying for family reunification, their views on the substantive criteria to be fulfilled and the application process, as well as the impact of the application process on the family. The interviews also focused on the experiences of the family whilst living separately, as well as following reunification in Ireland.

To obtain an insight into as broad a range of experiences as possible, the Immigrant Council of Ireland (ICI) sought to interview migrants across all categories, including refugees, other third-country nationals (e.g. employment permit holders and individuals granted leave to remain on another basis, such as humanitarian grounds or parents of Irish citizen children), EU/EEA and Irish citizens, including naturalised Irish citizens, who have applied for family reunification with family members living outside of Ireland, as well as individuals whose family members made in-country residence applications having perhaps met and established family life in Ireland.

Individuals seeking family reunification were asked several questions regarding the ease of obtaining information about application criteria and requirements, whether they had received any kind of support from relatives or friends and their general impression of the application process in terms of length, bureaucracy and cooperation from and interaction with officials of the Irish Naturalisation and Immigration Service (INIS) and the Garda National Immigration Bureau (GNIB). Furthermore, participants were asked questions regarding the overall impact of the application procedure – especially during periods of separation from their families - on integration in Ireland. Finally, they

were asked if and what kind of additional supports they would have required and where there was room for improvement. Although phrased in a slightly altered mode, the questions posed to service providers and policy makers served the same purpose.

Participant Selection

A multi-methodological approach was used to source participants. To access as broad a range of family reunification experiences and perspectives as possible, the ICI disseminated information regarding the research by advertising online¹ and sending letters and emails to individuals², community and voluntary groups, national NGOs, legal practitioners and policy makers. Recipients were invited to self-select into the research and/or inform their own personal contacts, service-users and clients of the project and to refer any interested participants to the ICI to be interviewed. Two of the individual participants were approached directly and the remaining eight individual participants were sourced via gatekeepers and snowball sampling (e.g. word of mouth). All of the interviews were conducted through English and, with permission of the participants, tape recorded. Each interview lasted between 1 and 2 hours. The individuals that participated consented to the publication of the information detailed in Table 1 below but it was agreed that any quotes used would be anonymous.

In addition, six national and regional NGOs providing family reunification advocacy services participated in a three-hour focus group. Legal practitioners providing legal advice and assistance in family reunification applications were also interviewed in-depth regarding the issues encountered by their service users or that they have advised on or identified in their practice over a period of five to ten years. Each of these interviews lasted 1 ½ - 2 ½ hours. The organisations and legal practitioners that participated consented to being identified as participants in the research (set out in Table 2 below) but it was agreed that any quotes used in this report would be anonymous. Additionally, a further 2 ½ hour migrant focus group was held, where the key issues and preliminary findings arising from the interviews, focus group and desk research were outlined to the participants and provided opportunity for general feedback and wider discussion. Seven individuals participated in the migrant focus group on an anonymous basis and, further to their own personal experiences, each participant brought additional perspectives from their current professional work and/or volunteering experience with national migrant and children's rights organisations or other regional community-based integration organisations.

Ethical Considerations

The purpose of the research was clearly explained to all participants and all took part on a voluntary basis. Given the sensitive and private nature of family life, all individuals were assured of anonymity and confidentiality. Additionally, they all participated in the knowledge that some details and quotes from the interviews would be published in the report.

¹ Advertising platforms included the ICI online bulletin and *Facebook*.

² The individuals who participated in the study had either been successfully granted family reunification or were waiting for a decision on their application.

Profile of Individual Participants in Research – Table 1

| | Nationality of sponsor | Residence status of sponsor | Gender of sponsor | Category of family member(s) | Nationality of family member | Residence status of family member ³ | Gender of family member(s) | Family reunification or formation |
|-----------------|------------------------|-----------------------------|-------------------|------------------------------|--|--|--|-----------------------------------|
| P1 ⁴ | Nigerian | IBC/05 status | Female | 1 Spouse; 5 Children | <i>Spouse:</i> Nigerian; <i>Children:</i> 3 Nigerian 2 Irish | Stamp 4 | <i>Spouse:</i> male <i>Children:</i> 3 male 2 female | Reunification |
| P2 | Nigerian | Join spouse/ children | Male | 1 Spouse; 5 Children | <i>Spouse:</i> Nigerian; <i>Children:</i> 3 Nigerian 2 Irish | Stamp 4 | <i>Spouse:</i> male <i>Children:</i> 3 male 2 female | Reunification |
| P3 | Pakistani | Refugee | Male | 1 Spouse; 6 Children | Pakistani | Stamp 4 | <i>Spouse:</i> female <i>Children:</i> 3 female 3 male | Reunification |
| P4 | Pakistani | Work-permit holder | Male | 1 Spouse; 5 Children | Pakistani | Stamp 3 | <i>Spouse:</i> female <i>Children:</i> Not identified | Reunification |
| P5 | Indian | Work-permit holder | Male | 1 Spouse; 1 Child | Indian | Stamp 3 | <i>Spouse:</i> female <i>Children:</i> 1 male | Reunification |
| P6 | Congolese | Refugee | Male | 1 Spouse; 6 Children | Congolese | Stamp 4 | <i>Spouse:</i> female <i>Children:</i> 3 female 3 male | Reunification |
| P7 | Irish | Irish Citizen | Female | Mother | Chinese | Visitor | <i>Mother:</i> female | Reunification |
| P8 | Irish | Irish Citizen | Male | Spouse | US-American | Stamp 4 | <i>Spouse:</i> female | Formation |
| P9 | Dutch | EU citizen | Male | Spouse | Sudanese | Stamp 4 | <i>Spouse:</i> | Reunification |

³ A table of the main immigration residence stamps in Ireland is provided at Appendix 1.

⁴ P = Participant (e.g. P1 = Participant 1).

| | | | | | | | | |
|------------|-------|------------|------|--------|------------|----------------|----------------|---------------|
| | | | | | | EUFAM | Female | |
| P10 | Welsh | EU citizen | Male | Spouse | Australian | Stamp 4 EU FAM | Spouse: Female | Reunification |

Table 1

NGO Service Providers / Legal Practitioners⁵ - Table 2

| Full Name | Name of Organisation | Function / Position | Target Group(s) | Kind of Interview | Years of Experience |
|-----------------------------|--------------------------------------|---------------------|--|-------------------|---------------------|
| Not Identified Staff Member | Crosscare Migrant Project | NGO | Work-permit holders; Irish citizens and their Third Country National family members; Third- country national parents of Irish citizen children (incl. IBC/05); EU citizens and their third- country national family members; Non-EEA students; | Focus Group | Not stated |
| Not identified staff member | Immigrant Council of Ireland (ICI) | NGO | Work-permit holders; Irish citizens and their third- country national family members; Third-country national parents of Irish citizen children (incl. IBC/05); EU citizens and their third- country national family members; Non-EEA students; | Focus group | 8 |
| Not identified staff member | Integration Centre | NGO | Refugees; | Focus group | Not stated |
| Not identified staff member | Irish Refugee Council (IRC) | NGO | Refugees; | Focus group | Not stated |
| Not identified staff member | Migrant Rights Centre Ireland (MRCI) | NGO | Irregular migrants; Work-permit holders; | Focus group | Not stated |

⁵ By way of anonymisation, service providers will be quoted as SP 1, 2, etc., including both NGOs and legal practitioners and the numbering does not correspond to the order in which the organisations/practitioners are listed in the table, which is done alphabetically.

| | | | | | |
|------------------------------------|--|-----------|---|----------------------|------------|
| | | | Low-skill & low-wage sector workers; Refugees; | | |
| Not identified staff member | Nasc – Irish Immigrant Support Centre | NGO | Work-permit holders; Irish citizens and their third-country national family members; Third- country national parents of Irish citizen children (incl. IBC/05); EU citizens and their third-country national family members; Non-EEA students; | Individual interview | Not stated |
| Karen Berkley | Brophy Solicitors | Solicitor | Refugees; All categories of immigrants, largely: i) Irish citizens and their third - country national family members; ii) EU citizens and their third- country national family members; | Individual interview | 7 |
| Jeanne Boyle | Jeanne Boyle & Company Solicitors | Solicitor | Refugees; Third-country national work-permit holders; EU citizens and their third-country national family members; | Individual interview | 7 |
| Patricia Brazil | Law Library | Barrister | Refugees; Work-permit holders; Irish citizens and their third- country national family members; Third-country national parents of Irish citizen children (incl. IBC/05); EU citizens and their third- country national family members; | Individual interview | 8 |
| Evelyn Larney | Daly, Lynch, Crowe & Morris Solicitors | Solicitor | Asylum seekers, refugees and humanitarian leave to remain status holders; Deportation orders; Work-permit holders; | Individual interview | 5 |

| | | | | | |
|---------------------|---|-----------------|--|--------------------------------|------------|
| | | | Irish citizens and their third country national family members; Third- country national parents of Irish citizen children (incl. IBC/05); EU citizens and their third-country national family members; Non-EEA students; | | |
| Michael Lynn | Law Library | Barrister | Declared refugees; Irish citizens and their third- country national family members; Third-country national parents of Irish citizen children (incl. IBC/05); EU citizens and their third-country national family members; | Individual interview | 10 |
| PM1 | Irish Naturalisation and Immigration Service (INIS) | Senior official | Work-permit holders; Irish citizens and their third- country national family members; Third- country national parents of Irish citizen children (incl. IBC/05); EU citizens and their third-country national family members; Non-EEA students; | Individual interview | 6 |
| PM2 | Department of Justice, INIS | Senior official | Declared refugees following ORAC investigation | Individual telephone interview | Not stated |

Table 2

Profile of Participants in Migrant Focus Group (FG)

| | Residence status on arrival in Ireland / current status | Current Residence Status |
|------------|--|--------------------------|
| FG1 | EU national | EU national |
| FG2 | Non-EEA dependent spouse of employment permit holder / naturalised Irish citizen | Irish citizen |
| FG3 | Returning Irish emigrant citizen | Irish citizen |
| FG4 | Refugee | Irish citizen |
| FG5 | EU national | EU national |
| FG6 | Minor dependent family member of non-EEA employment permit | Irish citizen |

| | | |
|-----|---------|---------------|
| | holder | |
| FG7 | Refugee | Irish citizen |

Quantitative Family Reunification Data:

Summary 2008 - 2010

First permits issued for family Reasons by Reason, Length of Validity and Citizenship - Annual Data

| <i>Reason</i> | <i>Time</i> | 2008 | 2009 | 2010 |
|---|-------------|-------|-------|-------|
| Family reasons | | 3,409 | 2,608 | 2,030 |
| Family reasons: Person joining an EU citizen | | 2,953 | 2,040 | 1,730 |
| Family reasons: Spouse/partner joining an EU citizen | | 2,824 | 1,855 | 1,550 |
| Family reasons: Child joining an EU citizen | | 100 | 148 | 156 |
| Family reasons: Other family member joining an EU citizen | | 29 | 37 | 24 |
| Family reasons: Person joining a non EU citizen | | 456 | 569 | 300 |
| Family reasons: Spouse/partner joining a non EU citizen | | 134 | 162 | 112 |
| Family reasons: Child joining a non EU citizen | | 236 | 285 | 117 |
| Family reasons: Other family member joining a non EU citizen | | 86 | 121 | 71 |

Table 3: Eurostat (2012)

Breakdown of Family Reunification Data for 2010

First Permits Issued for Family Reasons by Reason, Length of Validity and Citizenship - Annual Data

| Reason \ Citizen | Total Admitted for Family Reasons | Person joining an EU citizen | Spouse/ Partner joining an EU citizen | Child joining an EU citizen | Other family member joining an EU citizen | Person joining a non EU citizen | Spouse/ Partner joining a non EU citizen | Child joining a non EU citizen | Other family member joining a non EU citizen |
|--|-----------------------------------|------------------------------|---------------------------------------|-----------------------------|---|---------------------------------|--|--------------------------------|--|
| Europe | | | | | | | | | |
| British Overseas Countries and Territories | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Croatia | 15 | 15 | 15 | 0 | 0 | 0 | 0 | 0 | 0 |
| Former Yugoslav Republic of Macedonia | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| Serbia | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Turkey | 41 | 41 | 40 | 1 | 0 | 0 | 0 | 0 | 0 |
| Albania | 15 | 9 | 9 | 0 | 0 | 6 | 2 | 0 | 4 |
| Belarus | 13 | 13 | 9 | 3 | 1 | 0 | 0 | 0 | 0 |
| Bosnia and Herzegovina | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kosovo | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 0 |
| Moldova | 30 | 25 | 23 | 2 | 0 | 5 | 4 | 0 | 1 |
| Russia | 38 | 37 | 31 | 6 | 0 | 1 | 1 | 0 | 0 |

| | | | | | | | | | |
|----------------------------------|-----|-----|-----|----|---|----|---|----|----|
| Ukraine | 52 | 49 | 39 | 10 | 0 | 3 | 2 | 0 | 1 |
| Africa | | | | | | | | | |
| Angola | 7 | 4 | 3 | 1 | 0 | 3 | 0 | 3 | 0 |
| Cameroon | 18 | 11 | 11 | 0 | 0 | 7 | 2 | 5 | 0 |
| Congo | 11 | 3 | 3 | 0 | 0 | 8 | 3 | 2 | 1 |
| Democratic Republic of the Congo | 11 | 3 | 3 | 0 | 0 | 8 | 0 | 6 | 2 |
| Eritrea | 10 | 0 | 0 | 0 | 0 | 10 | 4 | 5 | 1 |
| Ethiopia | 5 | 2 | 2 | 0 | 0 | 3 | 3 | 0 | 0 |
| Kenya | 9 | 7 | 7 | 0 | 0 | 2 | 0 | 2 | 0 |
| Malawi | 7 | 6 | 6 | 0 | 0 | 1 | 1 | 0 | 0 |
| Mauritius | 10 | 10 | 10 | 0 | 0 | 0 | 0 | 0 | 0 |
| Seychelles | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Somalia | 56 | 3 | 3 | 0 | 0 | 53 | 8 | 22 | 23 |
| Uganda | 7 | 3 | 1 | 2 | 0 | 4 | 0 | 1 | 3 |
| Tanzania | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| Zimbabwe | 17 | 13 | 5 | 7 | 1 | 4 | 2 | 2 | 0 |
| Algeria | 30 | 28 | 26 | 1 | 1 | 2 | 1 | 1 | 0 |
| Egypt | 30 | 28 | 28 | 0 | 0 | 2 | 2 | 0 | 0 |
| Lybia | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Morocco | 25 | 25 | 23 | 2 | 0 | 0 | 0 | 0 | 0 |
| Sudan | 22 | 3 | 3 | 0 | 0 | 19 | 7 | 10 | 2 |
| Tunisia | 15 | 15 | 15 | 0 | 0 | 0 | 0 | 0 | 0 |
| Botswana | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Lesotho | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| South Africa | 77 | 73 | 55 | 16 | 2 | 4 | 4 | 0 | 0 |
| Swaziland | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Cape Verde | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Côte d'Ivoire | 6 | 5 | 3 | 2 | 0 | 1 | 0 | 1 | 0 |
| Ghana | 19 | 15 | 9 | 5 | 1 | 4 | 1 | 3 | 0 |
| Guinea | 8 | 5 | 4 | 1 | 0 | 3 | 1 | 1 | 1 |
| Liberia | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mauretania | 3 | 1 | 1 | 0 | 0 | 2 | 0 | 0 | 2 |
| Nigeria | 169 | 150 | 124 | 24 | 2 | 19 | 7 | 3 | 9 |
| Sierra Leone | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Togo | 9 | 2 | 2 | 0 | 0 | 7 | 2 | 2 | 3 |
| America | | | | | | | | | |
| Canada | 41 | 41 | 40 | 1 | 0 | 0 | 0 | 0 | 0 |
| USA | 262 | 259 | 254 | 2 | 3 | 3 | 3 | 0 | 0 |
| Bahamas | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Cuba | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Dominican Republic | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Haiti | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Jamaica | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Saint Vincent and the Grenadines | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Trinidad and Tobago | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| El Salvador | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Guatemala | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Honduras | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | | | | |
|-----------------------------------|-----|----|----|----|----|----|----|----|---|
| Mexico | 14 | 14 | 14 | 0 | 0 | 0 | 0 | 0 | 0 |
| Panama | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Argentina | 7 | 7 | 7 | 0 | 0 | 0 | 0 | 0 | 0 |
| Bolivia | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| Brazil | 98 | 93 | 88 | 5 | 0 | 5 | 5 | 0 | 0 |
| Chile | 8 | 8 | 8 | 0 | 0 | 0 | 0 | 0 | 0 |
| Columbia | 15 | 15 | 10 | 5 | 0 | 0 | 0 | 0 | 0 |
| Ecuador | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| Paraguay | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Peru | 9 | 9 | 9 | 0 | 0 | 0 | 0 | 0 | 0 |
| Uruguay | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Venezuela | 6 | 6 | 5 | 0 | 1 | 0 | 0 | 0 | 0 |
| Asia | | | | | | | | | |
| Kazakhstan | 3 | 3 | 2 | 1 | 0 | 0 | 0 | 0 | 0 |
| Kyrgyzstan | 3 | 2 | 1 | 1 | 0 | 1 | 0 | 0 | 1 |
| Tajikistan | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Turkmenistan | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Uzbekistan | 2 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| China (including Hong Kong) | 52 | 46 | 44 | 2 | 0 | 6 | 6 | 0 | 0 |
| Japan | 20 | 20 | 20 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mongolia | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Korea | 11 | 11 | 10 | 1 | 0 | 0 | 0 | 0 | 0 |
| Taiwan | 5 | 5 | 5 | 0 | 0 | 0 | 0 | 0 | 0 |
| Afghanistan | 10 | 7 | 5 | 2 | 0 | 3 | 1 | 1 | 1 |
| Bangladesh | 14 | 8 | 4 | 4 | 0 | 6 | 2 | 4 | 0 |
| Buthan | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| India | 43 | 41 | 38 | 3 | 0 | 2 | 2 | 0 | 0 |
| Iran | 5 | 3 | 3 | 0 | 0 | 2 | 0 | 1 | 1 |
| Nepal | 8 | 7 | 4 | 1 | 2 | 1 | 0 | 0 | 1 |
| Pakistan | 107 | 97 | 66 | 21 | 10 | 10 | 5 | 4 | 1 |
| Sri Lanka | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Brunei Darussalam | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Cambodia | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indonesia | 6 | 6 | 5 | 1 | 0 | 0 | 0 | 0 | 0 |
| Laos | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Malaysia | 15 | 14 | 13 | 1 | 0 | 1 | 1 | 0 | 0 |
| Myanmar | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Philippines | 70 | 69 | 57 | 12 | 0 | 1 | 1 | 0 | 0 |
| Thailand | 92 | 92 | 91 | 1 | 0 | 0 | 0 | 0 | 0 |
| Vietnam | 10 | 10 | 10 | 0 | 0 | 0 | 0 | 0 | 0 |
| Armenia | 4 | 2 | 2 | 0 | 0 | 2 | 0 | 0 | 2 |
| Azerbaijan | 3 | 0 | 0 | 0 | 0 | 3 | 0 | 2 | 1 |
| Georgia | 23 | 15 | 13 | 2 | 0 | 8 | 4 | 3 | 1 |
| Iraq | 52 | 5 | 4 | 1 | 0 | 47 | 13 | 26 | 8 |
| Israel | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| Jordan | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kuweit | 3 | 0 | 0 | 0 | 0 | 3 | 1 | 2 | 0 |
| Lebanon | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 0 |
| Palestinian Territory | 2 | 1 | 1 | 0 | 0 | 1 | 1 | 0 | 0 |

| | | | | | | | | | |
|-----------------------------|----|----|----|---|---|---|---|---|---|
| Saudi Arabia | 2 | 1 | 1 | 0 | 0 | 1 | 1 | 0 | 0 |
| Syria | 6 | 2 | 2 | 0 | 0 | 4 | 1 | 3 | 0 |
| United Arab Emirates | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Australia | 86 | 85 | 83 | 2 | 0 | 1 | 1 | 0 | 0 |
| New Zealand | 48 | 46 | 46 | 0 | 0 | 2 | 2 | 0 | 0 |
| Fiji | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| Solomon Islands | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nauru | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Samoa | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | | | | | | | | | |
| Stateless Persons | 3 | 1 | 1 | 0 | 0 | 2 | 2 | 0 | 0 |

Table 4: Eurostat (2012)

Chapter 2

Legislation on Family Reunification and Legal Position of Admitted Family Members

In this Chapter, the current legal framework governing family reunification applications for family members living outside of Ireland, as well as applications for residence permits in-country based on family life established in Ireland is presented. The Chapter is divided into three parts, which set out the separate requirements for third-country nationals and their family members, Union citizens and their family members and Irish citizens and their family members.

By way of general consideration, Irish constitutional and human rights law recognises the paramount importance of the family unit and its right to be protected. Article 41.1.1° of the Irish Constitution recognises the family as ‘the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law’. In view of this special status of the family, the State is committed by Article 41.1.2° to ‘protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State’. Additionally, Article 7 of the European Charter of Fundamental Rights and Article 8 of the European Convention of Human Rights (ECHR) guarantee that all people have the right to have their private and family life respected. Arising from the incorporation of the ECHR into Irish law, through the *European Convention on Human Rights Act 2003*, there is a clear obligation on ‘organs of the State’ to ensure that they act in a manner compatible with the Convention.

Notwithstanding these generally applicable constitutional and human rights protections in respect of family life, Irish legislation does not provide an explicit right to family reunification or to reside in Ireland on the basis of existing family relationships in all circumstances. The only persons who have a statutory right to family reunification are EU/EEA nationals, scientific researchers working in Ireland under *Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research* and persons granted refugee status or subsidiary protection. Whilst it is generally possible for the family members of Irish citizens and legally resident migrants to apply for a visa, if required, to accompany or join their family in Ireland or, if already in Ireland, to apply for a residence permit to remain with their family in Ireland, the applicable legislation, administrative policies and application procedures can vary significantly depending on the residence status of the family members living in Ireland. Other relevant factual considerations, such as the nationality and/or residence status of the family members seeking to be admitted to or permitted to remain in the State are also examined. There is no harmonisation of the family reunification admission criteria or formally stated income, housing, integration requirements and age limits.

2.1 Third-Country Nationals

Ireland did not opt-in to *Directive 2003/86/EC on the right to family reunification of third-country nationals* and there is no harmonisation of the family reunification admission criteria for all third-country nationals in Ireland. Rather, there are very specific but separate legislative and administrative procedures governing applications for family members of scientific researchers, refugees and persons granted subsidiary protection, which differ significantly with the administrative policies and procedures that apply to other third-country nationals such as, for example, persons granted ‘leave to remain’, long-term residents, victims of trafficking and migrant workers, which are generally subject to discretionary Ministerial decision-making on an individual case-by-case basis. Additionally, the residence permits and conditions attached are not necessarily uniform either. Each of these categories is dealt with separately in the following section.

Admission criteria common in other EU Member States such as income, housing and integration requirements which flow from the national transposition in those States of *Directive 2003/86/EC* are not applicable in the same way in Ireland.

2.1.1 Conditions for family reunification:

2.1.1.1 Third-Country Migrant Workers and Scientific Researchers

There are no specific legislative provisions regarding family reunification applications by family members of migrant workers or scientific researchers in national law, although general immigration legislation provisions, such as section 4 of the *Immigration Act 2004*, under which the Minister for Justice and Equality may grant, renew and vary the conditions of permission to be in the State on application, do apply. However, as Ireland has opted-in to *Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purpose of scientific research*, the Directive is directly applicable despite the absence of specific national legislation transposing the Directive into national law.

Accordingly, in line with administrative policies (DJEI, 2011; INIS, n.d.a), family members of foreign national migrant workers as well as those of scientific researchers (referred to as the ‘qualifying sponsor’) are generally permitted to apply to accompany or join their family members in Ireland but the nature of the entitlements in this regard depends on whether the applicant is the family member of a low skill (‘work permit’) or a high skill (‘Green Card’) employment permit holder or a scientific researcher on a Hosting Agreement.

Where the ‘qualifying sponsor’ is the holder of a valid ‘work permit’, family reunification may be granted at the discretion of the Minister when the sponsor has been in employment for at least twelve months prior to the date of application, is in full-time employment on the date of application and has a weekly income above the threshold which would qualify the family for a payment under the *Family Income Supplement (FIS) Scheme* administered by the Department of Social Protection. Calculated on the basis of a 52-week-year, the net monthly minimum income required for a work permit holder – with one child or no children – to be joined by a family member is therefore €2,192.66 or €26,312.00 per year and increases with every additional child. This sum is significantly higher than the median equivalised net income for Ireland of €19,882.00⁶. Furthermore, as the average income of women in Ireland is estimated to be only 73% of that of men (CSO, 2012c: 28), it must be concluded the chances of female work permit holders are severely restricted.

| Family Income Supplement Rates from 5 January 2012 | |
|--|---------------------------------|
| | Net family income of less than: |
| 1 child | €506 |
| 2 children | €602 |
| 3 children | €703 |
| 4 children | €824 |
| 5 children | €950 |
| 6 children | €1,066 |
| 7 children | €1,202 |
| 8 or more children | €1,298 |

⁶ http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_di03&lang=en (last updated 10th December 2012).

Table 5: Department of Social Protection

In contrast, family members of 'Green Card' holders or scientific researchers enjoy preferential access and are permitted to accompany the sponsor immediately and there are no specific income requirements to be fulfilled. However, one of the conditions for entering into a hosting agreement with a third-country national scientific researcher is that the accredited research organisation must ensure that the researcher has sufficient monthly resources to meet his or her expenses, without having recourse to the national social assistance system; the same conditions have to be complied with in relation to the admission of family members.

In all cases, a detailed statement of the family member's and the sponsor's bank accounts covering a six-month period immediately prior to any visa application, showing sufficient funds to support dependent family members without recourse to public funds must be provided. However, there is no administrative guidance publicly available as to what is considered to constitute '*sufficient funds*' in order for family members to be admitted.

For third-country national migrant workers and scientific researchers, permitted family members are the spouse/civil partner in a subsisting relationship or *de facto* partner with whom the sponsor is in an unmarried cohabiting relationship of at least four years' duration, and minor unmarried dependent children of the sponsor. However, the INIS website makes no reference to the minor dependent children of the spouse, civil or *de facto* partner. Evidence of the relationship, namely marriage/civil partnership, evidence of cohabitation or birth certificates must be provided. Furthermore, written consent from the other parent or evidence of sole custody in the form of a court order is required where children travel alone to join a parent working in Ireland.

2.1.1.2 Long Term Residents

Ireland has not opted-in to *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents* and there are no specific legislative provisions regarding the granting of 'long-term residence' in Ireland or on family reunification applications by family members of 'long-term residents'. General immigration legislation provisions, such as section 4 of the *Immigration Act 2004* do apply and long-term residence status, which is a five-year renewable permit granted at the discretion of the Minister for Justice and Equality, is only available to foreign nationals who were first admitted under employment permits schemes or as scientific researchers on the basis of a hosting agreement.

However, there is no information about admission of family members of those who hold the status of 'long-term resident'. The only reference to the admission of family members of 'long-term residents' to Ireland on the INIS website can be found under 'Join Family Visas' and eligibility for partners, including civil partners, of long-term residents, whereby evidence of a four year relationship or of the civil partnership is required. Additional criteria are evidence of identity, details of immigration history, detailed bank statement for six months showing evidence of 'sufficient funds' to cover costs, evidence of lawful residence in country other than Ireland, evidence supporting existence and durability of relationship, full relationship history, evidence of how family sponsor will support financially (including P60, payslips and six month bank statement) and private medical insurance.⁷

⁷ See:

http://www.inis.gov.ie/en/INIS/Pages/Join%20Family#Partner_of_Irish_Citizen/Work_Permit_Holder/Green_Card_Holder_and_Persons_Granted_Long_Term_Residence

2.1.1.3 Turkish Nationals

There are no specific legislative provisions regarding family reunification applications by family members of Turkish nationals. The provisions of the *Agreement Establishing an Association Between the European Economic Community and Turkey* and Article 7, *Decision 1/80 of the Association Council of 19 September 1980 on the Development of the Association between the European Economic Community and Turkey*. Accordingly, Turkish workers, who have been in 'legal employment' in Ireland for a certain period of time have a right to have their permission to work renewed and their corresponding right of residence renewed. The requirement for 'legal employment' means that, in order to benefit, a Turkish national has to have been admitted to and must have been allowed to work under Irish domestic law. This could, however, extend beyond those who have obtained a work permit and could include, for example, Turkish national family members of Irish nationals.

2.1.1.4 International Students

As in the case of migrant workers, there are no specific legislative provisions regarding family reunification applications made by international students although generally applicable immigration legislation provisions and administrative procedures do apply.

However, it is generally not the policy of the INIS to allow family members of international students to join them in Ireland. Partners and spouses may be considered for entry but on some independent basis. Students are not permitted to be accompanied or joined by children, other than those born in Ireland during the course of their studies. Some exemptions from this general policy may be allowed in respect of students pursuing courses at PhD level; if the student is participating in an agreed state-funded academic programme and all expenses are covered; or if the student can demonstrate sufficient private funds on an annual basis to support themselves and any family dependants; or if the child is on a short visit and the parent can demonstrate special circumstances and guarantees that the child will leave the State (INIS, 2009a).⁸ There is no administrative guidance publicly available regarding the level of 'private funds' required to be available in order for admission to be permitted.

2.1.1.5 Persons Granted 'Leave to Remain' on Various Grounds, including Humanitarian Leave to Remain and Victims of Trafficking

There are no specific legislative provisions regarding family reunification applications made by the family members of these categories of third-country national residents. There is also no further administrative guidance available. In practice, applications are most likely to succeed if the family sponsor is economically self-sufficient and/or there are humanitarian issues in the case.

2.1.2 Rights and Obligations after Admission

The Office for the Promotion of Migrant Integration (OPMI) does not offer integration programmes or language classes for migrants. Services are primarily provided by NGOs, with little or no Government funding (Healy, 2007). However, the website of the OPMI contains, for example, information on 'integration events' such as an International Conference on Combating Racism, 'Overcoming racial barriers and achieving full potentials', organised by the Association of Ghanaian Professionals in Ireland in August 2012, the 'Soccerfest' organised by Sport Against Racism Ireland (SARI) in September 2012 and the launch of Dublin City's 2012 "One City One People" campaign and a conference on 'Getting Young People Involved in Combating Racism, Xenophobia, Discrimination and Promoting Diversity', coinciding with the launch on 24 September 2012, which was organised by the ICI with Dublin City Council. Participation in these events is voluntary and not a precondition to family reunification.

⁸ INIS Notice [New Immigration Regime for Full-Time Non-EEA Students](#)

In Ireland, there is no requirement for family members aged less than 16 years to register and to be issued with a residence permit.⁹ Family members who are required to register may be granted the following residence permits:

2.1.2.1 Migrant Workers/Scientific Researchers

Although family members of Green Card holders and scientific researchers enjoy preferential access to the State (i.e. they can accompany immediately), generally all non-EEA adult family members of non-EEA migrant workers are granted residence permits as dependants on *Stamp 3* conditions and therefore do not enjoy access to the labour market, unless they qualify for a spousal dependant work permit (INIS, n.d.b)¹⁰ or independently qualify for an employment permit in accordance with general employment permit requirements, both of which are issued by the Department of Jobs, Enterprise and Innovation.

In contrast, minor dependent children are generally registered on *Stamp 2A* residence permits, preventing them from accessing the labour market. This status is normally reserved for international students and does not reflect the primary purpose of residence for minor dependent children of migrant workers or scientific researchers. Whilst access to public primary and secondary schools for children aged less than 18 years is permitted, access to third-level education is restricted, unless all fees and expenses are paid privately (Integration Centre, n.d.). All family members and dependants who are granted permission to be in the State under these administrative arrangements may only remain for a maximum period equal to the registration of the migrant worker/scientific researcher.

Family members of migrant workers and scientific researchers are required to pay the general registration fee of €150.

2.1.2.2 Long-Term Residents

As set out above at 2.1.1.2, there is little information available in relation to the rights and obligations of family members of 'long-term residents'.

2.1.2.3 Turkish Nationals

The provisions of the *Turkish Association Agreement* and Article 7 of *Decision 1/80* apply and family members are required to pay the general registration fee of €150.

2.1.2.4 International Students

Adult family members of international students who are granted residence permits are issued with *Stamp 3* residence permits and do not enjoy access to the labour market, unless they independently qualify for an employment permit in accordance with general employment permit requirements. In respect of international students who may have been permitted to be accompanied or joined by their children in Ireland on an exceptional basis, it is the general policy that such children must attend private fee-paying schools. Previously, the children of international students were able to attend regular public primary and second level schools and such children who were already in that system were permitted to remain in their current school until the end of their parent's course or the end of July 2012, whichever was earlier (INIS, 2011).¹¹ Family members are required to pay the general registration fee of €150.

⁹ Immigration Act, 2004, s. 9(6)(a)

¹⁰ [Guide to Work Permits for Spouses and Dependents of Employment Permit Holders](#)

¹¹ [Transitional Arrangement Notice for Children](#) - New Immigration Regime for Full-Time Non-EEA Students.

2.1.2.5 Persons Granted ‘Leave to Remain’ on Various Grounds, Including Humanitarian Leave to Remain and Victims of Trafficking

Adult family members who are granted residence permits may be issued with a *Stamp 4* permit, allowing them full access to the labour market, or with a *Stamp 3* permit issued to dependent family members, depending on the particular circumstances in which they applied to join their family member and any conditions attached by the Minister in exercising discretion to permit entry to and residence in the State. There is no information publicly available from the INIS in this regard. All admitted family members are required to pay the general registration fee of €150.

2.1.3 Requirements for the Granting of an Independent or Permanent Residence Permit

As a general rule, all residence permissions granted to third-country nationals and their family members are temporary. Residence permits are typically granted for between one and five years maximum and may be renewed, provided that the conditions for granting a residence permit at first instance continue to be fulfilled. There are, however, a number of caveats to this general position:

2.1.3.1 Independent Residence and Retention of Residence Entitlements in Event of Changes in Family Circumstances

There are no legislative or administrative provisions for family members of third-country nationals to be granted an independent residence card on completion of a certain period of residence or for them to retain residence in the event of certain changes in family circumstances such as separation arising from relationship breakdown, divorce, death or departure of the family member from the State. Recently, some administrative guidelines have been made public which detail the INIS approach in domestic violence situations. (ICI, 2012; INIS, 2012c).

Third-country national family members must notify the INIS of the changes in their personal circumstances and seek permission to remain and, if necessary, to vary the conditions of residence from those when first granted entry to and residence in the State. Such applications are made under section 4(7) of the *Immigration Act 2004* and are granted at the discretion of the Minister for Justice and Equality. Whilst it is reported that such applications are often responded to positively, there is no legislation regarding such applications or any criteria to be fulfilled (Domestic Violence Coalition, 2012).¹² However, the Minister for Justice and Equality has stated in this regard that ‘[...] in respect of domestic violence, where the victim is seeking immigration status independent of that of the perpetrator, the current system places no legal impediment in the way of dealing with such issues in a sympathetic manner and in fact this is what happens in practice’ (Shatter, 2012).

While legislation in relation to the issue is still lacking, in July 2012 in response to repeated lobbying by organisations such as the ICI, the INIS published information guidelines on its website that detail the immigration authorities’ approach to situations where relationship breakdown occurs as a result of domestic violence. These guidelines were broadly welcomed by organisations working with those experiencing domestic violence as a positive step towards clarifying the rights people in this situation. It must be noted however that some elements of the policy can be seen as being problematic (ICI, 2012).

2.1.3.2 Permanent Residence

Ireland did not opt-in to *Directive 2003/109/EC Concerning the Status of Third-Country Nationals Who are Long-Term Residents* and there is no entitlement to permanent residence, as understood and provided for in that Directive, for non-EEA nationals living in Ireland. With the exception of

¹² Domestic Violence Coalition Briefing Note on “Granting of ‘independent’ residence permits to migrants who experience domestic violence”, March 2012.

employment permit holders, there is no provision for third-country nationals and their family members to apply for '*long-term residence*' (Cosgrave, 2011), which, it should be noted, is not a permanent status comparable with the status granted in other Member States following the transposition of *Directive 2003/86/EC*.

The administrative arrangements governing access to '*long-term residence*' for employment permit holders were first introduced in 2005. Long-term residence may be applied for after an employment permit holder has completed five years residence on employment permit conditions and, if granted, the worker is permitted to register on *Stamp 4* conditions, which grants free access to the labour market, for a period of five years and may thereafter be renewed for further periods of five years at the discretion of the Minister for Justice and Equality.

Additionally, the dependent family members of employment permit holders, who have themselves been legally resident in the State for five years or more, may also apply for long-term residence. However, the granting of long-term residence to dependent family members will not exempt them from employment and business permit requirements (INIS, n.d.c).¹³ Further, aside from labour market entitlements there is a lack of clarity regarding any additional rights and entitlements of long-term residents.

There is no information publicly available regarding the circumstances in which this status is retained in the event of (for example, absence from Ireland for any length of time or the circumstances in which the status may be revoked), including any revocation procedure or procedural safeguards.

It is also possible for third-country nationals to apply for permission to remain in Ireland 'without condition as to time' (WCATT) (INIS, 2012). This is a residence stamp that is granted at the discretion of the Minister for Justice and Equality to individuals who are of '*good character*' and have completed eight years of legal residence in Ireland. Certain categories of residence permit holders are not eligible to apply, including international students and intra-corporate transferees. '*Long-term residents*' and *Stamp 4* holders cannot apply for a WCATT endorsement in their passport unless they have less than six months remaining on their current permission to reside. Although not explicitly excluded, refugees (and possibly their family members depending on the circumstances) are effectively excluded as the WCATT stamp is issued in passports only and not travel documents. If WCATT status is granted, there is no fee payable. The administrative arrangements do not provide for any right of review against a decision to refuse WCATT.

In stark contrast to the rights of permanent residents under the Citizenship *Directive 2004/38/EC* or long-term residents under *Directive 2003/109/EC*, apart from being granted a residence status of indefinite duration, WCATT holders derive few, if any, further rights and do not enjoy any enhanced protections against expulsion. In particular, the granting of a WCATT permission does not confer any additional or preferential family reunification entitlements on the status holder. It is INIS policy that WCATT permission does not confer any entitlement or legitimate expectation on any other person, whether related to the WCATT permission holder or not, to enter or remain in the State. In addition, family members of WCATT permission holders do not qualify to be granted WCATT permission or *Stamp 4* permission, unless they independently qualify.

Similar to domestic '*long-term residence*' status outlined above, there is no information available regarding the grounds upon which the status may be revoked, the revocation procedure or any procedural safeguards that may apply.

¹³ INIS Information on [Long-Term Residency](#)

2.2 Refugees and Holders of Subsidiary Protection

2.2.1 Conditions for Family Reunification

2.2.1.1 Refugees

In respect of recognised refugees, section 18, *Refugee Act 1996 (as amended by the Civil Partnership Act, 2010)* provides that recognised refugees are entitled to be joined by certain family members in Ireland. Section 18(3)(b)(i)-(iii) sets out the definition of qualifying family members, which includes the spouse or civil partner to whom the refugee is married or in a civil partnership with and unmarried dependent children under the age of 18 or, in the case of unaccompanied minor refugees (under age 18), their parents.

In relation to spouses, the High Court has held in the case of *Hamza v MJELR* that *'section 18(3)(b)(i) of the 1996 Act, does not require that the Minister be satisfied that the refugee and spouse be parties to a marriage which is recognisable as valid in Irish law, or that any particular documentary proof of the foreign ceremony be produced. It requires, merely, that the refugee and the spouse are married and that the marriage is subsisting at the date of the application. It does not define the term "marriage"'*.

In respect of qualifying family members, apart from evidencing the existence of the family relationship by way of documentation such as marriage, civil partnership and birth certificates or DNA testing, there are no other formal admission criteria to be fulfilled in terms of income, housing or integration requirements.

Under section 18(4), refugees are also entitled to apply for other 'dependent' family members, including grandparents, parents, brothers, sisters, children, grandchildren, wards or guardians who are dependent on the refugee or suffering from a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself or herself fully. However, such applications in respect of dependants are granted at the discretion of the Minister for Justice and Equality. The concept of 'dependence' in section 18(4) is not defined and the legislative provisions do not explicitly identify specific admission criteria in terms of income, housing or integration requirements that must be fulfilled. In practice, applicants are required to provide documentary evidence that the refugee has been financially supporting the respective family member, as well as evidence of the refugee's current financial and domestic situation. However, there are no stated financial thresholds that must be met (INIS, n.d.b).¹⁴

Under section 18(5), the Minister is permitted to refuse to grant permission to enter and reside in the State, to a family member or to revoke any permission granted to such a person in the interest of national security or public policy ("*ordre public*").

Finally, the question if recognised refugees who subsequently naturalise as an Irish citizen retain the family reunification entitlements provided for under the *Refugee Act 1996* is currently the subject of consideration by the Attorney General. Until recently, the official stance of the INIS was that once a refugee has become an Irish citizen their right to family reunification was lost. *'This stance would appear to have softened and anecdotally we know that applications are currently being accepted from naturalised refugees. Notwithstanding this, enquiries by advocacy groups and immigrant rights organisations suggest that something of a status quo currently exists in that seemingly conflicting advice was received by the Attorney General on this point. Although ORAC may be processing these*

¹⁴ INIS Information [Family Reunification Information Leaflet](#)

applications at present, until many of them are ultimately determined we will not be able to say with any certainty that the State's interpretation of the law has indeed changed in favour of permitting such applications' (O'Neill, 2012). The failure to allow naturalised refugees to seek family reunification based on their position as refugees has been criticised in the past by the Irish Human Rights Commission, which has expressed the view that under no circumstances should the rights of Irish citizens be less than those of non-Irish citizens resident in Ireland and that naturalisation should never lead to a diminution of legal rights (IHRC, 2005: 7, 9).

2.2.1.2 Subsidiary Protection Status Holders

Family reunification for persons with subsidiary protection status is provided for in accordance with Regulation 16 of the *European Communities (Eligibility for Protection) Regulations 2006*. Regulation 16(1) provides that such a person may apply to the Minister for permission to be granted for a member of their family to enter and reside in Ireland (INIS, 2006).

Regulation 16(3)(b) defines a 'family member' as a spouse, if married, parents (if the applicant is under the age of 18 years and unmarried at the time of application) or a child of the applicant (provided the child is under 18 years and unmarried at the time of application). Regulation 16(4)(b) also provides Ministerial discretion for the granting of family reunification for 'dependent family members', which in this context includes '*any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the applicant who is either dependent upon them or unable to maintain themselves fully due to a physical or mental incapacity*'. The legislative provisions do not explicitly identify specific admission criteria in terms of income, housing or integration requirements that must be fulfilled in respect of any family members and no further administrative guidance is publicly available (*ibid.*). To date, the legislation has not been amended to provide for family reunification of subsidiary protection holders with 'civil partners'.

Under Regulation 16(5) the Minister can refuse to grant entry or to revoke permission to reside (previously granted) to the family member of a subsidiary protection holder on the grounds of national security or public policy ("*ordre public*") as well as in cases where the individual 'would be or is excluded from refugee or subsidiary protection status in accordance with regulation 12 or 13', namely the commission of serious crimes and/or constituting a danger to the community or the security of the State (*ibid.*).

2.2.2 Rights and obligations after Admission

2.2.2.1 Refugees

Family members of refugees who are granted residence permits in the State are issued with *Stamp 4* residence permits and, in accordance with the provisions of section 18(3)(a) of the *Refugee Act 1996*, are entitled to the same rights and privileges in the State as the refugee, for such period as the refugee is entitled to remain in the State. The residence permit is generally issued for a period of one-year (and in some cases, shorter periods), renewable thereafter on fulfilment of conditions. The rights conferred are effectively the same as those provided to Irish citizens in terms of access to employment, education and other social benefits/services.

Refugees and their family members are exempt from the requirement to pay the normal registration fee of €150.

2.1.2.2 Subsidiary Protection Status Holders

Family members of subsidiary protection status holders who are granted residence permits in the State are issued with *Stamp 4* residence permits and, in accordance with the provisions of Regulation

19, are entitled to the same rights and privileges in the State as the sponsor. These are effectively the same rights and freedoms as conferred on refugees/Irish citizens. The residence permit is initially issued for a period of three years, renewable thereafter on fulfilment of conditions. However, it is reported by legal practitioners participating in this report that the permit is renewed for a period of one-year only.

In practice, there is an exemption from the requirement to pay the normal registration fee of €150, although this is not explicitly stated.

2.2.3 Requirements for the Granting of an Independent or Permanent Residence Permit

2.2.3.1 Independent Residence and Retention of Residence Entitlements in Event of Changes in Family Circumstances

Similar to provisions concerning other third-country nationals, the relevant legislation and administrative guidelines governing family reunification for refugees and subsidiary protection holders are silent regarding independent residence or retention of residence in the event of changes in circumstances. Following a literal interpretation of section 18(3)(a) of the *Refugee Act 1996* however, which is reflected in the current practice of the INIS, a family member of a refugee will be permitted to remain in the State *'for such period as the refugee is entitled to remain in the State'*.

Furthermore, it is open to both family members of refugees and family members of subsidiary protection holders to apply for a change of status pursuant to section 4(7) of the *Immigration Act 2004*, for example in situations of domestic violence. The INIS information guidelines of June 2012 add some clarification to how residency rights may be retained in situations of relationship breakdown as a result of domestic violence but they do not make reference to family members of refugees and subsidiary protection holders and legislative provisions are still lacking.

2.2.3.2 Permanent Residence

As a general rule, all residence permissions granted to refugees and their family members as well as to subsidiary protection holders and their family members are temporary and renewable on fulfilment of conditions until citizenship by naturalisation may be granted at some future date. There is no legislative or administrative provision for granting 'long-term residence' or WCATT status.¹⁵

2.3 Union Citizens

In Ireland, the rights of entry and residence of family members of Union citizens are governed by *Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, which is transposed into Irish law by the *European Communities (Free Movement of Persons) (No.2) Regulations 2006* and the *European Communities (Free Movement of Persons) (Amendment) Regulations 2008*.¹⁶ Given that these Regulations largely follow the requirements of the Directive, this section has a particular focus on apparent divergences between the relevant Directive provisions and the provisions of domestic law.

2.3.1 Conditions for Family Reunification

The definition of 'qualifying family members' is set out in Article 2(2) of *Directive 2004/38/EC* and includes the spouse or partner, the partner with whom the Union citizen has contracted a registered

¹⁵ See section 2.1.3.2 above.

¹⁶ It should be noted that In 2008, the European Commission published a report (the [Commission Report 2008](#)) assessing the transposition by Member States of the Directive, which concluded that the overall transposition of the Directive was rather disappointing and that not one Member State, including Ireland, had transposed the Directive effectively and correctly in its entirety.

partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State, descendants under 21 and direct dependants in the ascending line of either the EU national or their spouse/partner. Article 3(2)(a) and (b) of the Directive also extend the entitlements to other 'beneficiaries' who do not qualify in the above definition of 'qualifying family members' and includes a person with whom the Union citizen has a 'durable relationship duly attested' and family members who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen.

These provisions are transposed by Regulation 2 of the 2006 Regulations. In Regulation 2(2) qualifying family members are referred to in the same way, whereas in Regulation 3 'beneficiaries' are referred to as 'permitted family members'. The concept of 'dependence' is not defined in either the Directive or the Irish Regulations. In respect of unmarried *de facto* partners, applicants are required to provide '*satisfactory evidence of a durable relationship being in existence for at least two years*' (INIS, 2010).

2.3.1.1 The Situation of Bulgarian and Romanian Nationals in Ireland

Although the rights of movement and residence provided under the Directive apply to all Union citizens regardless of nationality, it should be noted that, arising from transitional measures imposed at the time of the accession of Romania and Bulgaria to the European Union in 2007, until July 2012 citizens of Romania and Bulgaria did not enjoy full freedom in all circumstances to access employment in the same way as other Union citizens do in Ireland.

On 20 July 2012 the Department of Jobs, Enterprise and Innovation (DJEI, 2012) announced that the Government has decided to bring forward the date for the restrictions on Romanian and Bulgarian nationals access to the Irish labour market to be dropped. These restrictions were previously due to expire on 1 January 2014. Prior to this announcement, the Government had in place 'transitional measures' which restricted the rights of some Romanian and Bulgarian nationals to access the Irish labour market. With the removal of these measures, Romanian and Bulgarian nationals now enjoy the unrestricted access to the Irish labour market as provided to all EU nationals' (DJEI, 2012).

2.3.2 Rights and Obligations after Admission

In accordance with Regulation 8 of the Irish Regulations 2006 and 2008, the family members of Union citizens are issued with a *Stamp 4 EUFAM* residence permit for a five-year period or for the envisaged period of residence of the Union citizen, if this period is less than five years. The validity of the residence card shall not be affected by temporary absences not exceeding six months per year, or by absences of a longer duration for compulsory military service or by absences of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

Family members have full access to the labour market and the right to education, including primary, secondary and vocational education and are exempt from the requirement to pay the normal registration fee of €150.

2.3.3 Requirements for the Granting of an Independent or Permanent Residence Permit

2.3.3.1 Retention of Residence Following Changes in Circumstances

In order to safeguard the rights of both Union citizens and their family members, Article 14 of the Directive provides that Union citizens shall have the right of residence, as long as they do not become an unreasonable burden on the social assistance system of the host Member State. However, the Directive explicitly provides that expulsion shall not be the automatic consequence of a Union citizen's or a family member's recourse to social assistance. In contrast, the Irish Regulations 2006 and 2008 do not exclude expulsion as an automatic consequence of recourse to social assistance.

Additionally, on fulfilment of conditions, the right of residence is retained following the death or departure of the Union citizen from Ireland (Regulation 9) or in the event of divorce, annulment of marriage or termination of registered partnership, as well as other situations warranted by particularly difficult conditions, such as domestic violence (Regulation 10).

Furthermore, the Union citizen's departure from the host Member State or death shall not entail loss of the right of residence of the parent who has actual custody of the children, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies (Regulation 9(3)).

The right of residence is retained where prior to the initiation of a divorce or annulment proceedings or termination of the registered partnership, if the marriage or registered partnership has lasted at least three years, including one year in the host Member State or the third-country national family member has custody of the Union citizen's children or has a right of access to a minor child, if a court has ruled that such access must be in the host Member State. There is no specific required length of relationship to be fulfilled in the case of domestic violence.

Although not explicitly stated in the Directive or the Irish Regulations 2006 and 2008, the Irish courts have confirmed that the right of residence is not contingent on the family members living together, as outlined in the case of *Mohamud*, referred to in Chapter 5.

Regulation 11(4) of the Irish Regulations 2006 and 2008 obliges family members of Union citizens to notify the registration officer, within 7 days, of any change in their place of residence or any other change in circumstances which may affect their right to reside in the State under the Regulations.

2.3.3.2 Permanent Residence

The granting of and application for permanent residence in Ireland is dealt with in Regulations 12 to 16 of the Irish Regulations 2006 and 2008. Union citizens and their family members who have resided in Ireland legally for a continuous period of five years have the right to permanent residence. Continuity of residence is not affected by temporary absences from the State for particular reasons and, once acquired, the right of permanent residence is only lost through absence from the host Member State for a period exceeding two consecutive years (Regulation 16(5)).

As a matter of administrative practice, applications for a permanent residence card by a third-country national family member must be submitted using the '*EU 3 application form*'. In such cases, the Directive requires that the application for permanent residence be submitted before the residence card expires (Article 20(2)). In terms of processing times, for third-country national family members, the permanent residence card must be issued within six months of submitting the application (Article 20/Regulation 16(3)). Although the Directive specifies that the permanent

residence card is renewable automatically every ten years (Article 20), Regulation 16(4) provides that the card shall be renewable on application to the Minister.

2.4 Nationals of the Member State

2.4.1 Conditions for Family Reunification

In Ireland, in contrast to the family members of refugees, subsidiary protection holders, scientific researchers or EEA citizens, there are no specific legislative provisions conferring an entitlement on any family members of Irish nationals to enter or reside in the State. General immigration legislation and administrative procedures as referred to above, apply and applications are granted on a discretionary basis. Comprehensive information regarding family reunification applications by family members of Irish citizens is not available in a single official document on the INIS website. The information provided is gathered from a number of INIS web pages regarding Visas, [Join Family](#), [De Facto Relationships](#), [Spouse of Irish National](#) and information published following the judgment of the Court of Justice of the European Communities (CJEU) in the case of *Zambrano v ONEM*¹⁷. Some information regarding rights and obligations after admission is not published but is known to the authors of the report arising from their experience as legal practitioners and confirmed by the other service providers who participated in the research interviews.

Despite the absence of specific legislative provisions governing family reunification for Irish citizens, family members of Irish citizens are generally permitted to enter and/or remain in the State. There is no strict administrative definition in respect of qualifying family members and theoretically there is no restriction on the categories of family members that may be admitted. However, in practice, although there is no entitlement *per se*, residence permits may be granted to spouses/civil partners, *de facto* (unmarried cohabiting) partners, including same-sex partners, the parents/siblings of minor Irish citizen children and the parents of adult Irish citizens.

Following the judgment of the Court of Justice of the European Union (CJEU) in the *Zambrano* case, the INIS has introduced a specific application procedure for parents of Irish citizen children who are awaiting a decision in their case under Section 3 of the *Immigration Act 1999*, i.e. parents who have been informed of the intention of the Minister for Justice and Equality to issue a deportation order in respect of them, parents of an Irish born citizen child or children who have current permission to remain in the State on the basis of *Stamp 1*, *Stamp 2* or *Stamp 3* conditions and parents of an Irish born citizen child who have been deported or who have left the State on foot of a Deportation Order. However, it must be noted that as a matter of public policy, the INIS has announced that the terms of the *Zambrano* judgment will not be applied to any third-country parent of an Irish born citizen child or children who has been convicted of serious and/or persistent criminal offences.

There are no formal conditions that are strictly applied in order for admission to be granted and, in practice, applications are most likely to succeed if the family sponsor is economically self-sufficient and/or there are humanitarian issues in the case.

In all cases, it is necessary for family members to establish the genuine nature of the relationship and to provide evidence of identity and of the family relationship, including marriage/civil partnership/birth certificates and DNA testing may be requested to establish parentage in some cases. It was mentioned by a legal practitioner that it is '*at the discretion of the Department of Justice [...] [to] agree to cover the cost of the testing provided the results are positive (i.e. that the results confirm the family relationship claimed)*' (SP3, personal communication, 9 July 2012). Whilst

¹⁷ See Chapter 5.

applicants are requested to provide evidence of employment and financial means, there is no administrative guidance on what constitutes sufficient finances and, if there are humanitarian factors in the case, financial means or dependence on social assistance may not automatically result in an application being refused. In the case of spouses/civil partners and minor children of Irish nationals, there is generally no requirement to provide evidence of private health insurance for the family members but this is ordinarily requested in the case of dependent parents and *de facto* partners. *De facto* partners must also provide evidence of two years cohabitation (Walsh & Ryan, 2006).

There are no formal requirements in respect of housing or integration. Applicants who are already in Ireland at the time of making the application are not permitted to work during the application process, unless they already hold an employment permit or are permitted to work in the State in accordance with a pre-existing residence permit.

2.4.2 Rights and Obligations after Admission

Rights and obligations are not uniformly provided in all cases. Generally, the family members of Irish citizens are issued with *Stamp 4* residence permits, initially for a period of one-year, during which they are permitted full access to the labour market and free public education at primary and secondary level. However, in some situations, family members may be issued with more restrictive *Stamp 3* residence permits if they have been admitted on a dependent basis only (e.g. dependent adult parent of family sponsor), or where a genuine family relationship is acknowledged but admission criteria are not fulfilled (e.g. unmarried partner but less than two year cohabiting), or where the family member applicant may have had an irregular immigration history for a significant period prior to making a residence application.¹⁸ Admitted family members do not enjoy any additional family reunification entitlements themselves.

With the exception of spouses and civil partners, family members of Irish nationals are required to pay the €150 registration fee following the granting of a residence permit to them.

2.4.3 Requirements for the Granting of an Independent or Permanent Residence Permit

2.4.3.1 Independent Residence

Similar to what has been outlined above in respect of third-country nationals, there are no legislative or administrative provisions for family members of Irish citizens to be granted an independent residence permit on completion of a certain period of residence or to retain residence in the event of certain changes in family circumstances such as relationship breakdown arising from separation, divorce or domestic violence, death or departure of the family member from the State. Family members must notify the INIS of the changes in the personal circumstances and may seek permission to remain and, if necessary, to vary the conditions of residence to those when first granted entry to and residence in the State. In practice, an independent residence permit may be granted following relationship breakdown, for example in circumstances of domestic violence, and this has been confirmed by the Minister for Justice and Equality in a recent Dáil debate where he stated that: *'[T]he Irish Naturalisation and Immigration Service (INIS) of my Department operates a flexible, pragmatic and humane approach to the status of non-EEA nationals (both men and women) who are in situations of domestic violence. Any person in such a situation can approach INIS either directly or through An Garda Síochána or a non-governmental organisation and their case will be examined with sensitivity. All cases are addressed on an individual basis and independent status is granted where the known circumstances of the case warrant it. In considering the circumstances of*

¹⁸ There is no comprehensive information made publicly available by INIS regarding the residence stamps that are issued to family members of Irish citizens or the circumstances in which particular terms and conditions may be attached to any residence permit that is granted.

each such application every effort is made to ensure that the most appropriate permission stamp is granted consistent with overall public policy and the requirement to ensure that the integrity of the immigration system is upheld' (Shatter, 2012). In July 2012 the INIS published 'Guidelines for Victims of Domestic Violence' which provide for the making of an application for independent status. However, contrary to the contents of these guidelines and established practice in this regard, the INIS website continues to state in its section on 'Spouse of an Irish National/Civil Partnership with an Irish National' that there are no rights of retention of residence in the event of separation/divorce (INIS, n.d.e).¹⁹

2.4.3.2 Permanent Residence

Similar to what has been outlined above in respect of third-country nationals, all residence permissions granted to family members of Irish citizens are temporary. Residence permits are typically granted for between one and five years maximum and may be renewed provided that the conditions for granting the residence permit at first instance continue to be fulfilled. Equally, there is no legislative or administrative provision for third-country national family members of Irish nationals to apply for long-term residence.²⁰

2.5 Conclusion

Due to the decision of the Irish Government not to opt-in to Directives 2003/86/EC and 2003/109/EC and the retention of the extensive discretion of the Minister for Justice and Equality, the situation of third-country nationals and Irish nationals with regard to family reunification remains unclear, leading to confusion and frustration on the part of applicants and their family members. Furthermore, errors in the transposition of *Directive 2004/38/EC* continue to necessitate administrative and legal challenges on behalf of EU/EEA nationals and their family members.

| | Income requirement | Accommodation requirement | Integration requirement | Age limits |
|--|--|---------------------------|-------------------------|------------|
| Third-country nationals <ul style="list-style-type: none"> • Work Permit Holders | income above threshold for Family Income Supplement (FIS) sufficient monthly resources to meet expenses, without having recourse to the national social assistance system | n/a | n/a | n/a |
| <ul style="list-style-type: none"> • 'Green Card' Holders | | | | |
| <ul style="list-style-type: none"> • Scientific Researchers | | | | |
| Refugees/ Holders of Subsidiary Protection Permit | n/a | n/a | n/a | n/a |
| EEA Nationals <ul style="list-style-type: none"> • Workers/self-employed | n/a | n/a | n/a | |

¹⁹ See also section 2.1.3.1 above.

²⁰ See also section 2.1.3.2 above.

| | | | | |
|---|---|------------|------------|------------|
| <ul style="list-style-type: none"> • Students/ economically • self-sufficient | <p>sufficient monthly resources to meet expenses, without having recourse to the national social assistance system</p> | | | |
| <p>Own Citizens</p> | <p>n/a</p> | <p>n/a</p> | <p>n/a</p> | <p>n/a</p> |

Table 6

Chapter 3

Policy Developments and Political Debate on Family Reunification and the Legal Position of Admitted Family Members

The lack of harmonisation in the family reunification admission criteria across categories, as well as the absence of formal income, housing, integration requirements and age limits in Ireland, was noted in Chapter 2. The aim of this Chapter is to set out the general position regarding family reunification applications in 2001 and to trace developments regarding particular legislative or administrative policy changes in the following years, noting when policies were implemented or amended, the arguments of policy makers and any reactions in the political debate and literature. The amendments or changes only affecting particular groups are also noted.

3.1 General Overview of Ireland's Inward Migration History

Traditionally a country of emigration, significant inward migration to Ireland is a relatively recent phenomenon. Even after Ireland joined the EU in 1973, immigration from other EU Member States remained relatively low until the 1990s. Prior to the economic boom of the so-called *Celtic Tiger* years (mid-1990s – 2007), the Irish Government actively pursued a policy of discouraging economic migrants and asylum seekers, in order to protect the labour market in a climate marked by a weak economy and high unemployment rates. Consequently, between 1981 and 1991 net emigration reached almost six per cent (Barret & Duffy, 2008: 600). These economic conditions, coupled with Ireland's geographical location and the fact that it had no colonies in the past, meant that there was no tradition of immigration to Ireland.

During the economic boom, Ireland witnessed considerable changes to its largely homogenous societal landscape. Ireland's experience of migration reversed from a tradition of recurring waves of emigration to an influx of immigration including both returning Irish nationals as well as non-Irish nationals. Rapid economic growth rates entailed job creation on a large scale (Roeder, 2012) transforming Ireland into 'a country of immigration' (Ruhs, 2005: X) generating greater ethnic, cultural and social diversity. Inward migration increased steadily from 31,200 immigrants in 1995 to 109,500²¹, its peak, in 2007. Net immigration 'peaked at 48,000 per annum during 2002-2006' (CSO, 2011: 10) after which period, net immigration fell to 23,730 during the 2006-2011 inter-censal period (CSO, 2011: 12).

According to Ruhs (2005), between the mid-1990s and 2003 the Irish government pursued a *laissez-faire* policy approach to work permits leaving local employers free to hire as many workers as they wanted regardless of nationality and job category. This led to a noticeable increase in work permits issued to non-EEA nationals 'from 5,750 in 1999 to 47,707 in 2003' (Ruhs, 2005: XII), the majority of which were issued 'for employment in relatively low-skilled and/or low-wage occupations, especially in the service' (*ibid.*) and construction sector with migrants accounting 'for 17 percent of the construction work force' (Wickham & Krings, 2009: 2). However, the *Employment Permits Act 2003* marked a more restrictive and skills-based policy approach leading to a decline in the numbers of permits issued, 'from 47,707 in 2003 to 34,067 in 2004' (Ruhs, 2005: XIII). The 2006 Census counted 47,000 Asian nationals as well as 35,000 African nationals (Barret & Bergin, 2009: 6). According to latest Census (CSO, 2012b) these numbers increased to 79,021 Asian or Asian-Irish nationals and 54,419 African or African-Irish nationals now living in Ireland.

²¹ Out of 109,500 immigrants 20,000 were returning Irish nationals and 89,500 were foreign nationals (CSO, September 2011).

The latest Census 2011 (CSO, 2012a) reveals that 17% of the population were born outside of Ireland. According to the most recent censuses (2006 and 2011), the three largest immigrant groups come from the UK, followed by Poland and Northern Ireland. However, the accession of ten new Member States in May 2004 created another shift in inward migration patterns as Ireland was one of three countries (along with the UK and Sweden) that did not apply any restrictions to accessing the Irish labour market for nationals of the respective states. Kropiwek & King-O’Riain (2006) observed that in the two years following the EU enlargement, Ireland received approximately 130,000 applications for Personal Public Service Numbers (PPSN) from nationals from the new accession countries, more than half of which were issued to Polish applicants during the respective period of time.

The economic crisis that hit Ireland in late 2007 marked a turning point, with slowing inward migration from 83,800²² arrivals in 2008 to 42,300²³ in 2011. Between 2007 and 2010 net-migration fell from 1.6% to -0.8% of the total population (OECD, 2011: 288).

3.2 General Overview of Family Reunification Developments

In 2001, the Irish government launched a public consultation process on regular immigration policy and commissioned the *International Organization for Migration* (IOM) to conduct a comparative study of international law and practice with regard to immigration (IOM, 2002). Although the report identified some measures adopted by other countries, as well as efforts to develop common migration policies on family reunion at a European level, no specific policy recommendations were made to the Irish Government on the issue. However, the report did highlight the then Irish birthright citizenship entitlements irrespective of nationality of parents and noted the general policy, at that time, to grant residence to third-country national parents and spouses of Irish citizens, signalling that these as weaknesses and potential areas of immigration abuse (IOM, 2002: 97-98).

Following this consultation, in April 2005 the Department of Justice initiated a further process of consultation by publishing a discussion document including proposals for future immigration and residence legislation (DJELR, 2005b). The discussion document reflected the pressing need for reform in almost all aspects of immigration law, policy and practice in Ireland. It was argued that the single, most urgent issue requiring reform in this context was family reunification (Ryan, 2005). Chapter 9 of the discussion document focused on the issue of family reunification and identified the importance of admission of family members of migrants. Significantly, it recognised that although higher levels of migration to Ireland were a relatively recent phenomenon, if Ireland’s experience of immigration mirrored that of other countries, particularly in Europe, then the demand for family reunification would intensify. The discussion document also acknowledged that family reunification provisions needed to be set out accessibly and transparently, by way of secondary legislation or practice guidelines, to ensure that Ireland’s future immigration practices conform to constitutional obligations and reflect best practice. It was proposed that more favourable conditions for family reunification should apply for long-term or permanent residents, who would have a right to be joined by a spouse and unmarried children in cases where the family is economically self-sufficient. In certain circumstances, these residents could also apply to be joined by other family members. The discussion document further clarified that consideration would be given to a range of situations, including for example, short-term residents, unmarried relationships and marital breakdown. However, the discussion document did not detail what specific measures were actually contemplated to address these situations or situations that may arise in the future in relation to the reunification of family members in Ireland. For example, there was no mention in the document of the rights to be afforded to or obligations of admitted family members (ICI, 2005; IHCN, 2005; NGO Alliance, 2005).

²² Out of 83,800 immigrants 16,200 were returning Irish nationals and 67,600 were foreign nationals (*ibid.*).

²³ Out of 42,300 immigrants 17,100 were returning Irish nationals and 25,200 were foreign nationals (*ibid.*).

Despite the identification of the importance of and need to address family reunification in immigration legislation and policies in this document in 2005, to date there has been no comprehensive reform in this area, or enactment of immigration and residence legislation in Ireland. The Irish Government published draft immigration and residence legislation in 2007, 2008 and 2010 (DJELR 2008; DJLER 2010) but, with the exception of provisions re-enacting existing legislation regarding refugee family reunification entitlements, none of the published Bills contained any specific provisions regarding the entry or residence of family members of residents or Irish citizens. Whilst occasionally signalling that the intention was to address family reunification in separate secondary regulations following the enactment of the primary legislation²⁴, no draft secondary regulations or proposals have ever been published by Government, which has been the subject of much criticism.²⁵ Most recently, in January 2012, the current Minister for Justice and Equality, under a new Government lead by Fine Gael, published an immigration statement setting out his intention to address family reunification for third-country nationals and Irish citizens (DJELR, 2012) but no further proposals have been published to date. Furthermore, despite the commitment of the new Government to progress the Immigration, Residence and Protection Bill 2010 and, following development of key Government amendments, to “*return to the Oireachtas with this comprehensive legislative centrepiece of a wider programme of reform, in line with the Programme for Government*” (INIS 2012b), the re-publication of the Bill remains outstanding.

Despite the absence of comprehensive reform, in the intervening years since 2001 there have been several fundamental legislative, policy and administrative changes that have impacted significantly on the family life of migrants and Irish citizens. Some of these, for example, the introduction of a change in policy in 2003 regarding the residence entitlements of parents of Irish citizen children or measures introduced in 2006 to tackle alleged ‘sham marriages’ have not been without controversy and have been the subject of much political, media and academic debate, as well as legal challenge. Other developments, such as the overhaul of information provided on the INIS website, extension of residence entitlements to *de facto* couples in 2006 (Walsh & Ryan, 2006) and civil partners in 2010 (*Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*) and the introduction of spousal work permits have been the subject of less debate in the immigration context but, arguably, were of significant importance to individuals engaging with the immigration system and have been much welcomed by civil society actors. Some of these developments are further examined and discussed in the following section.

The Supreme Court confirmed in the case of *Fajujonu v Minister for Justice* in December 1989 that it was possible in Ireland to apply for a residence permit as the parent of an Irish citizen child and it has been reported that approximately 10,500 foreign nationals were granted leave to remain in the State, on the basis of their parentage of an Irish-born child, between 1996 and January 2003 when the Supreme Court reiterated in the cases of *Lobe & Osayande v Minister for Justice, Equality and Law Reform* that the ruling in the earlier *Fajujonu* case did not mean that the Minister had no power to deport the parents of an Irish born child. Following the Supreme Court decision in these cases, applications for residency made solely on the basis of parentage of an Irish citizen child were no longer being processed and instead, many of the 11,493 parents who had outstanding applications at the time were issued with notifications of intention to deport pursuant to section 3(3) of the Immigration Act, 1999. From January to March 2005, parents of Irish citizen children were then given the opportunity to apply for permission to remain in the State under the so-called ‘Irish Born Child/05 Scheme’ (Becker, 2012). However, prior to this, a referendum was held to amend the rules on the acquisition of Irish citizenship provided for in the Irish Nationality and Citizenship Act. The

²⁴ IRP Bill 2008

²⁵ Criticisms by ICI on www.immigrantcouncil.ie (e.g. News Bulletin: 2008, Issue 32; 2010, Issue 71. Press releases:13 February 2008; 1 April 2008; 2 July 2010).

Constitutional amendment passed in June 2004 stated that persons born on the island of Ireland no longer have a constitutional right to Irish citizenship by virtue of their birth solely on the island of Ireland (Brandt, 2007).

Those who applied for permission to remain under the 'IBC/05 Scheme' were asked to sign a statutory declaration to the effect that they are aware that *'the granting of permission to remain [...] does not confer any entitlement or legitimate expectation on any other person [...] to enter the State.'* This declaration was described as lying at the heart of most of the pain experienced by parents and the inherent problems resulting from *de facto* single parent status and as causing *'a profound discomfort and distress among many IBC/05 parents who are geographically separated due an inadequate response by Government to family reunification as a whole in Ireland'* (Coakley & Healy, 2007: 19).

The position of Irish citizen children and their family members remains unresolved despite the decision of the Court of Justice of the European Union in the *Zambrano* case. In March 2011, immediately after the judgment, the Minister for Justice and Equality stated that *'there needs to be a more proactive approach'* and *'early decisions in appropriate cases to which the Zambrano judgment (sic) applies [will] be made without waiting for further rulings of the Courts'* (Shatter, 2011a). He further stated that *'(T)his initiative is being taken in the best interests of the welfare of eligible minor Irish citizen children and to ensure that the taxpayer is not exposed to any unnecessary additional legal costs'* (*ibid.*). The inclusion of the word *'eligible'* has been described as *'noteworthy'*. It implies that not all Irish children with foreign parents would benefit from the CJEU ruling in the *Zambrano* case. *'It is clear that the Department of Justice and Equality has chosen to interpret, and apply, the judgment as narrowly as possible'* (Lynn, 2011). The INIS website asserts that Irish children who left the State before being ordinarily resident here cannot rely on *Zambrano*, that an Irish child's parent who left the State voluntarily cannot rely on *Zambrano*; and, that an EU citizen child, who is not an Irish citizen, also cannot rely on this judgment (INIS, n.d.e).

Referring to the judgment of the Court of the Justice of the European Union in the case of *Metock and Others v Minister for Justice, Equality and Law Reform* in March 2008, the current Minister for Justice and Equality has expressed concern that while *'(F)ree movement is a fundamental right for citizens of the EU (...), evidence is emerging in Ireland that this very fundamental right of all EU citizens is being abused by those seeking to circumvent proper immigration controls on entering the Union. One such abuse is the evidence of highly unusual patterns of marriage involving EU citizens and Third Country Nationals. For example, last year almost 400 applications for residence were lodged in Ireland by non EEA nationals on foot of their marriage to Latvian nationals'*. According to the Minister, *'[T]he non EEA nationals in question were from Pakistan and to a lesser degree, the Ukraine and India'* (Shatter, 2011b). The Irish Government had sought to address the issue of 'sham marriages' through the introduction of legislation in 2007, 2008 and 2010 and in this regard, the original legislative proposals sought to introduce a prohibition to marry in Ireland for asylum seekers and migrants who were in Ireland on a 'non-renewable residence permit', even where they intend to marry an Irish or EU citizen. These proposals were reviewed following the judgment of the UK Court of Appeal in the case of *R (Baiai and others) v SSHD* and later replaced with a 'marriages of convenience test' in the 2010 Bill.

Originally, there was no provision for family reunification for unmarried couples which was lobbied for by organisations such as the ICI (Cosgrave, 2005), the Gay Lesbian Equality Network (GLEN) (2009; 2007) and the Gay Lesbian Union Éire (GLUE) (Lacey et al., 2005; Wickremasinghe, 2005). Administrative arrangements for the family reunification of *de facto* couples were introduced in 2006 and, following introduction of the *Civil Partnership and Certain Rights of Cohabitants Act* in 2011

(GLEN 2011), family reunification was introduced for couples in civil partnerships *en par* with married couples. However, the current arrangements do not take into account the fact that for many homosexual couples, particularly those who have suffered persecution on the basis of their sexual orientation, it is not possible to register their partnership in their country of origin. Furthermore, the relevant legislative amendment does not seem to include persons granted subsidiary protection status (see above).

As set out above at 2.1.1.4, it is generally not the policy of the INIS to allow family members of international students to join them in or accompany them to Ireland. Prior to the introduction of this policy in January 2011, students were generally permitted to be accompanied by family members if they were able to show that they could maintain themselves and their accompanying family members without recourse to public funds. Initially, the interpretation of this requirement allowed children of international students to access free primary and secondary education in Ireland. In 2007, the Government had introduced a policy of denying international students permission to reside in Ireland if they had children at non fee-paying schools. This policy change also affected those who were already living in and pursuing a course of studies in Ireland. The ICI subsequently acted on behalf of an American student who was refused an extension of her residence permit, halfway through her Masters course, because her young son was attending a public school in Galway. The ICI initiated High Court proceedings in the matter and the case was settled out of court. As a result, the Government's policy was reconsidered and the requirement that the children of international students do not attend public schools was re-introduced in a more transparent manner, allowing for a period of transition (ICI, 2008). In 2009, the Government published a consultation paper 'Proposed New Immigration Regime for Full-Time Non-EEA Students' (INIS, 2009a) on the basis of which the new policy was introduced in a phased manner in January 2011.

Overview of policy requirements since 2003:

| Year | Policy | Detail of Policy |
|------|--|--|
| 2003 | End of policy to grant residence permits to parents of Irish citizen children | End of 'routine' granting of residence permits to parents of Irish citizen children following the Supreme Court judgment in <i>Lobe & Osayande</i> and issuing of notification of intention to deport pursuant to Section 3(1) of the Immigration Act 1999 |
| 2004 | | |
| 2005 | 'Irish Born Child/05 Scheme' | Parents of Irish citizen children were given the opportunity to apply for permission to remain in the State on condition that they signed a statutory declaration to the effect that they understand that the granting of residence to them does not give them an entitlement to family reunification. |
| 2006 | Extension of residence entitlements to <i>de facto</i> couples | Recognition of <i>de facto</i> relationships for the purpose of family reunification – introduction of 4 year cohabitation requirement which was later amended in respect of applications made in respect of <i>de facto</i> partners of Irish nationals |
| 2007 | Official launch of new work permit arrangements Change of interpretation of 'reliance on public funds' in relation to | Policy permitting spouses and dependants of all employment permit holders to apply for a work permit in any sector Policy of denying international students permission to reside in Ireland if they had children at non fee-paying schools also affected those who were already living in and pursuing a course of studies in Ireland – reversal of policy following legal action |

| | | |
|------|--|---|
| | international students | |
| 2008 | Judgment of the ECJ in the case of <i>Metock and others v MJELR</i> | Amendment of implementing legislation following ECJ judgment in <i>Metock</i> case. |
| 2009 | Changes to Spousal Work Permit Scheme | The 'sponsor' must hold a valid Green Card Permit, or a valid Work Permit of 12 months or more duration where the first Work Permit application was received by the Employment Permits Section before 1 June 2009, or a valid Employment Permit or Hosting Agreement in respect of a Researcher position, or a valid Working Visa issued before the 31st December, 2006, or a valid Work Authorisation issued before the 31st December, 2006, or a valid Intra-Company Transfer Permit of 12 months or more duration where the application was received by the Employment Permits Section before 1 June 2009, and the employment permit holder must still be working within the terms of their employment permit. |
| 2010 | Extension of residence entitlements to <i>civil partners</i> | Family reunification was introduced for couples in civil partnerships <i>en par</i> with married couples. |
| 2011 | Judgment of the CJEU in the case of <i>Zambrano v ONEm</i> New Immigration Regime for Full-Time Non-EEA Students' | Introduction of application based on ' <i>Zambrano</i> criteria' Generally not the policy of the INIS to allow family members of international students to join them in or accompany them to Ireland |
| 2012 | Guidelines for Victims of Domestic Violence | Official policy permitting victims of domestic violence whose relationship has broken down to apply for independent immigration permission in his/her own right |

Data on visas and residence permits issued for the purpose of joining or remaining with family members in Ireland is not readily available from the authorities and prior to 2010 visa statistics were not published at all. It is therefore not possible to provide a quantitative analysis regarding any changes in the numbers of applications or visas issued as a consequence of the implementation of new policies. Statistics for 2011 and 2012 have not yet been made available.

3.3 Overview of Irish Government's Definition of Integration

Over the past decade, the Irish Government approach has tended to reflect the EU model, whereby integration is recognised to be composed of different elements and is viewed as a '*two-way process*' involving both immigrants and the host society (Commission of the European Communities, 2005; Council of the European Union, 2004).

The formation of the Interdepartmental Expert Group on Integration by the then Minister for Justice, Equality and Law Reform and the Publication of *Integration: A Two-Way-Process* in 1999, marked the first statement of intent of Irish officials in the development of the interculturalism road map. Integration markers, according to the report, include language skills, employment, training, recognition of skills and qualifications, education, accessing mainstream services, health,

accommodation, naturalisation and citizenship, and family reunification (DJELR 1999: 28-32). The report also outlined that key indicators of integration within the interculturalism framework are acceptance by the host society, ability to communicate in the host language, employment, training, education, access to mainstream services, accommodation, residence status, native culture and social inclusion (*ibid.* 43).

In *Integration: A Two-Way-Process* (1999) the Irish Government recognised that the process of integration was complex and should not be viewed as a static concept but a process that undergoes constant change as society evolves. A working definition of the concept was adopted, conceptualising integration as *'the ability to participate in Irish society to the extent that a person needs and wishes in all of the major components of society, without having to relinquish his or her own cultural identity'*. (DJELR 1999: 9). Further, integration was identified as placing certain duties and obligations on both refugees and the host society in order *'to create an environment in the host society which welcomes refugees as people who have something to contribute to society'* (*ibid.*). The report identified that certain measures had been adopted by the State to combat racism and intolerance, including the introduction of equality legislation and the establishment of the National Consultative Committee on Racism and Interculturalism (which was closed due to funding cuts at the end of 2008). Further measures to facilitate the integration of refugees, in particular educational and language supports were also adopted but it was recognised that a limited evaluation of those measures had been undertaken. In respect of specific integration issues, the report identified a number of relevant, key practical issues to be addressed, including language skills, employment, training, recognition of skills and qualifications, education, accessing mainstream health services, health issues, accommodation, naturalisation and citizenship, and family reunification (DJELR 1999: 27-32). Family reunification was recognised as *'playing a part in easing the sense of isolation which refugees can experience especially in the absence of peer support'* (DJELR 1999: 32). Although in 2005, in *Planning for Diversity: National Action Plan Against Racism 2005-2008 (NPAR)* (DJELR, 2005), the Irish Government extended the definition of integration beyond the refugee category to include Travellers and migrants, Murphy identifies that integration policy, in so far as it existed at all, was based on this report for the next seven years (Murphy 2011: 27).

One of the key outcomes of the *United Nation's World Conference Against Racism*, held in Durban, South Africa in 2001, was the commitment by participating countries, including Ireland, to develop a *National Action Plans Against Racism (NPAR)*. A consultation process on the development of the *National Action Plan* began in March 2002 and a report entitled *Diverse Voices* (National Action Plan Against Racism Steering Group, 2003) was published in July 2003. The NPAR 2005-2008 was subsequently launched in 2005. The four year programme *'was designed to provide strategic direction towards the achievement of a more intercultural inclusive society in Ireland. Under the Plan, support was provided towards the development of a number of national and local strategies promoting greater integration in our workplaces, in the police service, the health service, in our education system, in the arts and within our local authorities'* (OPMI, n.d.a).

Interculturalism was seen by officials as an important framework through which to enshrine the integration of migrants into Irish society. An integrated intercultural society was seen as necessary for the emergence of a new Ireland, respecting democratic norms and nurturing a cohesive society. The then Minister for Justice also acknowledged the need to avoid the mistakes made by other European countries and *'the absolute imperative to respond rapidly and effectively to a changing social environment'* (McDowell, 2005b). The last official endorsement of interculturalism was the establishment of the Office of the Minister for Integration. It was set up in June 2007, following the appointment of a Minister of State with responsibility for the development of integration policy.

On 1 May 2008, *Migration Nation, a Statement on Integration and Diversity Management* (hereafter *Migration Nation*) was launched. The Statement ‘contains four key principles which will inform and underpin State policy in this area, namely (i) a partnership approach, (ii) a mainstream approach to service delivery, (iii) a strong link between integration policy and wider state social inclusion measures and (iv) a commitment to effective local delivery mechanisms. The new integration policy statement focuses on the role of local authorities, sporting bodies, faith-based groups and political parties in building integrated communities.’ It also highlights the necessity of ‘a two-way process with responsibilities and rights for both newcomers and the current population’ (DJELR, 2008a: 40). The publication of *Migration Nation* marked the beginning of a new era, the era of diversity management that replaced interculturalism. *Migration Nation* ‘constitutes a skeletal conceptual framework for future development of integration policy in Ireland’ (Murphy 2011: 26). The two-way model of integration was re-iterated (OMI 2008: 18) and integration was identified as a necessary condition for social cohesion (OMI 2008: 15). Key areas including host language education, information provision and interpretation and translation were identified as crucial to achieving ‘integration success’. It was recognised that the chances of successful integration were greatly increased if core services such as employment, education, health and housing were delivered successfully and equitably to new communities (OMI 2008: 34 – 35). It was recognised that there would be implications for national Government departments, in particular the mainstreaming of service provision (OMI 2008:16), the need to drive integration through research and a linked requirement to review policy in light of outcomes achieved (OMI 2008:24).

Notwithstanding the matters identified in *Migration Nation* as crucial to achieving successful integration, Murphy questions whether the inclusive approach outlined in official policy statements is mirrored in the practical reality of concrete measures actually taken by the Government since its publication (Murphy 2011: 37). Recognising that the mandate of the OMI does not include migration admission issues and only begins when the legal status has been determined (Murphy 2011: 41), Murphy observes that, since its establishment, the OMI appears to have perceived its role as facilitating integration at grassroots level through the funding of sporting groups, non-governmental organisations and faith-based community groups rather than developing an overarching integration framework which could be used to inform the action of other state bodies (Murphy 2011: 30). Additionally, following the emergence of the financial crisis in Ireland, there have been systematic cuts in Governmental funding across all equality, human rights and integration infrastructures, including the abolishment of the position of the Minister for Integration (MIPEX, 2012).

The main change in the diversity management era was the acknowledgement of the fact that integration happens at a local level. This belief was matched with funding through local authorities because ‘successful integration largely depends on effective integration interventions at a local level’ (OPMI, 2008a). At the launch of a local integration framework plan by Dublin City Council, the Minister outlined the fact that local integration was the ideal site for ‘progressing the integration of migrants’ (*ibid*). The then Minister further argued that ‘all successful integration policies and practices should be pursued at a local level, in the home, in the workplaces and schools’ (OPMI, 2008b). Other sites that were highlighted as important were sports organisations, faith-based organisations, political parties (DJELR, 2008b) and migrant groups. Other social partners such as employers and trade unions were also identified as key partners in progressing migration management but the statement did not cite funding mainstream NGOs as a priority.

Moreover, although the *International Organisation for Migration* (IOM) has argued that any integration programmes should include all categories of migrants (IOM, 2002; NESC 2006a; NESC 2006b), no formal programmes have been introduced, other than those provided for Programme Refugees and there has been little, if any, focus on the immigration status of minor dependent family

members or integration policy considerations in respect of second generation migrations (OMI n.d.a; OPMI, n.d.c).

Irish legislation does not currently contain any express reference to integration either in immigration or citizenship laws. Additionally, formal integration requirements, such as language courses or 'knowledge of society tests' do not currently form part of the administrative requirements governing entry to the state or post-admission criteria for the granting of family reunification, long-term residence status or citizenship.²⁶ Nonetheless, the importance of proficiency in English language literacy and proficiency for integration was recognised almost universally by participants in this research.²⁷ Whilst an emphasis on language proficiency continues to exist, other integration programmes, such as civic knowledge courses, do not appear to be considered important by some policy makers: *'We wouldn't be hung up about tests of knowledge of society or some sort of quiz. Personally, I just don't see the merit of those tests'* (PM1, personal communication, 12 April, 2012). Although proficiency in the language(s) of the host country is seen as essential, there are no Government provisions for standardised English language classes. However, a number of NGOs and voluntary organisations do offer language classes of which migrants are free to avail.²⁸

Participants of the NGO focus group unanimously approached the concept of integration as a right to participate economically, culturally and socially, including the right to family reunification; further, this is connected with the right to equality in access to information, opportunity and outcome. Those factors are seen as closely linked to an informed legal status: the more one's situation resembles the status of an Irish national, the greater the probability for that person to succeed in Irish society. Not only does the level of status grant, impede or deny access to services, rights and entitlements, but it also impacts on the ability to make life decisions. This requires clear guidelines and transparent policies enabling service providers to advise their clients. SP1 outlines that although there have been some improvements over the last few years, *'it's very hard to advise when policies are changed without being published [...] because it creates an uncertainty [...] because you're relying on the sharing of information with other practitioners and NGOs in the area in order to actually come up to date what their current policy is'*.

NGOs and legal practitioners agreed on integration being a 'two-way-process' entailing both rights and obligations; however, concern was expressed over the imbalance in the current situation putting too much emphasis on migrants to fulfill their part of the 'contract'. P6 argued that while *'we did our part of the job'* too few structures were in place to support migrants and to facilitate their integration. Furthermore, integration was identified as protecting against exploitation.

NGO representatives articulated the necessity for Government to take on more responsibility since *'integration does not happen in a vacuum'* (MRCI), including the areas of oppression and racism creating tension and division. This entails a more proactive rather than reactive approach to integration; NGO representatives and individuals expressed the need for constructive planning ahead to facilitate integration: *'They can say they didn't have much resources but [...] when you don't have*

²⁶ However, Migration Nation (OMI 2008) identified that citizenship and long-term residence should be contingent on proficiency of skills in the spoken language of the country (p.9) and note also sections 46 and 141 of draft IRP Bill, as well as Ministerial comments in respect of planned changes to naturalisation process. It remains to be seen whether these elements will be retained in future proposals.

²⁷ Although formal integration programmes have not been established as part of Irish immigration laws, the 2007 report *On Speaking Terms – Introductory and Language Programmes for Migrants in Ireland* (Healy, 2007) outlines continuous initiatives and reports not only recognising the importance of English language proficiency for integration but also making recommendations to the Government as to the development of policies promoting literacy and language learning.

²⁸ See summary of integration programmes in Chapter 7 for more information.

much resources and you want to achieve something, the first is planning, the second is planning, and the third is planning' (P6).

Literature suggests that the economic crisis that hit Ireland in late 2007, imposing strict austerity measures, has contributed to integration matters slipping down the political agenda (Murphy, 2011). The measures implemented, impacting on the lives of migrants include as follows: restrictions in family access to work which may adversely affect the ability to achieve familial self-sufficiency. Fees for naturalisation and citizenship have been increased to €950 which may prolong insecurity in status for those less well-off as Ireland does not offer an entitlement to long-term residence after five years. Finally, cuts to the budgets of the Equality Authority and the Irish Human Rights Commission (IHRC) are suggested to likely have adverse effects on anti-discrimination work (MIPEX, 2012) and thus, on integration.

3.4 Conclusion

Despite identifying family reunification as important to be addressed ten years ago, there has been no comprehensive reform to date and many of the developments have merely reacted to specific issues which entailed perceived abuse. The main focus of the integration policy statements and practices has been on economic integration and other dimensions have been overlooked. Since 2011, the functions of the Office of the Minister for Integration have been assumed by the Department of Justice and Equality. The limited engagement with civil society on the issue of integration is also indicative of the *ad-hoc* response to integration to date.

Many of the positive changes (e.g. spousal work permits, inclusion of *de facto* couples, amendments to defective regulations) have materialised in response to external pressure arising from NGO lobbying or by way of response to legal challenges, rather than at the initiative of the Department of Justice and Equality itself. It is thought that comprehensive immigration reform is still intended under the current Government but the extent of any such reforms remains to be seen.

The relationship between family reunification and integration is clearly not prioritised and any good intentions outlined in policy documentation are not mirrored in legislation or administrative practice. Access to family reunification, long-term residence status and citizenship is generally granted on an entirely discretionary basis on fulfilment of criteria, including unclear financial requirements. Governmental concerns appear to focus more on potential financial costs to the State if family reunification is granted and not necessarily on the process of social inclusion or equal rights and opportunities for migrant members of the host society. *'It's a balance of the rights of the individual and the rights of the society. And some of those rights, some of the interests of society are expressed in economic terms'* (PM1, personal communication, 12 April 2012). There has been a failure to recognise any relationship between family reunification and integration, or, more generally the relationship between immigration status and integration.

Chapter 4

Implementation of the Right to Family Reunification: Administrative Competences and Practices

This Chapter describes how family reunification rules are implemented, by outlining the actual family reunification application procedures and identifying some of the issues that can arise during the process, as illustrated by the experiences of individuals and service providers that participated in the research.

4.1 Implementation of Family Reunification Rules

4.1.1 The Actors Involved

In Ireland, the Minister for Justice and Equality has overall responsibility for the implementation of refugee and immigration legislation. The daily powers are delegated to the *Irish Naturalisation and Immigration Service* (INIS) and the Minister and/or immigration officers acting on behalf of the Minister are empowered to take decisions in respect of individual applications, which are issued in the name of the Minister. The question of whether immigration related decisions, such as the issuing of a deportation order, must be made personally by the Minister for Justice has been by Hogan J. in his recent judgment in *LAJ & Ors v MJELR*. While accepting that the decision to deport is often a complex one, he held that: *'[...] the nominated civil servant remains free to make the decision in question. Of course, [...], the Minister remains accountable [...] for all such decisions, [...]*'. Several units within the INIS are in charge of the various family reunification applications: The 'Family Reunification Section' deals exclusively with applications by refugees and holders of subsidiary protection. Applications based on EU Treaty Rights are processed by the 'EU Treaty Rights Section', applications in respect of spouses and civil partners of Irish nationals are being processed by the 'Spouse of Irish National Unit' whereas *de facto* couple must make their applications to the 'De Facto Applications Unit'. Applications made by other families, particularly those made by family members of non-EEA workers (other than *de facto* partners) are often handled by the 'General Immigration Division'.

To assist in the overall delivery of the immigration service, the Department of Foreign Affairs, through its network of embassies and consular posts, provides administrative supports in the processing of visa applications. However, the overall policy parameters in relation to visa matters are set by the Minister for Justice and Equality.

Upon arrival in the country, all foreign nationals are subject to immigration controls and individuals who wish to reside in Ireland for longer than 90 days must register with a local immigration officer and be issued with a Certificate of Registration. These immigration controls and registration functions are delegated to the Garda National Immigration Bureau (GNIB) (An Garda Síochána (n.d.)), which is a unit of *An Garda Síochána* – Ireland's national police service. Although the GNIB is empowered in some instances to register and issue family members with residence permits without a formal application having first been made to the INIS, ultimate responsibility for overall decision-making lies with the Minister for Justice and Equality.

4.1.2 The Admission Procedure

4.1.2.1 Generally Applicable Visa Requirements

An application for family reunification, in principle, commences with a visa application. However, EU nationals are exempt from visa requirements and not all third-country national family members residing outside of Ireland who intend to accompany or join family members in Ireland to visit or stay on a more long-term basis are in fact visa required. Visa Orders made under section 17 of the *Immigration Act 2004* are updated regularly, identifying classes of third-country nationals who are

not required to be in possession of an Irish visa when arriving in the State. Schedule 1 of the *Immigration Act 2004 (Visas) Order 2012* lists those countries whose nationals currently do not require a visa to enter Ireland.

4.1.2.2 Generally Applicable Visa Application Procedure

Apart from the Statutory Instruments identifying whether particular third-country nationals are visa-required, the actual application procedure, as well as the power of the Minister for Justice and Equality to grant or refuse visas, is not regulated by statute. Visa applications are governed by administrative practice and procedure.

Visa-required third-country family members are required to lodge visa applications using the INIS on-line facility. After the online visa application is submitted, a summary sheet with the visa transaction reference must be submitted to the relevant Irish Embassy or Consulate in the country where the applicant is residing. Non-refundable visa application fees range from €60 (single entry) to €100 (multiple entry) and further administrative fees may be payable in some circumstances. However, qualifying third-country national family members of Union citizens are exempt from payment of any generally applicable visa fees, provided necessary proof of the family relationship is submitted with the application. From March 2010, the Irish Government introduced the collection of biometric data (fingerprinting) from visa applicants aged 6 years or over as part of the visa application process in Nigeria and this may be extended to other countries in the future.

The visa decision is issued by the Department of Justice and Equality and is published on the INIS website under the 'Visa Decisions' list by visa transaction reference number. If the visa application is refused, reasons for the visa refusal are published on the INIS website in the 'Visas Decisions Document'. In the case of a visa refusal, it is possible to lodge an administrative appeal in writing, by way of an internal review process, to the Visa Appeals Officer at the INIS, within two months.²⁹

There is no mandatory processing time for visa applications or visa appeals. However, in respect of family members of EU citizens, Article 5(2) of *Directive 2004/38/EC* requires that Member States shall grant persons every facility to obtain the necessary visa as soon as possible and on the basis of an accelerated procedure. The Irish Regulations 2006 and 2008 do not expressly deal with visa applications made by third-country national family members and, although Regulation 4(3)(b) states that the Minister shall consider an application for an Irish visa from a qualifying family member on the basis of an accelerated process, there is no information publicly available regarding the relevant administrative arrangements, if any, in this regard. It should also be noted that Article 5(2) further provides that third-country national family members already in possession of a valid residence card issued by a Member State under the Directive are exempt from the visa requirement. This is not expressly provided for in the Irish Regulations 2006 and 2008, as was considered in the case of *Raducan*, referred to in Chapter 5.

4.1.2.3 Generally Applicable Entry Requirements

Without prejudice to the specific legislative provisions regarding EU citizens and their family members³⁰, the granting of a visa prior to arrival in the State does not guarantee entry to the State. Regardless of whether a person arriving in the State is visa-required or otherwise, pursuant to

²⁹ Further information regarding visa applications and visa appeals procedures is published on <http://www.inis.gov.ie/>

³⁰ Article 5(1) of Directive 2004/38/EC provides that, without prejudice to the provision on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport.

section 4, *Immigration Act 2004*, all foreign nationals must present to an immigration officer on arrival and seek permission to enter. Section 4(3) of the *Immigration Act 2004* provides that an immigration officer may refuse to give permission to a person to land or be in the State for a number of reasons, including, for example, requiring a visa yet not holding one (section 4(3)(e)) or that their entry to or presence in the State could pose a threat to national security or is contrary to public policy (section 4(3)(j)). Whilst there is an obligation on an immigration officer who refuses to give permission to enter or be in the State to inform the person in writing of the reasons for the refusal (section 4(4)), the decision is not subject to an appeal.

In respect of Union citizens and their family members, these general immigration considerations are subject to Ireland's obligations arising under Articles 20 and 21 of the *Treaty on the Function of the European Union* (TFEU) and *Directive 2004/38/EC*. In domestic law, the permission for Union citizens and their family members to enter the State is dealt with in Regulation 4 (qualifying family members) and Regulation 5 (permitted family members) of the Irish Regulations 2006. The provisions of these Regulations provide for subtle differences in treatment between 'qualifying' and 'permitted' family members. For example, Regulation 4(3)(b) obliges the Minister to consider an application for an Irish visa from a qualifying family member on the basis of an accelerated process and to issue the visa free of charge, whereas there are no corresponding provisions in respect of 'permitted' family members. The basis for the difference in treatment is not entirely clear and is questionable. Furthermore, Article 5(4) of the Directive provides that where a Union citizen or a family member does have the necessary travel document or, if required, the necessary visa, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence. Irish law does not currently comply with these requirements, as outlined in the case of *Raducan*, referred to in Chapter 5.

4.1.2.4 Generally Applicable Registration Requirements

Section 4(6) of the *Immigration Act 2004* allows for an immigration officer granting permission to land or be in the State to attach conditions as to duration of stay and engagement in employment or business in the State as he or she may think fit and there is an obligation to comply with any such conditions. However, again, in performing such functions, an immigration officer is obliged to have regard to all of the circumstances, including family relationships of the person concerned, including any entitlements to enter the State under the *TFEU* and *Directive 2004/38/EC*.

Following the granting of permission to be in Ireland, section 9 of the *Immigration Act 2004* imposes an obligation on all third-country nationals to register with a 'registration officer'. Evidence of identity and address in Ireland must be provided. In practice, this function is performed by the GNIB and a Certificate of Registration is issued which states the type of residence permission that has been granted. There is a registration fee of €150 for the issuing of the Certificate of Registration from which certain categories of third-country nationals are exempt, including family members of refugees and subsidiary protection holders, spouses of Irish citizens and family members of EU nationals.

4.1.2.5 Specific Application Procedure for Refugees

Applications for refugee family reunification are governed by section 18 of the *Refugee Act 1996*, which provides that a refugee may apply to the Minister for Justice and Equality for family reunification and that the application will be referred to the Office of the Refugee Applications Commissioner (ORAC) for investigation. Applicants are required to complete a questionnaire, detailing the relationships with family members, how contact is maintained, etc. When all relevant information and documentation has been provided, ORAC compiles a report, which is then referred

to the 'Family Reunification Section' of the INIS for consideration and a decision on behalf of the Minister for Justice and Equality. If the application is granted, the refugee is informed of the positive decision and the family members, if visa-required, must submit a visa application in accordance with the generally applicable visa procedure outlined above at section 4.1.2.2. In the event that an application is refused, there is no statutory right of appeal against the decision but applicants are informed on the website of the INIS that if they have '*significant new information*' it is open to them to submit a new family reunification application.

4.1.2.6 Specific Application Procedure for Subsidiary Protection

In accordance with Regulation 16(1) and (2), subsidiary protection holders may apply to the Minister for their family members to enter and reside in the State and the Minister shall '*investigate, or cause to be investigated*' such an application '*to determine the relationship between the applicant and the person who is the subject of the application and that person's domestic circumstances*'. However, the Regulations do not set out the application process to be followed and there is no information published on the INIS website regarding the application for family reunification by subsidiary protection status holders. However, in practice, nearly identical arrangements as those outlined above for refugees are in place for subsidiary protection holders. Applicants complete a questionnaire outlining the details of the family members being applied for, their current personal and domestic circumstances in Ireland, including employment, accommodation and household members and any social welfare benefits received, which is submitted along with supporting documentation attesting to the information provided. The application is investigated by the Family Reunification Section, INIS. If the application is approved, the applicant is informed in writing and, if necessary, the family members can apply for Irish Travel Documents. At that stage, if the family members are visa-required, visa applications must be submitted in accordance with the generally applicable visa procedure outlined above at section 4.1.2.2. In the event that an application is refused, there is no statutory right of appeal against the decision.

4.1.2.7 Specific Application Procedure for Family Members of EU Nationals

Although the INIS acknowledges that third-country national family members of EU citizens may not be subject to visa requirements in particular circumstances and alludes to an accelerated procedure, there is no information in the public domain regarding any such procedure. There remains an onus imposed on any third-country family members seeking to accompany or join EU citizens to Ireland to satisfy themselves whether the documentation issued to them in another Member State is sufficient to exempt themselves from any Irish visa requirement. The INIS Join Family (INIS n.d.a) (Information for Non-EEA Family Member of EU Citizen states '*Please be advised that the Visa Office's of the Irish Naturalisation and Immigration Service are not in a position to provide guidance or advice as to whether a particular card held is sufficient to exempt the person concerned from the visa requirement. It is however open to the persons concerned to contact the appropriate issuing authority of the member state concerned for advice/guidance as to whether the document/card comes within the definition of the Directive, as implemented by that particular Member State. In circumstances where an individual is in anyway uncertain as to whether or not they are exempt from a visa requirement, then it remains open to such an individual to apply for a visa. Such an application from a family member of an EU Citizen will continue to be dealt with in an accelerated fashion. Whether or not a visa should be applied for is a matter of choice for the individual themselves*').

Under Article 8(1) of *Directive 2004/38/EC*, Member States may require Union citizens and their family members to register with the authorities. However, there is no such requirement in Ireland for Union citizens. However, in respect of third-country national family members, an in-country application for a residence card must be made to the INIS and there is also a registration requirement. When the Directive was first transposed into Irish law, Regulation 3(2) made the right

of residence of third-country family members conditional upon their prior lawful residence in another Member State. This was an additional requirement, which was not provided for in the Directive. In Case-127/08, *Metock*, the CJEU ruled that this requirement was contrary to the Directive and, as a result the Irish regulations were amended.

The relevant residence application and registration requirements are set out in Regulation 7 of the Irish Regulations 2006 and 2008 and applications must contain the particulars set out at Schedule 2 of the Regulations. As a matter of administrative practice, family members are required to submit an EU1 application form to the 'EU Treaty Rights Section', INIS, together with necessary original supporting documentary evidence, including evidence of identity of the applicant and Union citizen family member, evidence of relationship, residence in the State and current activities of the Union citizen. The processing of EU1 applications, as well as decisions to refuse to grant a residence card, has been the subject of a number of recent Irish High Court decisions in Ireland, some of which are considered further in Chapter 5.

Pending a decision on the application, the applicant may remain in the State (Regulation 7(3)) and is issued with a temporary *Stamp 4* residence permit, which provides the right to reside and work in the State. The temporary registration and issuing of a temporary *Stamp 4* is not explicitly provided for in the Irish Regulations 2006 and 2008. In 2010, an administrative practice was adopted by the INIS whereby a *Stamp 3* residence permit was issued to applicants, prohibiting access to the labour market, pending the determination of their application for a residence card. This practice was challenged in the case of *Decsi*, wherein the applicant, a Chinese citizen married to a Hungarian citizen, challenged what appeared to be an attempt to prevent third-country national family members from working whilst their application for a residence card was being processed. Furthermore, although not explicitly provided for in the Directive or the Irish Regulations 2006 and 2008, the Irish courts have determined in the case of *Druzinins* that if the application for the residence card is refused and an application for review is applied for, the temporary residence card should be provisionally extended until the conclusion of the review.

An application for a residence card may be refused if there is a basis for refusing to grant a residence permit under the Directive and provided the decision is in accordance with law. Any decision concerning the entitlement of a family member of an EU citizen to be allowed to enter or reside in the State is subject to a right of review, as provided for under Regulation 21. However, that review is carried out internally, within the INIS, by the EU Treaty Rights Review Unit and not by an independent body.

4.1.2.8 Other Administrative Applications

With the exception of the specific residence applications in respect of family members of refugees, subsidiary protection holders and EU citizens outlined above, other administrative procedures apply to family members of Irish citizens and other categories of third-country nationals. There are no specific application forms to be completed and, unless the family member is visa-required, there is no possibility of making an application prior to entering the State. Visa-required nationals can apply for a '*D-Reside Join-Family Visa*' before travelling to the State and, in that context, it is possible for them to make an application for 'family reunification', setting out the relevant matters regarding their situation prior to travelling to Ireland. However, applications for permission to remain, including by visa-required nationals, can only be made in-country by way of a letter to the INIS. Supporting documentation to be submitted with such an application generally includes evidence of identity of the family members concerned, evidence of the family relationship and relationship history, evidence of employment and/or financial means of the applicant and family sponsor, and any other information that may be relevant, for example, the applicant family member's immigration history.

In respect of spouses and civil partners of Irish nationals, it is not always necessary for a formal residence application to be made to the INIS. If the family member is already legally residing in Ireland and has a valid Certificate of Registration, it is possible for the family to present directly to their local GNIB immigration officer and to request a 'change of status'. However, in the case of applications regarding *de facto* couples or where the family member is not legally resident in Ireland, a written application must be made to the INIS. In the event that the applicant family member is the subject of a deportation order previously issued, it is necessary for an application to revoke the deportation order to be submitted. These applications are determined at the discretion of the Minister for Justice and Equality.³¹ There are no mandatory processing times for residence permit applications imposed on the Minister. Pending a decision on the application, a family member is generally permitted to remain in Ireland but he/she is not issued with a temporary residence permit and is not permitted to work in Ireland, unless he/she already holds the relevant permission. However, if the family member is the subject of a deportation order, he/she is liable for removal from the country, unless he/she has secured a formal undertaking or court injunction barring his/her removal.

4.2 The Judicial and Legal Aid System

Family reunification applications are administrative in nature and are processed by various sections within the INIS, with the exception of refugee applications which are investigated initially by the *Office of the Refugee Applications Commissioner* (ORAC) before a final decision is taken by the Family Refugee Section, INIS on behalf of the Minister. With the exception of visa applications and EU Treaty Rights applications, for which internal administrative review mechanisms are formally provided, there is no right of independent appeal provided in respect of family reunification applications. In practice, it is possible to request an internal administrative review but this may not always be provided and standards of decision-making have been the subject of criticism (Cosgrave 2006: 45).

It is possible to challenge an administrative decision taken by or on behalf of the Minister in the courts but this is only by way of judicial review proceedings in the High Court. Judicial review is specific legal remedy, whereby the court is requested to may make an order compelling the Minister to do something (*mandamus*) or make an order quashing a decision of the Minister (*certiorari*). However, the court cannot review the merits of the decision taken and/or substitute the decision taken by or on behalf of the Minister for its own decision. The High Court held only last year, in the case of *Efe & Ors. v MJELR*, that '*there is no basis for contending that [the] common law rules of judicial review [...] fails to satisfy the ECHR's requirements with regard to an effective remedy*'. Where an aspect of European law may arise, the court may also make a reference to the Court of Justice of the European Union for determination.

Many individuals find the application procedures relatively straightforward and are in a position to self-represent, which was confirmed by those interviewed for this study. However, family reunification applications can involve complex procedures and often require submissions to be made on complex points of administrative, statutory, constitutional, human rights and European law. This means that it can be extremely difficult for applicants to advocate directly and are therefore required to engage a legal representative, particularly at administrative review stage and, if necessary, to bring a case to court (Cosgrave 2006: 44).

Where legal representation is required in the course of an application, applicants face a number of difficulties. There are few legal practitioners, particularly outside of the cities Dublin and Cork, who

³¹ Section 3, Immigration Act, 1999.

specialise in immigration law and provide access to affordable legal services for applicants who do not have the financial means to pay a legal practitioner privately. Although a scheme of civil legal aid exists in Ireland³² and there is no actual legislative provision preventing the Legal Aid Board from providing services in immigration matters,³³ the reality is that immigration law is not an area where advice or representation is routinely provided. The Free Legal Advice Centres (FLAC) have identified that although certain areas of law are not excluded from the scheme by legislation or regulation, civil legal aid services concentrate heavily on family law matters (FLAC, 2005: 28-30).³⁴ Although the Refugee Legal Service, a dedicated unit of the Legal Aid Board, was established to provide legal services in relation to applications for refugee status, it does not ordinarily provide legal advice or representation in relation to refugee family reunification applications or immigration-related matters.

These difficulties were also highlighted by a number of the NGO service providers and legal practitioners interviewed for this study, who expressed concerns regarding the absence of independent appeals mechanisms and questioned whether High Court judicial review is the most appropriate forum, given the costs involved and potential delay in cases being determined at hearing. The administrative and judicial system, including the civil legal aid scheme in immigration cases has been described as *'inadequate'*, *'not applicant friendly'*, *'prohibitively costly'* and *'hugely lengthy'*. Although noting the possibility of seeking a discretionary internal administrative review, practitioners also questioned standards of decision-making and expressed concerns that the internal review may sometimes be undertaken by the original deciding officer at first instance. One practitioner expressed the view that there were serious concerns regarding access to justice, noting the costs for simply issuing proceedings and the risks of adverse costs orders being awarded against the applicant in the event of not being successful, which are not typically associated with ordinary appellate bodies. It was further noted that some of these issues have in fact been pleaded by applicants in court proceedings as incompatible with the fair procedures and effective remedy protections provided for by Articles 6(1) and 13 of the ECHR but, as set out above, the High Court has so far maintained that the common law rules of judicial review fully to satisfy the ECHR's requirements with regard to an effective remedy.

4.3 Conclusions

The fact that applications are being handled by a number of different divisions within the INIS may create an obstacle for applicants, who find it difficult to access information on their rights and entitlements, if any, and the procedures applicable to them and their family members. Furthermore, the absence of a statutory right to family reunification for many families coupled with high levels of Ministerial discretion governing the determination of applications continues to lead to uncertainty among applicants and those wishing to apply. Moreover, the lack of a consistent decision-making process including an independent appeals mechanism at administrative level is resulting in substantial litigation in all categories of non-nationals. Furthermore, the collection of biometric data from visa applicants aged 6 years or over who are residing in Nigeria lead to a significant decrease in the volume of visa applications as well as the detection of a number of individuals seeking to re-enter Ireland, having previously been deported (Comptroller and Auditor General, 2011: 295). Any family members seeking to re-enter Ireland in such a situation will have to apply for the revocation of their deportation order, which includes a life-long exclusion, in advance of or as part of their visa application in order to be readmitted.

³² Civil Legal Act, 1995

³³ Section 28(9)(a) of the Civil Legal Aid Act, 1995 specifically excludes nine separate "designated matters" from the scope of the Legal Aid Scheme, which does not include immigration/residence matters.

³⁴ The services advertised by the Legal Aid Board itself make no reference to immigration law, see: <http://www.legalaidboard.ie>

Chapter 5

Case Law³⁵

Family reunification and residence applications based on family life is a developing area of law in Ireland and a relatively large body of Irish case law has emerged in recent years, particularly in respect of aspects of refugee family reunification applications, EU free movement rights and third-country national family members of Irish citizens, and proposed deportation cases.

Due to the relevant admission criteria provided for in the relevant legislation or administrative policies, as outlined in Chapter 2, the case law that has developed in Ireland tends to concern issues arising during the administrative processing of applications, such as processing times, or more substantive issues concerning the lawfulness of particular decisions in individual cases, including compatibility with EU law, the European Convention on Human Rights or domestic constitutional law, particularly protections in respect of private and family life. Given the absence of formal integration requirements, such as financial, housing, language or civic testing requirements in the Irish immigration process, there has not been any case law specifically addressing these matters to date. However, as matters such as the duration of residence in the State of the person, the family and domestic circumstances of the person as well as the nature of the person's connection with the State, if any, must form part of the Minister's consideration in any deportation decision,³⁶ 'integration matters' have found their way into many decisions of the Irish courts.

A full reporting of all of the case law is beyond the scope of this report, therefore a select number of cases highlighting particular issues are identified, outlined and discussed to give a sense of the judicial approach, and wider reaction, to cases that have arisen.

5.1 Third-Country Nationals

5.1.1 National Case Law

Despite the increased levels of inward migration to Ireland from the mid-1990s, particularly for employment purposes, as well as the documented importance of family reunification and issues arising for migrant workers in that context, there is little litigation emerging in this context and there is no reported case-law in respect of migrant workers, scientific researchers and Turkish nationals. One legal practitioner contacted in the course of the case-law research for this project reported that he had brought two judicial review applications on behalf of third-country nationals who had leave to remain in Ireland on *Stamp 4* conditions for more than five years and had good jobs. The applications for D-Reside 'Join-Spouse' visas for their spouses were refused on the basis that it is not the general policy of the Minister to permit family reunification with persons on temporary leave to remain. The decisions were challenged on the basis of the application of a fixed policy and lack of a proportionality assessment under Article 8 of the ECHR but both matters have now been settled.

Most of the litigation has concerned issues arising in the context of refugee family reunification applications, in particular the issue of delay in processing of applications and the approach taken by the Irish Government in relation to the status of family relationships.³⁷ In the case of ***POT v The Minister for Justice, Equality and Law Reform*** the Court recognised the importance of family reunification as a provider for integration in holding that: *'family reunification is not only a way of bringing families back together, but it is also essential to facilitate the integration of third-country nationals into the State [...]. Refugees finding themselves alone in a foreign country which has*

³⁵ For a comprehensive overview of the case-law on immigration and citizenship in Ireland see Becker (2012) and Joyce (2011).

³⁶ See section 3(6) of the Immigration Act 1999 (as amended).

³⁷ For other issues arising in the refugee family reunification context, see Brazil (2009).

admitted them, traumatised by the events that brought them there, more than ever need the society and support of their immediate family. Every effort must be made to ensure such reunification occurs as quickly as possible’.

In this case, which involved a delay of more than four years in the making of a decision on a family reunification application submitted by a recognised refugee from Ghana in respect of his four children, Hedigan J. held that: *‘[t]he requirements of constitutional justice dictate that an applicant seeking administrative relief, whether in the immigration context or otherwise, is entitled to a decision within a reasonable time [...]. Bearing this in mind, the Court is of the view that the fact that it is open to the applicant to make a fresh application for family reunification does not provide an answer to the applicant’s difficulties. According to information provided on the website of the Irish Naturalisation and Immigration Service (INIS), “[t]he average time processing for Family Reunification applications is 24 months (as at January 2008)”. Thus, if the applicant was to submit a fresh application, each of his children would have reached the age of majority by the time a decision was reached’.*

Throughout 2009 and 2010, a practice developed whereby the Minister would insist that a declaration as to the validity of the marriage under Irish law from the Circuit Court was provided before he would grant family reunification or even deal with a family reunification application. This practice appeared to apply to all Muslim marriages, traditional African marriages and any marriages by proxy. The general consensus appeared to be that these marriages were not valid under Irish family law and that the wife or husband was not therefore the spouse (O’Dwyer, 2011: 17). This matter seems to have now been resolved following the judgment of Cooke J. in the case of **Hamza & Anor v Minister for Justice, Equality and Law Reform**, a case concerning a recognised refugee from Somalia who had a wife and two children living in Sudan. The children were granted family reunification visas but their mother was refused as she was not considered the ‘spouse’ of a refugee because her Muslim marriage to Mr Hamza was by ‘proxy’. The practical effect of this decision would have entailed that the children be separated from their mother, leaving her in very uncertain circumstances in Sudan, in order to benefit from family reunification with their father in Ireland. However, Cooke J. held in this case that: *‘[...] it would not in any event be competent or appropriate for the Minister to require the obtaining of such a declaration as a condition for the making of a decision on a family reunification application under s. 18. In that section, the Oireachtas has designated the Minister as the sole authority to decide whether permission should be granted or refused under subsection (3). It is to the Minister that the application for permission is made under subsection (1) and it is the Minister alone who must be satisfied that “the person the subject of the application is a member of the family of the refugee” under subsection (3) (a). It is envisaged by the provision that he will do so on the basis of the report furnished by the Office of the RAC under subs. (2) which has “set out the relationship between the refugee concerned and the person the subject matter of the application”. The Minister cannot delegate to any third party, therefore, (including a Circuit Judge) the decision he is required to make under subs. (3)(a), namely, that the person comes within the definition of a family member or, in a case such as the present, that the person concerned and the refugee are parties to a subsisting marriage’.* It seems therefore that an assessment under section 18(3) of the Refugee Act 1996 as to whether a person is a member of the family of the refugee can be based upon the reality of the conjugal relationship of the refugee rather than the fact of marriage or the availability of formal verification of the legality of the marriage contract (O’Dwyer, 2011:20). Supporting this decision, in **M. -v- F.** the High Court held, on appeal, that a customary marriage conducted in Zimbabwe was valid and subsisting at Irish law.

5.1.2 Compatibility of National Legislation with EU and Human Rights Law

Irish law, in section 3(1) of the *Immigration Act 1999* provides that *'the Minister may by order require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State'*. In the case of ***Sivivade & Ors -v- Minister for Justice & Ors*** the High Court found it *'impossible to conclude that (...) s.3(1) of the Act is per se incompatible with the State's obligations under the European Convention of Human Rights with the consequence that all orders ever made under the section are rendered invalid'* despite indefinite, potentially life-long exclusion of a person issued with a deportation order. Kearns P. distinguished this case from the case of ***Emre (No.2) v. Switzerland*** in which the European Court of Human Rights had held that a ten year re-entry ban imposed by the Swiss authorities violated Article 8 and that the Swiss government did not appear to have considered the balance between the private interests at stake and the public interests in finding that *'the duration of a deportation order is not the determining factor in cases of this nature coming before the Court but rather one of a list of factors all of which must be duly weighed and examined'*.

Despite the wording of section 18(3)(b)(i) of the Refugee Act 1996, which does seem to include family formation as well as family reunification with spouses in that it requires that the refugee be married at the time of his or her application for family reunification pursuant to section 18(1) of the Act, Irish case law seems to suggest that only those who are married at the time of the refugee's application for international protection are in fact entitled to reunification under the Act. As Hogan J. stated in the case of ***Aslam v MJE & Ors***, *'the spouse has to be the spouse of the applicant at the date of the asylum application itself. While the Minister is also empowered to admit other family members - such as parents and siblings - who are actually dependent on the refugee, s. 18(3) does not mention unmarried partners with whom the refugee is in a stable relationship'*. While this seems to be in breach of the principles established by the Court of Justice in the ***Chakroun*** case, this will not have any consequences at national level as the Irish government has not opted-in to Directive 2003/86/EC.

5.2 Union Citizens

5.2.1 National Case Law

The correct transposition of *Directive 2004/38/EC* has proven to be a challenge in Ireland and issues relating to visa requirements, entry to the State, the admission criteria imposed, as well as the administrative processing of applications and appeals have given rise to a considerable litigation before the Irish courts in recent years. Although the Directive does not impose an obligation to process visa applications for family members within a specific period of time, it is clear that the visa process cannot indirectly present undue obstacles and that that Member States are obliged to provide third-country family members with every facility to obtain a visa, including accelerated procedures should a visa not be issued prior to arrival at a point of entry. In Ireland, these issues were considered by Hogan J. in the case of ***Raducan v Minister for Justice, Equality and Law Reform*** which concerned the unlawful refusal by an immigration officer to grant the spouse of a Romanian citizen permission to enter the State on the grounds that, although in possession of a residence card for family members issued in another Member State, she did not have a visa. Hogan J. found that the procedures employed at Dublin Airport for family members of EU nationals were lacking as there was no facility whereby a visa, if it were in fact necessary, could be issued immediately. Moreover, he determined that the fact that such visas cannot be obtained at Dublin Airport and that any third-country spouse can only apply on line from abroad for such a visa *'clearly is a manifest breach of Article 5(2), since it could hardly be said that the State has afforded "such persons every facility to obtain the necessary visas"*. He concluded that *'[O]ne need hardly add that the absence of such a facility means that the State is also plainly failing in its obligation to issue such visas "as soon as possible and on the basis of an accelerated procedure"'* and held that *'[T]here was thus a clear breach of the Directive in that Ms. Raducan was not offered the possibility of securing a visa on her arrival at*

Dublin Airport. Despite the findings of this critical judgment, the relevant Irish regulations have not been amended to date.

The State's obligation to process residence cards within a maximum six month period has also been the subject of legal challenge in Ireland. ***Tagni v MJELR*** concerned a failed asylum seeker who applied for a residence permit on the basis of his marriage to an EU citizen exercising freedom of movement for work purposes and the decision of the High Court examined various issues, including the required timeframe for decisions at first instance and, if refused, on appeal. Edwards J. confirmed that *'the six month time limit in Article 10 is mandatory and requires to be respected in every case'*. Acknowledging however, that *'[T]here will also be cases from time to time, where the applicant has submitted the required documentation in a timely fashion, and has also submitted in timely fashion any further information sought by Minister as part of the verification process, and yet the Minister, at the end of the six months, finds himself with a suspicion, unsupported by clear evidence, that the claim may be fraudulent, and which suspicion requires further investigation'*, he held that in those circumstances *'the Minister is still obliged to render a decision at that point'* and that he *'[...] may in such circumstances have no choice but to grant the residence card on the basis that he has the power to immediately revoke it if clear evidence of fraud should subsequently emerge'*. The ***Tagni*** case is not an isolated case and challenges continue to be brought regarding delay in the decision-making process concerning applications by third-country family members of EU nationals.³⁸

A related matter that has been the subject of recent High Court decisions has been the Minister's refusal to grant a residence card to spouses of EU nationals, on the grounds that the Minister had been unable to verify the EU citizen's employment (see: ***Lamasz & Anor -v- MJELR, Chikhi & Anor -v- MJELR & Ors*** and ***Saleem & Anor -v- MJELR & Ors***). In the ***Lamaz*** case, the Court accepted that *'the Minister is entitled to take reasonable steps to verify the basic conditions for the grant of the residence card so long as they do not involve the imposition of administrative obstacles on the Union citizen's exercise of the Treaty-derived right outside those allowed by the Directive. He is entitled to check that the named employer does actually exist and that the Union citizen does actually work there. But if it is considered necessary to make such checks they must be done competently and seriously: the mere fact that casual phone calls (if that was the form of attempted contact,) may be unanswered does not constitute an adequate basis for a refusal which effectively implies a suspicion on the part of the Minister that the employment claimed does not exist'*

An increasing body of case-law is now developing in the area of retention of residence permits following changes of circumstances, such as separation. This issue was considered, in the 2011 case of ***Mohamud & Anor v MJELR***, where the application for a residence card was refused on a number of grounds, including failure to provide clear evidence of residing with the Union citizen. In this regard, Cooke J. held that *'the refusal is, in the judgment of the Court, based upon a mistake of law and involves the effective imposition of a requirement not countenanced by the Regulations or the Directive'*. In his view the decision to refuse the residence permit was *'vitiating by error of law and the effective imposition of a condition for the issue of a Residence Card unjustified by the Regulations and incompatible with the provisions of the Directive'*.

5.2.2 Compatibility of National Legislation with EU and Human Rights Law

Prior to the decision of the CJEU in ***Metock and Ors v Minister for Justice, Equality and Law Reform*** in March 2008, the Irish government had been refusing residency rights to family members of EU nationals on the basis that they did not have lawful residence in another EU Member State prior to

³⁸ See for example: O'Carroll, High Court allows immigrants to challenge Minister over 'undue delays', [thejournal.ie \(http://jrnl.ie/482525\)](http://jrnl.ie/482525), 11 June 2012.

coming to Ireland. Following the **Metock** judgment, the 2006 Regulations were amended by the *European Communities (Free Movement of Persons) (Amendment) Regulations 2008*. The Government remains concerned nonetheless that some applications for residency made on the basis of EU Treaty Rights may be based on ‘*marriages of convenience*’ (Quinn & Kingston, 2012:21). However, the High Court has since held, in the 2011 case of **Izmailovic & Anor v The Commissioner of An Garda Síochána & Ors** that: ‘*no matter how well intentioned, An Garda Síochána are not empowered to prevent the solemnisation of a marriage on the grounds that they suspect – even with very good reason – that the marriage is one of convenience*’. This case concerned a Lithuanian national whose Egyptian fiancé, in respect of whom a deportation order was in place at the time, was detained following his arrest at the registry office on the grounds that the proposed marriage was a ‘*marriage of convenience*’ under investigation by the Garda National Immigration Bureau (GNIB). In holding that the arrest of Ms Izmailovic’s fiancé had been unlawful, Hogan, J. stated that ‘*the arrest of a person at a registry office immediately prior to their marriage is one that calls for a high degree of justification*’. In conclusion, he acknowledged that ‘*the decision in this case may present the authorities with very considerable difficulties in this problematic area*’ and indicated that ‘*if the law in this area is considered to be unsatisfactory, then it is, of course, in principle open to the Oireachtas and, if needs be, the Union legislature to address these questions. [...]*’.

Another error in the implementation of *Directive 2004/38/EC* was corrected by the Government following the judgment of the High Court in the case of **Decsi & Ors v MJELR** in July 2010. Prior to the judgment, an administrative practice had been adopted; to issue only a *Stamp 3* residence permit, prohibiting access to the labour market, to applicants pending the determination of their application for a residence card. This practice was challenged in the case of **Decsi**, wherein the applicants, a Chinese citizen married to a Hungarian citizen, challenged what appeared to be an attempt to prevent third-country national family members from working whilst their application for a residence card was being processed. Granting a declaration in favour of the applicants, Cooke, J. in his judgment confirmed that a third-country national has an entitlement to work in the State as of from the date of the acknowledgment of the application for a residence card. It was further noted that Article 10(1) of the Directive provides that the right of residence is merely evidenced by the issuing of the residence card, as opposed to conferring the right to reside in the State.

5.3 Nationals of Your Member State

5.3.1 Spouses of Irish nationals

5.3.1.1 National Case Law

In situations where the foreign national spouse or civil partner of an Irish national is the subject of a deportation order, it is possible to make an application pursuant to s 3(11) of the Immigration Act, 1999 for the revocation of same, on the basis of the couple’s change of circumstances. However, as set out by Fennelly, J. in **Cirpaci (née McCormack) v The Minister for Justice, Equality and Law Reform**, matters such as a previous unsuccessful asylum application, the evasion of deportation and the immediate commencement of moves to be readmitted to the State following marriage to an Irish national without subsequent cohabitation for an appreciable time ‘*are all matters of legitimate concern for the State*’.

More recently, in 2011, the State’s obligations regarding the protection of the family life of Irish citizens and their non-EEA spouses have been further clarified in **S v MJELR** concerning a middle-aged Irish citizen and his Nigerian wife whom he met and married in Ireland after her applications for international protection had been refused. The Court, in recognising that Mr S. suffered from an intellectual disability and a bi-polar disorder as well as diabetes, hypothyroidism and elevated cholesterol levels, all requiring ongoing medical supervision, dismissed the Minister’s assessment that ‘*[I]f Mr [S] wished to visit Ms [E] in Nigeria, the option would be open to him to apply for a visa to*

visit Nigeria in order to see Ms [E]’. In his judgment, Hogan, J. stated that: ‘One would have to say that this assessment is entirely unrealistic and totally unbalanced. Even assuming that he could obtain an entry visa to Nigeria, the Minister gave no consideration to the question of how Mr S. could possibly afford such a trip given that he is wholly dependent on disability benefit’. He opined further that: ‘[...] the practical effect of the Minister’s decision would be to condemn this couple to live apart, more or less permanently. It is very hard to see how such a decision would conform to the State’s obligation contained in Article 41.3.1 of the Constitution “to guard with special care the institution of marriage”, absent some compelling justification’. Recognising that ‘the imperative need to uphold the integrity of the asylum system could and often does – provide such a justification’, Hogan, J. considered the present case ‘quite exceptional, not least by reason of the special and vulnerable status of [Mr S]’, and went on to quash the Minister’s decision not to revoke the deportation order issued in respect of Ms E.

The issue of Irish citizens’ rights to reside in Ireland together with their non-EEA spouses has been further developed in the opposing judgments of Hogan, J. in **X Adeoye v Minister for Justice, Equality and Law Reform** and Clark, J. in the case of **U v Minister for Justice, Equality and Law Reform**: In his judgment, Hogan, J. sets out in detail the reasons why he could not see himself as bound by the views expressed by Clark, J. in U: ‘[...] whatever may possibly have been the situation in U, in the present case it is a pure fiction to say that Ms. Adeoye [the Irish citizen] has a choice worth speaking of’. He contrasted the case of the Adeoye family with cases involving Nigerian parents of an Irish-born child where it was open to the family to return to the country of origin of both parents where both had grown up and had established links. He stated that: ‘Naturally, in line with the established practice of this Court since *Irish Trust Bank Ltd. v Central Bank of Ireland* [1976] I.L.R.M. 50, I would normally defer as a matter of judicial comity to the prior views of my judicial colleagues [...]. Yet the matter here is so fundamental and goes to the heart of our system of constitutional protection that, absent a binding Supreme Court decision on the point, I deeply regret that I cannot regard myself as bound by the views expressed by Clark, J. in U’. In his view, ‘[T]he essential point here is that the Constitution protects the fundamentals of marriage and it insists that the State respects the essence of that relationship. It is not indifferent to the plight of those who have been forcibly separated by State action and, adapting freely the language of a famous Bach chorale, it sees to it that these rights are available to us for our protection in our hours of deepest need. That is [the] very reason why these rights are deemed to be fundamental and it behoves the judicial branch of government to ensure that these constitutional rights are taken seriously so that, in the words of O’Byrne, J. in *Buckley v Attorney General* [1950] I.R. 67, 81, they are given “life and reality”’.

It seems from the case law of the Irish High Court that a processing time of 12 months for applications for residence permits made by spouses of Irish nationals is the maximum time which can be considered reasonable. As Edwards, J. set out in the 2007 case of **M v The Minister for Justice, Equality and Law Reform**, a period of 11 months from the date of application to the receipt of a decision ‘is certainly sub optimal and close to the limits of what is reasonable. [...]. However, [...], I do not believe that the degree of delay is presently such that it could be characterised as being unreasonable and/or unconscionable. If the applicant were kept waiting for a decision longer than 12 months I would have no hesitation in finding the delay to be unreasonable and, being unjustifiable notwithstanding any scarcity of resources, unconscionable’.

5.3.1.2 Compatibility of National Legislation with EU and Human Rights Law

Currently, Irish legislation and the developing case law seems to be in line with ECtHR case law, for example in the case of **O’Donoghue and Others v United Kingdom**, in so far as family formation is concerned in that ‘marriage of convenience tests’ are not overly burdensome and, as set out above at 5.2.2, the courts have recognised that ‘no matter how well intentioned, An Garda Síochána are not

empowered to prevent the solemnisation of a marriage on the grounds that they suspect – even with very good reason – that the marriage is one of convenience’. Like in the cases coming from the European Court of Human Rights, much emphasis is placed on matters such as a previous unsuccessful asylum application, the evasion of deportation and the immediate commencement of moves to be readmitted to the State following marriage to an Irish national without subsequent cohabitation for an appreciable time (see: ***Cirpaci (née McCormack) v The Minister for Justice, Equality and Law Reform***).

5.3.2 Parents of Irish citizens

5.3.2.1 National Case Law

Following the 1987 judgment of the High Court in ***Fajujonu v Minister for Justice***, there was a general policy under which parents of Irish citizen children were usually granted permission to remain in the State. However, following the judgments in ***Lobe and Osayande v Minister for Justice, Equality and Law Reform*** in January 2003, this policy was suspended. In these two cases, the Supreme Court reconfirmed that under Irish law a foreign national parent of an Irish-born child does not have an automatic entitlement to remain in the State with the child.

Following the Supreme Court decision in these cases, many of the 11,493 parents of Irish citizen children who had outstanding applications for residency were issued with notifications of intention to deport them. From January to March 2005, parents were then given the opportunity to apply for permission to remain in the State under the so-called ‘IBC/05 Scheme’³⁹. Further clarification regarding the application of this scheme was provided by the Supreme Court in ***of Bode (A Minor) v Minister for Justice, Equality & Law Reform & Ors*** wherein it clarified that: *‘[t]he IBC/05 Scheme was a scheme established by the Minister, exercising executive power, to deal administratively with a unique group of foreign nationals in a generous manner, on general principles. [...] At no stage was it intended that within the ambit of the scheme the Minister would consider, or did the Minister consider, Constitutional or Convention rights of the applicants. [...] Applicants who were not successful in their application under the IBC/05 Scheme remain in the same position as they had been before their application’.*

In relation to the deportation of parents of Irish citizen children the Supreme Court has since clarified in ***Oguekwe v Minister for Justice Equality and Law Reform*** and ***Dimbo v Minister for Justice Equality and Law Reform*** that: *‘the decision-making process should identify a substantial reason which requires the deportation of a foreign national parent of an Irish born citizen. The test is whether a substantial reason has been identified requiring a deportation order. [...] [...] the Minister is required to make a reasonable and proportionate decision’.* More recently, the High Court has had further opportunity to define the basis on which a parent of an Irish citizen may be deported from the State and in particular whether the absence of ‘insurmountable obstacles’ to the family of the deportee, including the Irish citizen child involved, moving the country of origin of the deportee, would render the deportation permissible under Article 8 ECHR. In ***Alli v Minister for Justice, Equality & Law Reform***, Clark, J. summarised her findings as follows: *‘[...] the Court has concluded that the Minister did not err in law in asking the question whether there were any “insurmountable obstacles” to the family moving with Mr. Alli to Nigeria and continuing family life there with him. The posing of that question is well established in the ECtHR jurisprudence on Article 8 [...]. An evaluation of whether there are any insurmountable obstacles to the family moving with the deportee incorporates an evaluation of the reasonableness of expecting that family to move’.* She held that: *‘[h]aving identified that there were no insurmountable obstacles to the family following Mr. Alli to Nigeria and following a fact-specific consideration of the applicants’ circumstances, the Minister identified the following*

³⁹ Irish Born Child/05 Scheme

“substantial reason” for the deportation of M.r Alli: “there is no less restrictive process available which would achieve the legitimate aim of the State to maintain control of its own borders and operate a regulated system for control, processing and monitoring of non-national persons in the State”. The Court was therefore satisfied that: ‘in all the circumstances and on the basis in particular of the judgment of the Supreme Court in A.O. and D.L., this constitutes a “substantial reason associated with the common good” which requires the deportation’.

However, in the more recent decision in the case of **BS v Minister for Justice, Equality and Law Reform**, a case concerning a Nigerian national father who, having been deported prior to his son’s birth in 2003, was seeking the revocation of the deportation order issued against him in order to rejoin his wife, by now a naturalised Irish citizen, and his 8-year old son and 11-year old stepson, Clark, J. held that: *‘[A] fair and just consideration would have included an assessment of the length of time the family had spent in the State and whether the children were at school here. While those facts are not determinative of rights of non-national parents, they are facts to be considered when balancing the constitutional rights of a citizen child with those of the State in order to ensure harmonious interpretation of such rights and to arrive at a proportionate decision’.* In this particular case, quashing the Minister’s refusal to revoke the deportation order, Clark, J. was of the opinion that: *‘[T]he effect of the decision not to revoke the deportation order means that if the family are to live together as a unit, they must abandon their right to live here and uproot and go to Nigeria. In Nigeria they will return to a father who is dependent on his wife’s earnings in Ireland and they will leave their education and their financial security behind them. The alternative is never to have the husband living with them apart from holidays in Nigeria. This cannot be a proportionate decision when measured against the conflicting right of the State to operate a fair immigration system. The balance in this case must fall in favour of the family’s strong constitutional rights to live in the country of their citizenship. The position of this family as settled migrants under Article 8 of the ECHR represents the other side of the coin in the insurmountable obstacles test where it would be unreasonable and therefore disproportionate to expect this family to live forever without the husband and father or to leave Ireland and return to Nigeria’.*

5.3.2.2 Compatibility of National Legislation with EU and Human Rights Law

As set out in Chapter 2.4.1, the judgment of the CJEU in **Zambrano v Office national de l’emploi (ONEm)** has now significantly altered the position of Irish citizen children with regard to the recognition of their rights as EU citizens resident in their own State of nationality. The CJEU established in this case that: *‘(A) refusal to grant a right of residence to a Third Country National with dependent minor children in the Member State where those children are nationals and reside, and also the refusal to grant such a person a work permit, [...] ‘has the effect of depriving those children of the genuine enjoyment of the substance of the rights attaching to the status of European citizen’.*

However, the Irish High Court, in the cases of **AO v Minister for Justice, Equality and Law Reform** and **E.A. & Anor v Minister for Justice & Anor** has clarified that *‘Ruiz-Zambrano turns on factors (...) such as dependency, residence in the territory of the Member State in question and the right of European citizens to enjoy one of the real benefits of that citizenship, namely, the right to reside within the territory of the Union’.* And in the latter case, Hogan J. found therefore that in a situation where the parents of an Irish citizen child were separated and, with the mother having been granted refugee status, there was *‘no real prospect that the deportation of the applicant would bring about a situation where [the child] would be compelled to leave Ireland or, for that matter, the territory of the Union, (...), there are no grounds for contending that [the father] is entitled to an interlocutory injunction restraining his deportation on Zambrano grounds’.* Interestingly, when the Hogan J. went on to assess the child’s right to the care and company of his father under the Irish Constitution, he found himself coerced to the conclusion that *‘there [are] abundant grounds for suggesting that the*

substance of [the child's] constitutional right to the care and company of his father would be denied were his father to be deported' and that 'this would ordinarily be sufficient in itself to justify the grant of an interlocutory injunction restraining the deportation of [the father], his disreputable and egregious conduct notwithstanding'. And he concluded that although the father in this case had 'manipulated the asylum system' and (...) 'engaged in egregiously wrongful conduct' and although '(H)e has no personal merits which would entitle him to administrative or judicial protection, (...) the court must (...) approach this application not from the perspective of the father, but rather from that of the child'. It seems therefore that the rights of minor Irish citizens to remain in their country of nationality, and with that in the territory of the European Union, as well as to the care and company of both their parents is best protected when courts and governments consider their situation in the light of national, international as well as EU human rights and citizenship law.

5.3.3 Other dependent family members

5.3.3.1 National case law

In ***O v The Minister for Justice, Equality and Law Reform***, a case concerning an application for the revocation of a deportation order made by the grandmother of two Irish citizen children born in 2002, who had entered the State in July 2002 together with her two daughters, their respective partners and one small child, Clark, J. recognised, in principle, the inclusion of a grandmother as part of the family as protected by Article 8 of the ECHR. She held that: *'(t)he first applicant's position as the mother of an adult family group with whom she has lived for upwards of four years is facing rupture by the Minister's decision to uphold his order for deportation. I believe the applicant should be permitted to argue that the refusal to revoke her deportation order may not have been a decision arrived at following proper consideration of the competing interests of maintaining an orderly immigration process and the interest of respecting family life'*.

On the question whether Irish citizens are at an unfair disadvantage when compared with their fellow EEA citizens resident in Ireland, Edwards, J. held in the case of ***M & Ors v MJELR***, that: *'it is fundamental to the notion of discrimination that you have two persons who are in an equivalent situation and that one is treated differently from the other, not withstanding this equivalence. In this case [a case concerning a naturalised Irish national seeking permission to have her mother reside with her as a dependent family member in the ascending line en par with the provisions of Article 2(2)(d) of Directive 2004/38/EC] however, the court is satisfied that the first named applicant's situation is not equivalent to that of a non-Irish EU worker who travels to Ireland to take up a job and brings her non-EU national mother with her to reside in Ireland'*.

However, in July 2011, leave to apply for judicial review was granted by Hogan, J. in ***O'Leary & Ors v MJELR***, regarding an application for residency by the parents of a naturalised Irish citizen, Ms. O'Leary originally from South Africa. In this case, the court recognised that *'[T]he question of reverse discrimination under EU law also hovers over this case. It is not in dispute but that had Ms O'Leary been a citizen of another EU state, she would have been entitled to have her dependent parents reside with her pursuant to the provisions of Directive 2004/38/EC. However, as she is an Irish citizen, she is not permitted to invoke the provisions of the Directive within the realm of matters which are governed by domestic law'*. Hogan, J. also noted the applicants' submission that *'it would be incongruous that the dependent parents could be protected under EU law if no equivalent protections were available under our domestic law and that Article 41 should not be so weakly interpreted as to sanction this state of affairs'*, and confirmed that he regarded this argument as implicit in the leave granted. However, his judgment, delivered in February 2012, following substantive hearing of this matter, Cooke, J. did not provide any further assessment of the issue of *'reverse discrimination'* but went on to quash the decision to refuse the parents' application for an extension and variation of their permission to be in the State pursuant to s 4(7) of the Immigration Act, 2004 on the basis that

even 'if the mistaken and unsound reasons given for the refusal of the application and identified above are excluded, the remainder of the decision fails, [...], to constitute an adequate and rational explanation as to why, when the family has undertaken that the [parents] will not be a financial burden on the State or on its public health services, the maintenance of the integrity of the immigration system should prevail over the moral interests and obligations of this family'.

5.3.3.2 Compatibility of National Legislation with EU and Human Rights Law

As set out above at 5.3.3.1, Irish case law is in line with the jurisprudence of the European Court of Human Rights as per the case of *Marckx v Belgium* in which the Strasbourg court recognised that: 'family life within the meaning of Article 8, includes at least the ties between near relatives, for instance, those between grandparents and grandchildren'. However, what remains lacking are clear legislative or even administrative guidelines setting out the rights of families when it comes to the making of applications for family reunification with dependent family members.

5.4 Conclusion

Case law in the area of family reunification in Ireland continues to evolve and as issues arising in the context of the longer term settlement of migrants in Ireland are only beginning to come to the fore. With draft legislation on migration and residence in Ireland delayed since 2005, the law will continue to be judge-made for the foreseeable future. As the Irish judicial system is relatively slow when compared to jurisdictions with administrative tribunals, the cases highlighted above merely provide an overview of the current *status-quo*.

Chapter 6

Impact on Family Reunification and Family Life

Existing research in Ireland on migrants' experiences of applying for family reunification highlights that the legislative provisions and administrative policies/procedures governing such applications in Ireland give rise to many issues, in particular delay and high levels of refusals of family reunification applications, which can and do have significant impact on families (Coakley, 2012; Cosgrave, 2006; Galvin, 2007).

While participants in this research identified a number of noteworthy improvements in recent years, such as the enhanced nature of information provision by the INIS, overall reduction in processing times and introduction of policies in respect of de facto partners, there is also evidence that significant issues persist in terms of the administrative processing of applications and also the underpinning policies, including across all categories of applicants, which result not only in high levels of stress and anxiety for the whole family but may also lead to prolonged separation of family members, in some instances for years and, indeed, indefinitely and with very profound consequences for family life, including, on occasion, family breakdown overtime.

Many issues raised by participants in this study are cutting across categories. Specific challenges for particular categories of families are highlighted below.

Cross-cutting Issues include the following:

Lack of Information and Customer Service: Despite some improvements in recent years, the accessibility of information and the lack of customer service remain unsatisfactory, and even well-educated native English speakers (P8, an Irish national, and P10, the Australian family member of an EU national resident in Ireland) express frustration and confusion: *[Initially] it was a real mystery to be honest. I remember doing some internet research and just finding it really hard to [...] find the information [and] to decipher what's actually being said. Clarity in plain English should be a standard (P8).* Obtaining the necessary information required a great deal of self-initiative and research involving platforms such as 'ex-pat kind of forums on the internet' (P10). While INIS provides information through a telephone helpline, it seems rather complicated to actually get through to somebody leaving service users with a sense of intentionality as P10 outlines: *Calling up was actually horrendous. I call up and they'd say: 'no, that's not the number for this anymore; it's another number you gotta call', and you call the other number and it's like them being disconnected or saying redirecting and it just never works. And there was another number that you call which was one day a week - it might have been Wednesday 10 to 12 or something, or 12 to 2[pm] you could actually call that number to discuss the matters and then you could only call it if you'd already put in an application [...] I thought it was strategic [and that] they're making it as hard as possible for people with little means to get in.* Both P8 and P10 eventually received the necessary information regarding the required documents from GNIB officers and experienced the application process as relatively unproblematic.

State funded organisations such as the Citizens Information Board (CIB), as well as non-governmental organisations have been credited with filling the gap in information provision regarding immigration matters – providing service users with face to face, telephone and web based information sources on immigration policies and procedures as well as up to date information on changes to the immigration system.

While P4 and P5, employment permit holders from Pakistan and India, experienced similar difficulties in obtaining information through official channels, they relied on the experience of their co-workers and employer: *They said the P60 is not accepted [...] So I speak to my boss. He just apply for the P21 and the P21 and P60 are similar. So, I don't know what the problem is [...] You can't talk with them in India. We can't communicate with them why they refuse it. They say just email the letter and that's it. If you call to the embassy or to the Indian Consulate no one will pick up the phone; they're not ready to speak to you. But you don't even know what documents they need but we are here for long and a lot of people they know the documents. We're very experienced with what all documents they need because there are 20 employees they brought their families here so we knew all the documents and even for naturalisation we know what the documents are (P5).* Their employer also pointed out that regarding the list of requirements, there appears to be a discrepancy between the standard list of requirements and an actual list of documents due to be submitted.

Bureaucracy and Processing Times/Delay: Although there have been improvements for both visas and in-country residence applications, there are still considerable delays. This is particularly an issue in refugee cases; SP4, a legal practitioner in Dublin city centre describes what she calls a '*blanket policy*' by the Department requiring the provision of documents that do not exist in certain '*refugee producing countries*' such as '*Somalia [...] where there hasn't been a functioning civil registration system since [...] 1992*'.

In other cases often no request is made for further supporting documents or information while the application is pending and the reasons for delays are unclear. While in some cases further documents (e.g. DNA tests for proof of parentage) are requested, this does not occur until after the application has been pending for months as has been the case for P2, a Nigerian national who had previously been deported from Ireland and was seeking to be reunited with his wife who is resident in Ireland on the basis of the IBC/05 Scheme. Three months into the application he was requested to produce DNA test results to establish his paternity. P2 was eventually reunited with his family after three years of separation.

SP1, a solicitor⁴⁰ in Dublin city centre, experienced delays in applications for family reunification for refugees from one year up to four and a half years: *Just on a broad level: we issued proceedings on behalf of that woman who had been - I think it was over three years waiting for a decision - in circumstances where her ex-husband had put the application into the Department of Justice for family reunification for a minor child. There had been violence in the relationship and the relationship broke up. The husband was imprisoned and was using the application as a sort of a power issue over her and was saying that the son would never join them in the State. The Department of Justice were on notice that this had happened and she'd been corresponding with them. They then proceeded, we started writing, looking for a decision. They made a decision and they issued it in favour of him and granted him the right for the child to join him in the State. There was a serious protection issue there around the minor child as well. We ended up having to challenge the decision. In fact it should never have come to that.*

Delays lead to long intervals of separation from families leaving them in a limbo in which lives are put on hold as P3, a Pakistani national who had originally come to Ireland on a business permit but was later granted refugee status, who was separated from his wife and children for three years summarises: '*When you have a wife, a life without your wife is no life.*' Further, it deprives families of a sense of normalcy as stated by P9, an EU national who was separated from his spouse for months before a visa was issued: '*When my wife arrived, I was very happy. It is only normal for my wife to live with me. We wanted children and to make plans.*' According to SP4, in some cases these delays have

⁴⁰ Professionally qualified common law lawyer

led to the breakdown of relationships or marriages in the past. She gives the example of one client *'who decided to bring their child to Ireland and then work on getting the declaration. In the meantime the relationship became so fractured with the spouse that the marriage broke down. So when he finally secured the reunification approval she no longer wanted to travel so the family was split up. The young son lost his mother and I wonder if that could have been prevented. Certainly there weren't those issues with the marriage when the son's application was approved.'*

Visa Policy: In the case of an application for family reunification being refused, some family members have temporarily 'reunited' with their families on the basis of a visit visa for the duration of three months which, in theory, cannot be further extended. Yet, applications for extension have been submitted after arrival and may be granted at the discretion of the Minister pursuant to the powers granted to him in section 4(7) of the Immigration Act 2004. In the context of the apparent inflexibility of the system and the non-transparency of decision-making, this is both confusing and unclear leading to concerns regarding family members' 'overstaying' as outlined by P7, an Irish national who was seeking permission for her mother to remain with the family in Ireland: *'The first time we applied for extension [...] we were waiting for a long time but we didn't get a reply. So we thought maybe there wasn't gonna be a decision. We didn't know what to do. So, in the end [my mother] had to go back to China. Almost nine months later I received a letter back from the Department of Justice saying she was granted for extension for six months initially. By the time she was already back to China.'*

Data on visas and residence permits issued for the purpose of joining or remaining with family members in Ireland is not readily available from the Irish authorities and prior to 2010 visa statistics were not published at all. It is therefore not possible to provide a quantitative analysis regarding any changes in the numbers of applications or visas issued as a consequence of the implementation of new policies. Furthermore, due to the lack of integration related visa policies having been introduced to date, a change in numbers on this basis is unlikely to have taken place.

Total Visas Issued by Ten Main Countries of Citizenship in 2010⁴¹

| Country of Citizenship (in descending order) | Join Family |
|--|-------------|
| India | 1,017 |
| Russian Federation | 113 |
| People's Republic of China | 140 |
| Nigeria | 129 |
| Turkey | 57 |
| Saudi Arabia | 256 |
| Philippines | 395 |
| Belarus | 35 |
| Pakistan | 168 |

⁴¹ The breakdown provided is for TOTAL visas issued. Estimated breakdowns between C (visit) and D (reside) Visa cannot be supplied to this level of disaggregation. This breakdown is not available prior to 2010.

| | |
|---------------------|-------|
| Ukraine | 102 |
| Other nationalities | 999 |
| Total | 3,412 |

Table 6: Quinn (2011: 65).

Reasons Offered for Visa Refusals: The reasons offered for visa refusals tend to be vague and unclear (e.g. insufficient documents), and no further information is given as to what particular documents are missing or needed or why the documents submitted are not satisfactory (e.g. relationship history). Yet, no real guidance is offered regarding actual requirements, particularly in the context of no prior cohabitation, arranged or proxy marriages. This is illustrated in the case of P9, a Dutch citizen who moved to Ireland in 2007 for full-time employment. His wife is Sudanese and they enjoyed a long-distance relationship for five years before marrying overseas in January 2009. After the wedding, they applied for her visa and he returned to Ireland after to go back to work after six weeks. As an EU citizen he thought the process would be easy but a few weeks later, the visa was refused on the grounds of insufficient documents (failure to provide translation of marriage certificate). They appealed but the application was refused again for a different reason. The marriage was deemed to have been by ‘proxy’, meaning that one of them was not considered to be present at the ceremony. This was not actually the case and they had provided proof by way of photos of the occasion and both of their signatures. As there was no further appeal, they re-applied for a new visa but this time they were both more stressed and worried. The visa application was again refused, this time on financial grounds and insufficient documents (failure to provide a tax certificate). On this occasion P9 decided to seek legal advice for the appeal. The visa was approved in August 2009, eight months after they had married and they were finally reunited⁴².

6.1 Third-Country Nationals

For third-country nationals, one of the primary issues is the absence of any legal entitlement to be joined by family members, including a spouse/partner or minor dependent children. Extensive Ministerial discretion has contributed to a lack of transparency and inconsistency in decision-making/outcomes. Although it is recognised that administrative policies which have been introduced since 2007, provide for family reunification for particular categories of migrant workers, arrangements are not harmonised across categories of third-country national workers and applications, particularly in respect of visa-required nationals, are determined on the basis of Ministerial discretion and the requirement to fulfil certain criteria, including financial criteria, which are not clearly stated.

P4, a Pakistani national who had originally come to Ireland on the basis of an employment permit in 2005, applied for family reunification in August 2011, one year after having been granted a long-term residence-permit. The application was refused in January 2012 on the grounds of insufficient funds, inconsistencies in bank statements and authenticity of the documents submitted. Regarding the financial inconsistencies P4’s employer (who interpreted on his behalf during the interview) remarked that while the authorities inspected internal monetary transactions, they do not consider transactions made overseas, which resulted in the alleged ‘inconsistencies’. He also pointed to a lack of clarity and communication regarding the grounds on which the application was refused. He felt that there is a lack of cooperation on behalf of the Irish authorities in terms of the acceptance of documents that deviate from national standards, in his case the difference in standards between an Irish and a Pakistani marriage certificate and also highlighted the lack of information provided in

⁴² See Appendix II for full case study.

relation to the standard of documents required. Further, he pointed to the bureaucratic nature of the family reunification application process during which a second GNIB card (Certificate of Registration) was rejected on the grounds that it did not match with the first expired GNIB card. P4 also spoke of being aggrieved by the fact that family members of other migrants known to him did come into Ireland illegally and were subsequently granted residence permits while he has now been separated from his wife and children for over six years.

It is the experience of NGOs and legal practitioners that *'the entire immigration system in Ireland is based on discretionary power. The Minister for Justice has discretion to grant residence to any non-national to be in the State on such conditions as the Minister thinks fit. That is the extent of the legislative guidance. There are no policy statements or immigration rules that give clarity to the exercise of that discretion which is a huge difficulty in terms of a person understanding the extent of their rights or my job advising a person on the extent of their rights. I have certainly seen very many decisions refusing a non-national father of a citizen child permission to reside in the State on the basis that the family can reside together outside of the State'* (SP3).

Even where statutory entitlements to reunification do exist, difficulties nonetheless arise. Although refugees/subsidiary protection holders do enjoy rights to family reunification with particular family members, participants highlighted particular difficulties with how strictly the definition of qualifying family members is applied and the apparent absence of consideration given to the impact that a particular decision may have or the desirability of maintaining family unity in particular instances. Examples highlighted by participants included a minor refugee seeking reunification with a parent and siblings; arising from the statutory entitlement the application, for the parent is approved but the siblings are refused, as they are not considered to be dependent on the refugee applicant. Not only is the refugee deprived of the possibility of fostering relationships with siblings but also the parent faces the agonising dilemma in respect of joining a dependent child in one country and leaving dependent children in another. Another example highlighted was the refusal to admit adult children, resulting in the break-up of the family and ongoing inability to visit, due to the applicant's inability to return to their country and difficulties to meet in a third country.

P6, who was granted refugee status in Ireland but now has Irish citizenship, indicated that while still in his home country he had taken care of his nephews and niece as well as of his then underage sister-in-law. They have now reached adulthood and were not allowed to join him in Ireland: *'My niece is having a very difficult life and every time I go and I see her I feel very guilty; is as if I abandoned her, because I brought her up since she was five. Even my children, my daughters, when they were there a year and a half ago they said "Dad, you have to do something for [her]"'* (P6).

6.2 Union Citizens

Service providers have criticised the application process for the reunification of third-country national spouses with their EU national spouses regarding its lack in clear guidelines and application forms. Further, it can be difficult for applicants to produce the documents required for a successful application including the Private Residential Tenancies Board (PRTB) or utility bills, proof of address, etc. as described by P10, the Australian national spouse of an EU national exercising Treaty rights in the State: *[With the information from the GNIB], it was a lot easier then because the information as to what I needed to give to them was very clear. [got it] from them, on a piece of paper. It was proof of marriage, birth certificate, passport stuff, originals of everything which was always a little bit scary and then bills, utility stuff like that, proof of address which was ... you know, that's another hard thing to show proof of address when you're just arriving somewhere, you're not legal to work so you have to be ... to get an apartment I had to convince the guy to do it ... I said 'we're gonna give you six months rent up front'. That's it. That's the only way we can get an apartment. And then that allowed*

me to be able to get bills to the address, to have the stuff I needed. So I had to have a lot of buffer zone backed up to pay six months rent in advance and then to be able to give three months in advance at least while things were pending.

Findings of the ICI's *Family Matters* (2006) correspond with the experiences of service providers in that the time frame within which a decision is required to be issued frequently is not met and is often accompanied by a lack of communication between applicant and the official in charge. While the third country national spouses of EU nationals may be issued with a six months residence visa permitting them to work, a delay in decision making may place their employment in jeopardy. However, service providers reported that if complaints were made to INIS and/or the EU Commission, a decision was usually issued within about two weeks upon a breach of the initial time frame.

6.3 Nationals of your Member State

One of the main issues facing Irish nationals wishing to be joined by family members in Ireland is the lack of a legal entitlement to family reunification leading to their 'reverse discrimination'. This 'has been a reality for many Irish citizens who see a clear divide between how they and their family members are treated in comparison to family members of EU nationals who have exercised their right to move to Ireland as another Member State' (Brophy Solicitors, 2011).

The following excerpt gives a brief example of P7's experience of reverse discrimination against Irish citizens: P7 is an Irish citizen of Chinese decent. Her mother is her only close relative remaining in China 'joining' her daughter in Ireland on short-term visit visas. Extensions have been granted on an irregular basis following in-country applications. However, her application for residency was refused and a legal challenge to this refusal failed in the High Court. This was despite both P7 and her Irish citizen husband being wholly self-sufficient, independent of State support and fully capable of taking care of P7's mother whom they had also provided with private health insurance to ensure that she would be unlikely to become an 'undue burden' on the Irish State. P7's mother experiences the recurring long journey between China and Ireland as strenuous. Therefore, she would like to be able to stay for an extended period of time, on the basis of a residence permit, to foster her relationship with her Irish citizen grand-children⁴³.

Persistent issues also occur in respect of minor Irish children in the context of the IBC/05 scheme in relation to family reunification with parents or spouses outside of Ireland. The *New Communities Partnership* (NCP) report *The Irish Born Child Administrative Scheme for Immigrant Residency 2005: The Impact on the Families of Status Holders Seven Years On* (IBC/05 report) (Coakley, 2012) found that the policy interventions in place for IBC/05 status holders tend to hinder rather than promote family reunification as families were 'deliberately [*emphasis added*] separated ... enfor[cing] a transnational familial imaginary on the Irish children of immigrant parents' (NCP, 2012: 20 – 21). The IBC/05 Report (2012) states that the majority of participants in the research found it difficult to make an application for family reunification; this was due to both a lack of instructions with regards to the making of an application as well as the absence of a clear '*set of criteria that needs to be met in order to entitle them to family re-union*' (NCP, 2012: 20). Most commonly, this results in the separation of Irish citizen children from their father and siblings residing in another country, leading to an '*enforced status as people parenting alone in Ireland*' (NCP, 2012: 21) and adding financial pressures. 'Single' parents struggle to fulfill the requirements of full-time employment on the one hand and the costs for adequate childcare on the other, leaving them '*to utilise less than satisfactory childcare*

⁴³ For full case study see **Appendix II**.

arrangements' (ibid.). Further, they find themselves excluded from lone parent's payments as they 'correctly maintain they are married but separated by a legislative process' (ibid).

IBC/05 status is anchored on the presence of an Irish child, whilst often denying that child, and the parent who is present with him/her in Ireland, the care and protection of his/her other parent, most often his/her father and the companionship of siblings currently residing in another country. This is reflected in the experience of P1 and P2, a Nigerian couple: P1 has been resident in the State for a number of years. She and her husband (P2) are the parents of five children, including two Irish citizen children. Following his deportation in December 2008, P2 was separated from his family for more than three years before the deportation order, which contains a life-long re-entry ban, was revoked and he was granted a visa and subsequently a *Stamp 4* residence permit on the basis of his parentage to his Irish citizen children and his wife's residence in Ireland. They indicated that the long separation has been a problematic experience for the family, impacting particularly on the children and ultimately resulting in the closure of two successful businesses and the subsequent dependency on State support, as well as the children's deterioration in terms of academic achievements⁴⁴.

6.4 Conclusion

To date there is no data to develop a quantitative analysis on family reunification. According to MIPEX findings, Ireland has the least favourable family reunification policies in the EU scoring 34 out of 100; in comparison: Portugal achieved the highest results scoring 91 out of 100 (MIPEX, 2012). Particular groups subject to Ministerial discretion in relation to the granting of family reunification have been adversely affected, manifesting in experiences of delay, anxiety and stress pending the application procedure. Severe delays in the application process have contributed to marriage breakdowns. However, despite Ireland's unfavourable family reunification policies, legal practitioners and NGOs alike have identified developments impacting positively on family reunification applications over recent years, including DNA testing, case law, acknowledgement of *de facto* and civil partnerships as well as improvements in processing times.

⁴⁴ For full case study see **Appendix II**.

Chapter 7

Impact on Integration

In the previous Chapter, the issues and impacts on integration for migrants arising from the family reunification process itself were highlighted. This Chapter considers some of the issues arising in the integration context for family sponsors and their family members who are granted admission to Ireland. It considers some of the issues that participants encountered whilst being separated from their families, as well as their narratives regarding any changes upon arrival as well as the challenges thereafter.

7.1 Quantitative Analysis of Integration Activities

It is not possible to provide a quantitative analysis of integration activities in Ireland as language and integration tests are not carried out as a precondition for family reunification and/or the renewal of residence permits granted on that basis. As PM1 stated: *'We would see language-learning as being one of the critical things. We wouldn't be hung up about test of knowledge of society or some sort of quiz [...] personally I just don't see the merit of those tests. I prefer integration if people speak English. That's a start'*. Although proficiency in the official language of the country is seen as essential, no provisions for testing have been made. Hence, no quantitative data is available regarding the numbers of family members participating in language courses, numbers of applicants for a text or numbers passing tests.

7.2 Benefits of Family Reunification to Integration – Migrants' Lives Pre- and Post-Admission

7.2.1 Migrants' Lives Pre-Admission - Impact of Conditions for Family Reunification

In *Getting On* (ICI, 2008) the researchers indicate that migrants' capacity to participate in society as well as their sense of belonging, are channeled by the regulations for both family reunification and temporary visits. Modern technology equips migrants with the means to cope with the barriers to family life through internet, telephone and home visits. However, it was found that the time invested in trying to bridge the distances between migrants and their families accompanied by work commitments have *'a significant impact ... on migrants' capacity to participate fully in Irish life'* (Feldman et al., 2008: 17). Additionally, many develop a sense of dual belonging to their home countries and to Ireland which *'can create tensions as well as opportunities'* (Feldman et al., 2008: 18).

Participants described how trying to stay connected with their families living abroad was a straining experience on organisational, financial and emotional levels, especially in situations where family members were left behind in difficult if not potentially life-threatening situations. P6, who is now an Irish citizen, recounted: *'There was a war in Congo, remember?' He continued to describe how telephone calls to his wife not only entailed a great deal of expense but were also difficult to arrange as due to the war, telephones were inaccessible. 'I couldn't keep in touch with them directly; I had to ring a friend. My best friend there was a general in the army, so he had to send his driver to go and collect my wife and talk to her, bring her back home and then I would call my wife and we talk. Or he goes over there and while he's there then I call and I talk to my wife. You see? I had to make arrangements for that. And it couldn't last too long; it couldn't last long, because it was costly.'*

P3, who was granted refugee status in 2006, reported that while he found the telephone to be a good medium to maintain contact with his family who stayed behind in Pakistan, he narrates that while they were separated, he lived in constant fear for their safety: *'They were living in a very dangerous and critical situation. I don't want to narrate my past but because of me they were facing a very terrible situation. For this reason they were moving, changing place for two or three times.'*

Every time I was frightened that something would happen very badly to them. Abduction. Kidnapping. In addition to their safety, P6 also stated that he was worried about his family's well-being, as being an asylum seeker in Ireland and thus, prohibited from seeking paid employment, he encountered difficulties in maintaining the payment of the school fees of his children's education back home.

P4 and P5, work permit holders from Pakistan and India, both reported that trying to maintain contact with their families was time consuming. Combined with work commitments, the separation from the family was perceived to be a hindrance to the pursuit of a social life: *'If you have family, then you can go other place. But if you are alone then that time you have to talk with the internet with wife; we have to take the time for them. So I talk every day, just in the morning when we get up. And then I work'* (P5).

P4 and P6 both highlighted that being separated entailed an element of guilt. P4 described how his children continued to ask when they would see their father again. While he was able to return to Pakistan once a year for a few weeks, he would put off the children saying: "Next month, next month". P6 described a conversation with his daughter illustrating his emotional turmoil: *'I was even feeling guilty like I abandoned them. I remember, my first daughter, one day we were talking on the phone and she said: 'Dad. Why don't we come over there? You always tell us you love us but why don't we come over there? You know there is a war here!' She's very, very intelligent. And she was challenging me like that. And you can't imagine when the conversation is over, what happened in my head and in my heart.'*

P5 feels that the arrival of his family has left him with more time to establish and/or maintain a social life including his family and friends and helped him to overcome the loneliness he experienced during the period of separation: *'They are very happy because they're living with me. When they arrived, my life has totally changed. I spend lots of time with them instead of calling home [...] We have some get-togethers with our family. [All of my] friends and family, they come together but it's not every day, we cannot manage it every day.'*

Impacts of Separation and Family Reunification on Children: While children were not interviewed in the study, available research suggests that family reunification is often an ambivalent process for children. There are many mixed emotions children have to deal with including the excitement of living with parents again after long periods of separation, coupled with the sadness of leaving loved ones behind (Gilligan, 2010; Ní Laoire, 2009). Children have to cope with adapting to life in a new family arrangement as well as life in a new country. Many children interviewed spoke of how they felt that they were "always separate" from their parents who were working long hours. This also came through many times during in the interviews.

Participants suggested that there were periods of adjustment during which children acclimatised to their new surroundings, sometimes bridging the gap between their 'old' and 'new' home as P3, who is originally from Pakistan, describes: *'Here the society is very different. We're Muslim in culture, our religion is Islam. Here they Christian and very liberal society. We have some reservation in norms and our own society was like abandoning us. [However, my children] are very good in both adapting in the [Irish] society and relating in our own culture. They speak their own language, their own mother language at home.'* Although *'[f]riendships with local Irish young people were valued'* (Gilligan et al., 2010: 2), incidents of bullying, racism and discrimination were also reported to be a major issue. This was also an experience shared by the interviewees for this study: *'There was two times [my children] get tortured [by fellow class mates], like name calling, punching my children'* (P3).

SP1 felt that long separation times may have adverse effects - both psychological and sociological - on children and their families as *'everybody knows that for a child the time goes much, much faster than it does for an adult [...] even a week in the life of a child is a very long time and for a child to be away from their parents for five years you [would] have to wonder what the effects of that are going to be on everybody.'* P1 and P2, a Nigerian couple, illustrate the psychological impact the 3-year separation from their father had especially on one of the children, saying that their son was emotionally traumatised by the absence of his father to whom he is very close, resulting in academic difficulties and social withdrawal. P1: *'I was issued a letter to go for a mental check-up [...] he couldn't handle it 'cause he was so close to the dad.'* P2 reflects on how his children's social life suffered while he was separated from the family: *'Other daddies will be taking their children out. There's no daddy for them to take them out to give them that fatherly guidance. That's impacted much on them, especially on the second child [who] was then 6 years. I used to coach them or help them with their homework. Teach them other things [...] to help them in school. Used to take them to school and bring them back. I used to bring them to all those [cultural sites showing them] Madonnas and other things. Nobody was doing it for them anymore.'* P2 outlines that in the time of his absence his wife, besides having to manage two businesses on her own, she was also left to rear the children as a 'single mother' which subsequently impacted on their social activities: *'My wife, when she could she took them [along to their sporting activities]. If she could not she asked the coach to take them along.'* P2 further exemplifies how the overall well-being of one of his sons has particularly improved since his father's return: *'I have not got any bad reports on [my son] since I came back. Even the teachers are telling me that he has improved since I came back. Because every time he was in class, when he withdrew from other people, they'd be asking me: "What is the problem?" and I was telling them: "He needs his daddy". Since I'm back he has improved; has no more problems.'*

However, while family reunification is generally perceived to have a positive impact on family life and on integration into the receiving society, SP1 argues that it is likely for children and their families to experience post-admission difficulties, particularly if they have lived separately for a number of years: *'It's just insane to me to think you can be separated so many years and then you'll have a big hug at the airport and everything is grand; it isn't grand, it isn't grand at all.'* P6 supports this view in saying that after four years of separation, he and his wife had to get used to one another again. When reunited with his family at the airport he felt that it was *'too much and to react it took me two days. To realise they were there. It took me two days ... I didn't want to display my emotion and even now my wife says: 'You didn't want us to come', because when I saw her, it was so 'tetanising' [overwhelming].'*

7.2.2 Migrants' Lives Post-Admission

Legal Position of Admitted Family Members and Integration Policy Regarding Admitted Family Members on the Level of Integration of Family Members

MIPEX (2012) identifies 'family reunification' as only one criterion considered beneficial for integration; other essential pre-requisites include equal access to both the labour market and to education, political participation, access to nationality, long-term residence, and anti-discrimination. This hypothesis was supported in both participants' narratives and the existing literature. P6 argues that family reunification is by no means the last step to integration. Rather, it initiates a transition period – *'a series of challenges'* (P6) - that need to be overcome in order for migrants to meet the definition of integration as *'the ability to participate in Irish society to the extent that a person needs and wishes in all of the major components of society, without having to relinquish his or her own cultural identity'* (DJELR, 1999: 9).

Generally, the interviewees reported that their lives had improved significantly upon reunification with their family members. However, as P6 outlined, the arrival of the family was often accompanied

by initial difficulties for both sponsor and family members that needed to be overcome. Initially, poor language proficiency poses the greatest difficulties to integration. However, other issues commonly identified are familiarisation with a new society, with its customs, values and culture; the absence of a social network; and issues related to accessing employment and accommodation.

Interviewees across all categories (individuals, NGO representatives, legal practitioners, policy makers) commonly expressed the view that family reunification was an essential pre-requisite to integration. However, while supports are available during the application process, participants feel that if difficulties arise thereafter they are largely left to their own devices. This seems to be the case especially in the areas of language acquisition, recognition of skills and qualifications, and access to services and employment.

Legislative and administrative criteria may constitute a barrier to integration even where that may not be their primary objective (Murphy, 2011: 407). It was observed in the *Living in Limbo* (2011) and *Getting On* (2008) reports that migration status is perceived to be a key element regarding integration in Ireland determining migrants' rights, entitlements and duties and thus, '*shapes their subsequent access to resources and services*' (Feldman et al., 2008: 11); this impacts on the extent to which migrants are capable to participate economically, socially and culturally. Legal status is largely perceived with a sense of greater security and decline in distinction between migrants and the host society which in turn contributes to integration. The absence of an integration policy (e.g. compulsory civic integration or language tests) makes it difficult to assess the level of integration of admitted family members. However, the following paragraphs on political, economic, educational and social inclusion attempt to give an overview of the level of integration of admitted family members influenced by legal status.

7.2.2.1 Political Inclusion

Migration status is perceived to be a key element regarding integration in Ireland determining migrants' rights, entitlements and duties and thus, "shapes their subsequent access to resources and services" (Feldman et al., 2008, 11). In turn this impacts on the extent to which migrants are capable to participate economically, socially and culturally.

Although most non-EEA family members have been able to secure long-term-residence status, the majority has either expressed intentions to apply for citizenship or were waiting for a decision on their pending citizenship application. This is largely perceived with a sense of greater security and decline in distinction between migrants and the host society which in turn contributes to integration. P8, a US citizen married to an Irish, maintains that she sees herself largely integrated Irish society and life. Nevertheless, she expressed a sense of pressure linked to the fear '*that something could go wrong or could go bad: that's kind of my overall experience of the immigration thing. I kind of feel like until I have citizenship full-on, that then I could relax but I always sort of feel like I need to maintain a good bank account, employment like, be really like a super citizen until I've got that all sorted. I don't really enjoy that feeling.*' This is also due to the Stamp 4 residence status being dependent on the relationship the family member enjoys with the sponsor which has an impact on the extent to which family members can plan their own and their family's future independent from the sponsor. This is reflected in P8's narrative exploring the potential consequences of a relationship breakdown: '*We've experienced marital problems over the last couple of years and we're on very good terms now but it definitely has been a factor like if we break up or something what are we at both individually and together? So that's been a stressor.*' Further, P8 maintains that the uncertainties entailed by a residence status dependent on the sponsor are incompatible with the reality of modern life: '*As well as that we've both talked about living and studying elsewhere ... and we both would be a bit anxious in terms of immigration. Sure if I would come with him wherever he goes I could probably seek some*

sort of employment but what if I don't want to? And what if I want to go work somewhere in Europe for a year? I actually can't do that at the moment. So it definitely has a significant influence on both professional and educational plans and things like that. My understanding of the citizenship application is that it is very traditional and very conservative and that they expect a married couple to be living together in the same household and things like work or going away for a year or a year off doesn't really make sense to that formal procedure.'

Although Ireland's performance in other areas of integration requires improvement, it ranks high with regards to political inclusion of non-nationals who are legally resident in the country (MIPEX, 2012); although only Irish citizens can vote in Presidential Elections, British citizens can partake in *Dáil* elections, European elections and local elections. EU citizens are entitled to vote at both European and local elections whereas non-EU citizens may vote at local elections (OPMI, n.d.b).

7.2.2.2 Language skills

Combined with legal status, proficiency in the language of the host country – the '*main medium of communication*' (Feldman et al., 2008: 137) appears to be of paramount importance for successful integration in every domain - economic, educational and social. The absence of widely available, standardised language classes in Ireland make it difficult for family members to participate in society; The authors of *Getting On* highlighted the language barrier as one factor facilitating social isolation and loneliness. P6, whose wife and children joined him from the DRC, illustrates the initial difficulties his wife encountered due to a poor command of the English language: '*She's never been jobless; by profession she was what we call in French 'secrétaire de direction'. Like an executive assistant, PA. But her command of English was very, very poor so she couldn't do that here ... Her English is not yet ... but anyway, she can talk, people can understand and she can understand what people say.'*

Moreover, it was found in *Getting On* that despite participants' agreement of English being '*a basic requirement for life in Ireland*' (Feldman et al., 2008: 141), great importance appears to be attached to the maintenance of individual national and regional languages. P3 echoes these findings illustrating his children's ability to bridge the divide between mainstream and minority communities: '*[My children] are very good in both adapting in the [Irish] society and relating in our own culture. They speak their own language, their own mother language at home - that's Pashtu.'*

7.2.2.3 Economic Inclusion

The type of permission to remain issued by the INIS determines the entitlement to seek and enter employment which is a means to both earning a living and the creation of a social network facilitating integration. As P10, the Australian national spouse of an EU national resident in Ireland points out: '*To participate in society you need the right to work*'. Limited means on the other hand have been found to impede social interaction and stability leading to a variety of coping strategies including shared accommodation, additional jobs and restrictions on spending necessitated by the high living costs in Ireland (Feldman et al., 2008). While some participants reported economic stability, others found themselves either struggling or reported several obstacles they had to overcome in order to achieve economic security.

Participants validated Feldman et al.'s (2008) findings of deskilling and downward occupational mobility on a number of occasions. P6, originally from the DRC and now an Irish citizen, reports that his doctorate in veterinary science was not recognised by the *Irish Veterinary Council*: '*They asked me to go to the first year. Can you believe it?! That was an insult! While there in the library I saw my publication; students were reading my publications and they asked me to go back to the first year. And I talked to this guy, the dean, said: 'This is my publication. Do you see that one?' He was reading ... my publication. [Yet] he said: 'So, I'm sorry but these are the rules.'*' P10 described that while

waiting for his work permit he reluctantly took up informal work as a kitchen porter. Although he now has a Stamp 4 permit entitling him to work in Ireland, he was unable to find work relevant to his qualifications; instead, he manages a café: *'I got an economics degree and I'd done a little of work with banks and in marketing and administration stuff in Australia, and when I tried to get jobs in those areas over here it was almost impossible to get an interview; it was very, very difficult. There were hundreds of jobs in hospitality. There was no shortage of jobs; there was just a shortage of desirable jobs.'*

7.2.2.4 Education

Like the workplace, educational settings are sites facilitating the social interaction and thus, integration. However, while parents participating in this study found that their children had integrated relatively well, both P3 and P6 illustrate the initial difficulties their children encountered. Here, linguistic proficiency, or a lack thereof, played an essential part in terms of integration. In P6's case, this resulted in the retro-gradation of his children by two years on average which meant that they visited classes with children outside of their own age group. However, participants indicated that school children are capable of catching up with their class mates quickly: although *'they were frustrated at the beginning because of retro-gradation, because of English language ... they caught up very quickly. And at some stage they even proved that it was a mistake, retro-grading them, because they were the best in the classes.'* (P6). Further, as found in *Getting On*, difficulties in understanding the Irish accent may contribute to an initial sense of isolation and loneliness that can be overcome with an increase in English proficiency as reiterated by P3: *'Initially it was very difficult for them to adjust to the situation and the environment. Especially the school and the language and the accent they couldn't grasp. But slowly ... the second year ... they speak English with children and communicating with teachers and class fellows.'* Moreover, Feldman et al. (2008) have identified racism as a cause for the exclusion of migrants which is reflected in P3's narrative: *'There was two times [my children] get tortured [by fellow class mates], like name calling, punching my children but the teacher was very good and the principal and the staff. They cooperated with us. And now every child is doing karate, they are expert in boxing so they can defend themselves.'*

7.2.2.5 Social Inclusion

The authors of *Getting On* found that amongst migrants, highest levels of interaction were with other people from their own country. This is echoed by P5, an Indian national, in saying that *'we have some get-togethers with our family. [All of my] friends and family, they come together but it's not every day, we cannot manage it every day.'* However, this appears to differ according to national background. While the findings in *Getting On* suggest that some migrant groups almost exclusively interact with others from their own community, members of other groups show higher interaction levels with Irish nationals. P5 suggests that there may be an adjustment period for family members to settle into their new environment. He says about his wife who recently arrived in Ireland: *'She is happy with me but I can't tell if she is happy or not. [His friend interrupts] It takes time because if you go in Delhi, it's very different. My wife, I used to live in Bombay. When she came here, for three months she was just get bored sitting at home, no people around. It will take her two or three months to get used to this.'* P10 narrates that for him integration was a matter of making an effort and as a result he now feels *'pretty well integrated'*. While for some migrant groups their choice of interaction partners was reliant on ethnic background, in the case of P10, an Australian national, his efforts focused on similarities in terms of interests: *'The first time around I was here I didn't seek out anything or anyone because [my wife] and I were just in our own little bubble and there was just no point in interacting outside then just going to work and coming home; I didn't care, I didn't wanna know. Second time around we were still in our own little bubble but outside of our little bubble I was pretty miserable the last time we were here, like the change of the weather - you know, coming from Australia to Ireland was a real shock: a knock in temperature and the sheer lack of sunshine. So, this*

time around I just went 'okay. I'm just gonna look for things; I'll look for my people. And by the 'look for my people' I just mean I look for stuff that I like: the music that I like, the musicians that I like and I'll make an effort to go out, to places that would have the kind of art that I would be into; the stuff that would fulfil me'.

Further, differences and commonalities in values and cultures may act as a barrier or facilitator to integration as illustrated by P6: *'You know, before coming to Ireland I travelled a lot for my work. Readjusting myself to the host community wasn't a problem. But for them it was the first time to come to Europe from Africa. And even though we had European friends in Congo, but living within the European culture - a lot of challenges as well. For example, how do you imagine that you can't say 'hello' to your neighbour? That's bizarre. For your neighbour is the closest person to you and to your family. How can't you say 'hello' to your neighbour? It took time. But later, our neighbour were very kind and 'hello' 'hello' but you can't visit each other. But in Congo, 75% of your daily life in Congo happens outside your home; in Africa in general. 75% of your daily life, it's outside. Here, 75 is inside. It's quite closed - probably because of the climate. And the climate has shaped the way of thinking and socialising. But in Africa it's different. Anyway, they adjusted themselves very quickly.'* This is supported by P3 narrating that *'here the society is very different. We're Moslem in culture, our religion is Islam. Here they Christian and very liberal society. We have some reservation in norms and our own society was like abandoning us.'*

7.3 Conclusion

Currently, there are no testing requirements, including language testing, whether during the first admission process, renewal of residence permits, acquisition of long-term residence or for citizenship applications – although changes are proposed in this regard. Minister Shatter commented that *'such tests are a standard part of the naturalisation process in many countries worldwide; the ability to speak the language – even at a most basic level - together with some knowledge of the way business is conducted in Ireland is an essential part of the integration process for immigrants and must form an integral part of eligibility for naturalisation'* (INIS, 2012b).

Irish legislation does not currently contain any express reference to integration either in immigration or citizenship laws. Note however Sections 46 and 141 of the draft IRP Bill 2010: The requirements for the granting of long-term residence provided for in the draft legislation, included 'a reasonable competence for communicating in the Irish or English language' as well as the person having 'satisfied the Minister, (...), that he or she has made reasonable efforts, while resident in the State, to socially integrate'. Furthermore, in relation to the admission of specify categories of third-country nationals, the draft legislation did foresee that 'the Minister shall have regard to whether the entry into or presence in the State of a foreign national or a class of foreign nationals to whom a permission (...) may be granted will contribute, inter alia, to the enrichment and strengthening of the cultural and social fabric of the State' and to 'the promotion of successful social integration of foreign nationals into the State'. It remains to be seen whether these elements will be retained in future proposals.

Integration policy is not connected officially with inward admission criteria or legal conditions associated with residence although many of the participants in the study do view these as connected. It has been noted that family reunification is granted depending on migrants' *'capacity [...] to fund their own families and to support them'* (PM1, personal communication, 13 April 2012). PM1 further explains that certain categories of people – high-skill workers in the position of *'a Green Card employment'*, researchers and PhD students - were incentivised by the State to come to Ireland: *'It's a balance of the rights of the individual and the rights of the society. And some of those rights, some of the interests of society are expressed in economic terms.'*

Chapter 8

Research Conclusions

There is no express reference to integration in Irish immigration law. It would appear that there is no formal connection made at policy level, between family reunification and integration.

On the basis of the existing publications, as well as the overall research conducted during this project, the conditions for family reunification across all categories of migrants do not currently include integration factors. However, it is clear from research that family reunification has a significant impact on migrants' ability to integrate and participate in Irish society. Government policy, in relation to family reunification does not differ in any significant way from general immigration policy and is largely influenced by financial considerations and the desire to control immigration.

Warnings against the abuse of family reunification process are more prominently displayed on the website of the INIS, highlighting that *'(A)pplications from persons where it is deemed that they are seeking such permission to simply gain entry to the State or where they seek such permission simply to continue their length of stay in the State for whatever reason, such applications will be refused and the appropriate and necessary action taken to remove the individual from the State. Any misinformation given during the application process will result in the application being refused immediately'* and emphasis is clearly not placed on family reunification as a right or a necessity for the successful integration of migrants.

8.1. Relationship between policy developments and family reunification/ integration

It is unfortunately difficult to draw definite conclusions between policy developments and actual family reunification in Ireland due to the lack of data publicly available. Moreover, despite acknowledging family reunification to be an essential pre-requisite for integration at a policy level more than ten years ago, positive changes (e.g. spousal work permits, inclusion of *de facto* couples, amendments to defective regulations) have not occurred as part of a comprehensive immigration policy initiated by the Department of Justice and Equality but rather, as a mere reaction to external pressures including NGO lobbying or by way of response to legal challenges. While it is assumed that the immigration reform, including the introduction of a legal framework work for family reunification, is still intended, concrete implementation has yet to materialise.

As set out by the ICI in *Family Matters* (Cosgrave, 2006), reform in the area of family reunification in Ireland needs to happen on several levels: enhancing the protection of rights, evidence-based policy making, improving administrative procedures, access to justice and resourcing the community and voluntary sector. Current decision-making practices prioritise certain migrant categories and are largely concerned with the economic funds available to the sponsor enabling him/her to support his/her family intending to minimise the potential financial costs for the State. However, the relationship between family reunification and integration is neglected with little or no focus on the process of inclusion or equal rights and opportunities for migrants, not least shown in the absence of comprehensive support post-family reunification, notably in the shape of standardised language classes and the provision of adequate support to the voluntary and community sector. Moreover, there has been a failure to recognise any relationship between family reunification and integration, or, more generally the relationship between immigration status and integration.

8.2 The main differences regarding the (development of the) conditions assessed between the four groups

Although the paramount importance of the family unit and its right to be protected has been recognised under Irish constitutional and human rights law, Irish legislation does not provide a

comprehensive system for the family reunification of residents and Member State nationals with their third-country national family members in the State.

Moreover, the different groups of residents Ireland covered by this report are treated differently in relation to their entitlements (if any) to family reunification in Ireland. The main basis for this difference in treatment is that for certain categories, i.e. EU/EEA nationals and for refugees and subsidiary protection holders as well as for certain scientific researchers, EU and international law require the provision of a statutory right to family reunification in national law. However, because of the decision of the Irish Government not to opt-in to Council Directive 2003/86/EC on the right to family reunification, there is no obligation to introduce similar legal provisions in respect of third-country nationals who are legally resident in Ireland. Furthermore, as set out above, Ireland has failed to introduce statutory family reunification rights for its own citizens and their third-country national family members. And, with the exception of the rights of EU citizen children to reside in their own Member State while benefiting from the care and company of their third-country national parent(s), as confirmed in the *Zambrano* case, the CJEU has continued to hold that the mere fact that a family member of an EU citizen has not been permitted to reside with them in their home Member State cannot constitute sufficient proof of an effective deprivation of citizenship or of a violation of fundamental rights.⁴⁵ In Ireland, decisions regarding family reunification for these two categories remain consequently at the discretion of the Minister for Justice and Equality, at least for the time being.

As set out in Chapter 5, case law in the area of family reunification in Ireland continues to evolve and issues arising in the context of the longer term settlement of migrants in Ireland are only beginning to come to the fore. With draft legislation on migration and residence in Ireland delayed since 2005, the law will continue to be judge-made for the foreseeable future. However, as the Irish judicial system is relatively slow when compared to jurisdictions with administrative tribunals, there have not been any significant developments in relation to judiciary engaging in comparisons across categories of migrants and citizens in the context of family reunification. The case of *O'Leary & Ors v MJELR*, described in more detail in Chapter 5, is one case in which the High Court did recognise the issue of 'reverse discrimination under EU law' and confirmed that had the Irish citizen plaintiff 'been a citizen of another EU state, she would have been entitled to have her dependent parents reside with her pursuant to the provisions of Directive 2004/38/EC. However, as she is an Irish citizen, she is not permitted to invoke the provisions of the Directive within the realm of matters which are governed by domestic law'. To date, the issue of reverse discrimination of Irish citizens when compared to their EU/EEA counter-parts resident in Ireland has not been addressed at policy level.

8.3 Developments of the numbers of family reunification between the four groups and the integration of their family members

It is difficult to assess the issue of numbers of family member admitted to Ireland due to the lack of disaggregated data available across all categories or information regarding numbers of applications made and those granted or refused. It is noteworthy that recognised refugee and subsidiary protection populations represent a minority when it comes to family reunification applications and that official figures available from the INIS on family reunification tend to reflect only this small number of applications.

EU nationals and their family members are distinctly advantaged when contrasted with Irish citizens other third-country nationals in general. Nevertheless, even EU nationals, refugees and subsidiary protection holders continue to experience difficulties during the processing of applications as well as

⁴⁵ Case C-434/09 *McCarthy v Secretary of State for the Home Department*, judgment of 5 May 2011, nyr; Case C-256/11 *Dereci and others v Bundesministerium für Inneres*, judgment of 15 November 2011, nyr.

post-admission. Equally, despite the lack of legal entitlement *per se*, family members of Irish citizens, including civil and *de facto* partners, can often have very positive experiences in terms of the application procedure and their subsequent permission to remain in Ireland on the basis of their family relationship.

In practice, all categories of migrants and citizens now experience barriers arising from the economic crisis in Ireland as more and more emphasis is placed, in so far as permitted by EU and international law, on families' financial independence. Other experiences shared by all categories are difficulties with regard to the recognition of qualifications, language barriers, access to labour market, as well as societal intolerance, including racism, towards particular categories of migrants, in particular those of African origin and/or Islamic background.

It was recognised by participants in this study that there are differences between potential and actual integration achieved for a wide variety of reasons. It was acknowledged, however, that in attempting to achieve integration, it is essential to provide equal access to rights and opportunities. Submitting families to an arduous and ambiguous initial application procedure fails to foster a good relationship with the State from the outset. Separating families for years before finally admitting family members to Ireland is likely to cause long-term irreparable damage to relationships. Furthermore, failure to provide access to an independent status after many years of legal residence can render families unable to improve financially, buy houses, and finance third-level education for children. Failure to provide access to long-term residence affects security and ability to plan, and keeps family members admitted as dependants in situations of dependency for an unnecessarily long time.

Overall, as concluded by the MIPLEX index in 2012, which compares integration policies across over 30 countries, Ireland has the least favourable family reunification policies of any country in the EU or North America. As set out above, Ireland has no national rules regarding family reunification enshrined in primary legislation. In addition, the Government failed to opt-in to the EC Directive on the right to family reunification and therefore decisions currently taken in this area are based purely on the discretion of the Minister for Justice and Equality. The wide discretion granted to the Minister has led to inconsistencies and a lack of transparency in the decision-making process.

References / Sources / Bibliography

1. General Sources

- Barrett, A. and D. Duffy (2008). Are Ireland's Immigrants Integrating into its Labour Market? *International Migration Review*, 42 (3), 597–619.
- Barrett, A., Bergin, A. and Kelly, E. (2009). *Estimating the Impact of Immigration on Wages in Ireland*. Dublin: ESRI.
- Becker, H. (2012). Immigration and Citizenship Law. In B. Moriarty & E. Massa (eds.). *Human Rights Law* (4th ed.). Oxford: Oxford University Press.
- Becker, H. (2010). Reverse Discrimination. *Law Society Gazette*, 104(6), 12-14.
- Brandi, S. (2007). Unveiling the Ideological Construction of the 2004 Irish Citizenship Referendum: A Critical Discourse Analytical Approach. *Translocations*, 2(1), 26 – 47.
- Brazil, P. *Recent Issues in Refugee Family Reunification under Irish Law*. Last accessed 1 June 2012, at http://www.legalaidboard.ie/lab/publishing.nsf/content/The_Researcher_June_2009_Article_1
- Brophy Solicitors (2011). *Reverse Discrimination – the Down Side to 'Free Movement'?* Last accessed 21 June 2012 at <http://brophysolicitorsimmigration.blogspot.ie/2011/01/reverse-discrimination-down-side-to.html>
- Citizens Information (2012a). *Residence Rights of non-EEA Nationals in Ireland*. Last accessed 2 May, 2012, at http://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/residence_rights_of_non_eea_nationals_in_ireland.html
- Citizens Information (2012b). *Work Permits*. Last accessed 17 April 2012, at http://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/residence_rights_of_non_eea_nationals_in_ireland.html
- Coakley, L. (2012). *The Irish Born Child Administrative Scheme for Immigrant Residency 2005 (IBC/05) - The Impact on the Families of Status Holders Seven Years On*. Dublin: New Communities Partnership.
- Coakley, L. & Healy, C. (2007). *Looking Forward, Looking Back: Experiences of Irish Citizen Child Families*. Dublin: Integrating Ireland.
- Commission of the European Communities (2005). *A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union*. Brussels: COM (2005) 389 Final.
- Comptroller and Auditor General (Volume 2), Report presented to Dáil Éireann pursuant to Section 3 (11) of the Comptroller and Auditor General (Amendment), Act 1993, September 2011
[http://www.audgen.gov.ie/documents/annualreports/2010/2010_Volume_2_EN\(1.04\).pdf](http://www.audgen.gov.ie/documents/annualreports/2010/2010_Volume_2_EN(1.04).pdf)

- Cosgrave, C. (2011). *Living in Limbo: Migrants' Experiences of Applying for Naturalisation in Ireland*. Dublin: Immigrant Council of Ireland.
- Cosgrave, C. (2006). *Family Matters: Experiences of Family Reunification in Ireland*. Dublin: Immigrant Council of Ireland.
- Cosgrave, C. (2005). *Family Issues: Presentations*, All-Party Oireachtas Committee on the Constitution [oral hearing]. Last accessed 10 July 2012, at http://www.constitution.ie/oral-hearings/family-issues_presentations-21042005/6.asp
- Council of the European Union (2004). 14615/04 [press release]. Last accessed 28 June 2012, at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf
- Department of Social Protection (2011). *Family Income Supplement*. Last accessed 30 May 2012, at <http://www.welfare.ie/EN/Schemes/BirthChildrenAndFamilies/ChildRelatedPayments/Pages/fis.aspx>
- DJELR (2008a). *Annual Report 2008*. Dublin: Department of Justice, Equality and Law Reform.
- DJELR (2008b). *Minister for Integration, launches 'Migration Nation' a Statement on Integration Strategy and Diversity Management*. Last accessed 29 June 2012, at <http://www.inis.gov.ie/en/JELR/Pages/Migration%20Nation%20Launch>
- DJELR (2005a). *Planning for Diversity: The National Action Plan Against Racism*. Dublin: Department of Justice, Equality and Law Reform.
- DJELR (2005b). *Immigration and Residence in Ireland: Outline Policy Proposals for an Immigration and Residence Bill – A discussion document*. Dublin: Department of Justice, Equality and Law Reform.
- DJELR (1999). *Integration - A Two Way Process*. Dublin: Department of Justice, Equality and Law Reform.
- Europa (2012). *Employment and Social Policy Council, 17 February 2011, Brussels* [press release]. Last accessed 1 June 2012, at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/110&format=HTML&aged=0&language=EN&guiLanguage=en>
- Fanning, B. (2011). *Immigration and Social Cohesion in the Republic of Ireland*. Manchester: Manchester University Press.
- Feldman, A. et al. (2008). *Getting On: From Migration to Integration*. Dublin: Immigrant Council of Ireland.
- FLAC (2005). *Access to Justice – A Right or a Privilege?* Last accessed 27 June 2012, at http://www.flac.ie/download/pdf/access_to_justice_final.pdf
- Galvin, L., (2007). *The Family Reunification Application Process for Refugees in Ireland*. Dublin: Refugee Information Service.

- Gilligan, R. et al. (2010). *In The Front Line of Integration: Young People Managing Migration to Ireland*. Dublin: University of Dublin, Trinity College.
- GLEN (2011). *Same-Sex Couples and Immigration Provisions in Ireland*. Last accessed 29 June 2012, at <http://www.glen.ie/attachments/b71882f9-c67f-4ad7-84ed-03e50ecd8e5a.PDF>
- GLEN (2009). *GLEN Campaign for Legal Recognition of Same-Sex Relationships and Families: A Chronology of Key Events*. Last accessed 29 June 2012, at <http://www.glen.ie/attachments/196e99a3-e278-4e3a-88b8-8260e91766e4.PDF>
- GLEN (2007). New Minister for Justice Gives his First Address to Lesbian and Gay Audience [press release]. Last accessed 29 June 2012, at https://docs.google.com/viewer?a=v&q=cache:n9bzjMeXyaAJ:www.glen.ie/attachments/9fd4cf0-ab73-493d-9cc8-535a86ddf688.DOC+Eoin+Collins+glen+civil+partnerships&hl=en&gl=ie&pid=bl&srcid=ADGESjI7-XRGCofDf12nD-3V1d0MG3_V8_M3L4JSikn7-7eEVWuX4StCcvTj8p3siVjRczCAsE8kOY_sskogRI0CuIXFKO3jBjvVzzeG14AchjMoltvJhzEIIQ7FEbAivQyvlddU7eYS&sig=AHIEtbT3qRnhN2cfryuMPYX7t-Rak8dIQ
- Groenendijk, K. & Guild, E. (2010). *Visa Policy of Member States and the EU Towards Turkish Nationals After Soysal*. Nijmegen: Economic Development Foundation.
- Healy, C. (2007). *On Speaking Terms – Introductory and Language Programmes for Migrants in Ireland*. Dublin: Immigrant Council of Ireland.
- ICI (2012). *Factsheet 10: Independent Immigration Status for non-EEA Nationals Experiencing Domestic Violence*. Last accessed 10 September 2012, at http://www.immigrantcouncil.ie/images/stories/Factsheet_10_-_Domestic_Violence.pdf
- ICI (2010). *International Students*. Last accessed 10 July 2012, at <http://www.immigrantcouncil.ie/campaigns/international-students>
- ICI (2008). *News Bulletin 2008*. Last accessed 11 September 2012, at <http://www.immigrantcouncil.ie/news-bulletin/2008>
- ICI (2005). *Immigration and Residence in Ireland: A Response to the Department of Justice, Equality and Law Reform's discussion document outlining policy proposals for an Immigration and Residency Bill*. Dublin: Immigrant Council of Ireland.
- IHRC (2005). Position Paper on Family Reunification. *Irish Human Rights Commission*. Last accessed 22 June 2012, at http://www.ihrc.ie/download/pdf/ihrc_policy_on_family_reunificationseptember_2005.pdf
- Huddleston, T. et al. (2011) *Migrant Integration Policy Index III*. Brussels: British Council and Migration Policy Group.
- IOM (2002). *International Comparative Study of Migration Law and Practice*. Dublin: Department of Justice, Equality and Law Reform.

- Joyce, C. (2011). *Annual Policy Report 2010: Ireland*. Dublin: European Migration Network.
- Kropiwiec, K. & King-O'Riain, R. (2006). *Polish Migrant Workers in Ireland*. Dublin: National Consultative Committee on Racism and Interculturalism.
- Lacey, M. et al. (2005). *Submission to Immigration and Citizenship Policy Unit the Department of Justice, Equality and Law Reform*. Last accessed 9 July 2012, from www.glue.ie (link has expired).
- Lynn, M. (2011). *Citizenship and Residence Rights in Ireland*. [seminar paper submitted to the ICEL].
- Martin, M. (2005). *Employment Permits Bill 2005: Second Stage. Houses of the Oireachtas*. Last accessed 25 July, 2012, at <http://debates.oireachtas.ie/dail/2005/10/12/00009.asp>
- McDowell, M. (2005a). *Speech by Minister at the Launch of the Logo for the National Action Plan Against Racism*. Department of Justice, Equality and Law Reform, 21 October 2005. Last accessed 28 June 2012, from <http://metroireann.com/article/goodbye,182>
- McDowell, M. (2005b). *Address by Michael McDowell, T.D., Minister of Justice, Equality and Law Reform to an Information Seminar for Ethnic Communities on Garda Recruitment National Consultative Council on Racial and Interculturalism (NCCRI)*. Last accessed 28 June 2012, at <http://www.gaelport.com/nuacht?NewsItemID=153>
- MIPEX (2012). *Ireland*. Last accessed 1 May 2012, at <http://www.mipex.eu/ireland>
- MRCI (2008). *Exploitation in Ireland's Restaurant Industry*. Dublin: Migrant Rights Centre Ireland.
- MRCI (2007). *Realising Integration: Migrant Workers Undertaking Essential Low-Paid Work in Dublin City*. Dublin: Migrant Rights Centre Ireland.
- Mullally, S. (2005). *Citizenship and Family Life in Ireland: Asking the Question 'Who Belongs'?* (2005) *Legal Studies*, 25(4), 578-600.
- Murphy, C. (2011). *Integration and the Law: The Irish Experience in its International and European Context*. (unpublished dissertation submitted to the University of Dublin for the Degree of Doctor of Philosophy).
- NESC (2006a). *Migration Policy: NESC Report No. 115*. Dublin: National Economic and Social Council.
- NESC (2006b). *Managing Migration in Ireland: A Social and Economic Analysis – A report by the International Organization for Migration for the National Economic and Social Council of Ireland: NESC Report No. 116*. Dublin: National Economic and Social Council.
- NGO Alliance (2005). *Submissions in Response to Department of Justice, Equality and Law Reform Proposals for Immigration & Residence in Ireland*. Dublin: NGO Alliance.
- Ní Laoire, C. et al. (2009). *Tell Me About Yourself: Migrant Children's Experiences of Moving to and Living in Ireland*. Cork: University College Cork.

- O'Carroll, S. (2012). *High Court Allows Immigrants to Challenge Minister Over 'Undue Delays'*. Last accessed 2 July 2012 at <http://www.thejournal.ie/high-court-allows-immigrants-to-challenge-minister-over-undue-delays-482525-Jun2012/>
- O'Dwyer, C. (2011). Family Reunification for Refugees and the Application of Section 29 of the Family Law Act 1995. *The Researcher*, 6(1), 15-20.
- OMI (2008). *Migration Nation - Statement on Integration Strategy and Diversity Management*. Dublin: Office of the Minister for Integration.
- O'Neill, E. (2012). *When is a Refugee not a Refugee?* Last accessed 22 June 2012 from http://www.legalaidboard.ie/lab/publishing.nsf/content/The_Researcher_April_2012_Article_1
- OPMI (2012). *Intercultural Fora*. Last accessed 28 June 2012, from <http://www.integration.ie/website/omi/omiwebv6.nsf/page/infoformigrants-interculturalfora-en>
- OPMI (2008a). *Minister Conor Lenihan Launches the Dublin City Integration Framework*. Last accessed 29 June 2012, at <http://www.integration.ie/website/omi/omiwebv6.nsf/page/CDKR-7N9EK310413613-en>
- OPMI (2008b). *Minister for Integration Launches Action Strategy to support Integrated Workplaces*. Last accessed 29 June 2012, at <http://www.integration.ie/website/omi/omiwebv6.nsf/page/CDKR-7N8LGD15443412-en>
- OPMI (n.d.a). *Racism*. Last accessed 28 June 2012, at <http://www.integration.ie/website/omi/omiwebv6.nsf/page/Racism-en>
- OPMI (n.d.b). *Voting in Ireland*. Last accessed 28 June 2012, at <http://www.integration.ie/website/omi/omiwebv6.nsf/page/infoformigrants-voting-en>
- OPMI (n.d.c). *The Irish Resettlement Process*. Last accessed 10 September 2012, at <http://www.integration.ie/website/omi/omiwebv6.nsf/page/resettlement-irishresettlementproc-en>
- Perry, J. (2005). *Employment Permits Bill 2005: Second Stage (Resumed)*. Houses of the Oireachtas. Last accessed 25 July 2012, at <http://debates.oireachtas.ie/dail/2005/11/10/00007.asp>
- Quinn, E. & Kingston, G. (2012). *Practical Measures for Reducing Irregular Migration: Ireland*. Dublin: European Migration Network.
- Roeder, A. (2012, January 31). *Polish Migration to Ireland – a Literature Review* [unpublished working paper]. Last accessed 22 May 2012, at <http://www.tcd.ie/sociology/assets/docs/>
- Ruhs, M. (2005). *Managing the Immigration and Employment of non-EU Nationals in Ireland*. Dublin: The Policy Institute, Trinity College Dublin & COMPAS.
- Ryan, A. (2005). *Reform Issues in Irish Law and Practice*. (unpublished paper presented at the Law Society of Ireland, 15 October 2005).

- Shatter, A. (2012). *Written Answers – Proposed Legislation* [Dáil Éireann Debate, Vol. 763 No. 2]. Last accessed 22 May 2012, at <http://debates.oireachtas.ie/dail/2012/04/26/00163.asp>
- Shatter, A. (2011a). Statement by Minister for Justice, Equality and Defence, Mr Alan Shatter, TD, on the Implications of the Recent ruling of the Court of Justice of the European Union in the Case of Ruiz Zambrano. Last accessed 9 July 2012, at <http://www.merrionstreet.ie/index.php/2011/03/statement-by-minister-for-justice-equality-and-defence-mr-alan-shatter-td-on-the-implications-of-the-recent-ruling-of-the-court-of-justice-of-the-european-union-in-the-case-of-ruiz-zambrano/>
- Shatter, A. (2011b). *Sham Marriages Leading to Abuses of EU Freedom of Movement Rights*. Last accessed 9 July 2012, at <http://www.inis.gov.ie/en/INIS/Pages/PR11000007>
- Turner, T. (2010). *The Jobs Immigrants Do: Issues of Displacement and Marginalisation in the Irish Labour Market*. *Work, Employment and Society*, 24 (2), 318-336.
- Wickham & Krings (2009). *MCA Newsletter No. 2: After the Boom: Migration and the Irish Construction Sector*. Dublin: MCA Publications.
- Wickremasinghe, D. (2005). Family Issues [oral hearings]. Last accessed 29 June 2012, at http://www.constitution.ie/oral-hearings/family-issues_presentations-21042005/5.asp

2. Legislation & Government Policy

- Agreement Establishing an Association Between the European Economic Community and Turkey (1963). *Official Journal of the European Communities*. Last accessed 30 May 2012, at http://www.ikv.org.tr/pdfs_en/ankaraagreement.pdf
- An Garda Síochána (n.d.). *Immigration*. Last accessed 10 September 2012, at <http://www.garda.ie/controller.aspx?page=31>
- Citizenship Directive 2004/38/EC (2004). *Official Journal of the European Union*. Last accessed 1 June 2012, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:229:0035:0048:en:pdf>
- Civil Partnership and Certain Rights and Obligations of Cohabitants Act* (2010). Last accessed 30 May 2012, at <http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0024.PDF>
- Council Directive 2005/71/EC (2005). *Official Journal of the European Union*. Last accessed 30 May, 2012, at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:EN:PDF>
- Charter of Fundamental Rights of the European Union (2000). *Official Journal of the European Communities*. Last accessed 30 May 2012, at http://www.europarl.europa.eu/charter/pdf/text_en.pdf
- Decision 1/80 of the Association Council of 19 September 1980 on the Development of the Association between the European Economic Community and Turkey* (1980). Last accessed 30 May 2012,

at

http://www.inis.gov.ie/en/INIS/DECISION_No_1_80_eng.pdf/Files/DECISION_No_1_80_eng.pdf

DJEI (2012). *Labour Market Issues Relating to 2005 EU Accession Treaty*. Last accessed 1 September 2012, at <http://www.djei.ie/press/2012/20120720a.htm>

DJEI (2011). *Scheme for Admission of Third Country Researchers to Ireland*. Last accessed 30 May 2012, at <http://www.djei.ie/science/technology/accreditation.htm>

DJELR (2010). *Immigration, Residence and Protection Bill 2010*. Last accessed 1 June 2012, at <http://www.oireachtas.ie/documents/bills28/bills/2010/3810/b3810d.pdf>

DJELR (2008). *Immigration, Residence and Protection Bill 2008*. Last accessed 1 June 2012, at http://www.inis.gov.ie/en/INIS/IRPB_2008.pdf/Files/IRPB_2008.pdf

Employment Permits Act 2006. Last accessed 1 June 2012, at <http://www.djei.ie/publications/labour/2006/emppermitsact2006.pdf>

European Communities (Eligibility for Protection) Regulations 2006. SI 2006/518. Last accessed 1 June 2012, at <http://www.inis.gov.ie/en/INIS/AsylumQual.pdf/Files/AsylumQual.pdf>

European Communities (Free Movement of Persons)(Amendment) 2008. SI 2008/310. Last accessed 1 June 2012, at <http://www.inis.gov.ie/en/INIS/SI%20310%20of%202008.pdf/Files/SI%20310%20of%202008.pdf>

European Communities (Free Movement of Persons) (No. 2) Regulations 2006. SI 2006/656. Last accessed 1 June 2012, at <http://www.inis.gov.ie/en/INIS/SI656of2006.pdf/Files/SI656of2006.pdf>

European Convention on Human Rights (2002). Council of Europe Treaty Series, 5. *European Convention on Human Rights*. Last accessed 30 May 2012, at <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf>

Houses of the Oireachtas (2008). Immigration, Residence and Protection Bill 2008 as initiated and Explanatory Memorandum. Last accessed 11 September 2012, at <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2008/0208/B0208D.pdf>

Immigration Act 2004 (Visas) Order 2012. S.I. 417 of 2012. Last accessed 14 December 2012, at <http://www.inis.gov.ie/en/INIS/SINo417.pdf/Files/SINo417.pdf>

Immigration Act 2004. Last accessed 1 June 2012, at <http://www.irishstatutebook.ie/pdf/2004/en.act.2004.0001.pdf>

Immigration Act 1999. Last accessed 1 June 2012, at <http://www.irishstatutebook.ie/pdf/1999/en.act.1999.0022.pdf>

- INIS (2012a). *Without Condition as to Time Endorsements*. Last accessed 31 May 2012, from Irish Naturalisation and Immigration Service:
http://www.inis.gov.ie/en/INIS/Pages/Without_Condition_As_To_Time_Endorsements
- INIS (2012b). *Immigration in Ireland 2011 – a Year-End Snapshot – Major Changes and More to Follow*. Last accessed 26 June 2012, at:
<http://www.inis.gov.ie/en/INIS/Pages/Immigration%20in%20Ireland%202011%20%E2%80%93%20a%20year-end%20snapshot%20%E2%80%93%20major%20changes%20and%20more%20to%20follow>
- INIS (2012c). *Guidelines for Victims of Domestic Violence*. Last accessed 10 September 2012, at
<http://www.inis.gov.ie/>
- INIS (2011). *Transitional Arrangements Regarding the Placement in Schools of non-EEA Children Not Accompanied by Parents and of Children of non-EEA Students in Ireland*. Last accessed 30 May 2012, at
<http://www.inis.gov.ie/en/INIS/Transitional%20Arrangements%20regarding%20the%20placement%20in%20schools%20of%20non-EEA%20Children%20not%20accompanied%20by%20parents%20and%20of%20children%20.pdf/Files/Transitional%20Arrangements%20regarding%20the%20placement%20in%20schools%20of%20non-EEA%20Children%20not%20accompanied%20by%20parents%20and%20of%20children%20.pdf>
- INIS (2009a). *Student Guidelines - New Immigration Regime for Full Time non-EEA Students*. Last accessed 30 May 2012, at <http://www.inis.gov.ie/en/INIS/Pages/Student%20Guidelines%20-%20New%20Immigration%20Regime%20for%20Full%20Time%20non-EEA%20Students>
- INIS (2009b). *Long Term Residency (Fees) Regulations 2009*. 2009/287. Last accessed 31 May 2012, from Irish Naturalisation and Immigration Service:
<http://www.inis.gov.ie/en/INIS/S.I.%20No.%20287%20of%202009.pdf/Files/S.I.%20No.%20287%20of%202009.pdf>
- INIS (2008). *Explanation of Reasons for Refusal of Visa*. Last accessed July 10, 2012 from
<http://www.inis.gov.ie/en/INIS/RefusalExplainJuly08.pdf/Files/RefusalExplainJuly08.pdf>
- INIS (2006). *European Communities (Eligibility for Protection) Regulations 2006*. Last accessed 31 May 2012, from <http://www.inis.gov.ie/en/JELR/ECR2006160209.pdf/Files/ECR2006160209.pdf>
- INIS (1980). *Decision No 1/80 of the Association Council of 19 September 1980 on the Development of the Association*. Last accessed May 30, 2012, at
http://www.inis.gov.ie/en/INIS/DECISION_No_1_80_eng.pdf/Files/DECISION_No_1_80_eng.pdf
- INIS (n.d.a). *Join Family*. Last accessed 30 May 2012, at
<http://www.inis.gov.ie/en/INIS/Pages/Join%20Family>
- INIS (n.d.b). *Family Reunification FAQ*. Last accessed 30 May 2012, at
http://www.inis.gov.ie/en/INIS/Pages/Family_Reunification_Information_Leaflet#5

INIS (n.d.c). *Long Term Residency*. Last accessed 31 May 2012, from Irish Naturalisation and Immigration Service: http://www.inis.gov.ie/en/INIS/Pages/Long_Term_Residency

INIS (n.d.d). *Spouse of an Irish National/Civil Partnership with an Irish National*. Last accessed 22 June 2012, from <http://www.inis.gov.ie/en/INIS/Pages/WP07000024>

INIS (n.d.e). *Frequently Asked Questions About the Zambrano Judgement*. Last accessed 9 July 2012, at <http://www.inis.gov.ie/en/INIS/Pages/WP11000038>

European Convention on Human Rights Act 2003. Last accessed 30 May 2012, at <http://www.irishstatutebook.ie/2003/en/act/pub/0020/sec0003.html>

National Action Plan Against Racism Steering Group (2003). *Diverse Voices: A Summary of the Outcomes of the Consultative Process and Proposed Framework for the National Action Plan Against Racism*. Last accessed 9 July 2012, at <http://www.nccri.ie/pdf/DiverseVoices.pdf>

Refugee Act 1996 (as amended by the Civil Partnership Act 2010). Last accessed 31 May 2012, at <http://www.irishstatutebook.ie/1996/en/act/pub/0017/print.html>

Long-Term Residents Directive 2003/109/EC . *Official Journal of the European Union*. Last accessed 1 June 2012, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:en:pdf>

Treaty on the Function of the European Union (2010). *Official Journal of the European Union*. Last accessed 30 May 2012, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>

3. Case Law

Alli (A Minor) & Anor v Minister for Justice, Equality & Law Reform [2009] IEHC 595 (High Court of Ireland December 2, 2009). Last accessed 9 July 2012 from <http://courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/9c7510fbe01f5cd48025772f004ac524?OpenDocument>

AO v Minister for Justice, Equality and Law Reform, Ireland and the Attorney General (No.2) [2012] IEHC 79 (High Court of Ireland January 17, 2012). Last accessed 22 October 2012 from http://www.courts.ie/_80256F2B00356A6B.nsf/0/F472C6A080943851802579E4003020C5?Open&Highlight=0,AO,~language_en~

Aslam v MJE & Ors [2011] IEHC 512 (High Court of Ireland December 29, 2011). Last accessed 22 October 2012 from <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/6dbca0c54e97063a802579ab005abdbb?OpenDocument>

Bode (A Minor) v Minister for Justice, Equality & Law Reform & Ors [2007] IESC 62 (Supreme Court of Ireland December 20, 2007). Last accessed 9 July 2012 from <http://ie.vlex.com/vid/bode-minor-justice-equality-law-reform-56491837>

BS v Minister for Justice, Equality and Law Reform [2011] IEHC 417 (High Court of Ireland October 13, 2011). Last accessed 9 July 2012 from <http://www.bailii.org/ie/cases/IEHC/2011/H417.html>

Carlonta Ltd v Commissioner of Works [1943] 2 All E.R. 560

Chakroun v Minister van Buitenlandse Zaken Case C-578/08 (Court of Justice of the European Union March 4, 2010). Last accessed 22 October 2012 from <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d5b32412019c4e4431a2a8c04d31804548.e34KaxiLc3eQc40LaxqMbN4Oa3qLe0?text=&docid=82677&pageIdex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5060921>

Chikhi & Anor -v-MJELR & Ors [2011] IEHC 53 (High Court of Ireland February 18, 2011). Last accessed 9 July 2012 at <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/238ec433a0e2e8f680257863004ee6c4?OpenDocument>

Cirpaci (née McCormack) v The Minister for Justice, Equality and Law Reform [2005] IESC 42 (Supreme Court of Ireland June 20, 2005). Last accessed July 9, 2012 at <http://www.bailii.org/ie/cases/IESC/2005/S42.html>

Decsi & Ors v MJELR [2010] IEHC 342 (High Court of Ireland July 30, 2010). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IEHC/2010/H342.html>

Dimbo v Minister for Justice Equality and Law Reform [2008] IESC 26 (Supreme Court of Ireland May 01, 2008). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IESC/2008/S26.html>

Druzinins [2010] IEHC 84 (High Court of Ireland March 16, 2010). Last accessed July 9, 2012 at <http://ie.vlex.com/vid/druzinins-anor-v-mjelr-195439007>

E.A. & Anor v Minister for Justice & Anor [2012] IEHC 371 (High Court of Ireland September 7, 2012). Last accessed 22 October 2012 at http://www.courts.ie/_80256F2B00356A6B.nsf/0/E563EAE8BDE4C0A880257A7700562E92?Open&Highlight=0,E.A.,~language_en~

Efe & Ors. v MJELR [2011] IEHC 214 (High Court of Ireland June 7, 2011). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IEHC/2011/H214.html>

Emre (No.2) v. Switzerland (Application No. 5056/10, October 11, 2011). Last accessed 19 October 2012 at <http://hudoc.echr.coe.int>

Fajujonu v Minister for Justice [1990] 10 ILRM 234 (Supreme Court of Ireland December 8, 1989). [direct URL not available]

- Gerardo Ruiz Zambrano v Office National de l'Emploi (ONEm)* [2011] EUCEJ C-34/09 (European Court of Justice March 8, 2011). Last accessed 9 July 2012 at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009J0034:EN:HTML>
- Hamza & Anor v MJELR* [2010] IEHC 427 (High Court of Ireland November 25, 2010). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IEHC/2010/H427.html>
- LAJ & Ors v MJELR* (High Court of Ireland November 2, 2011) [unreported].
- Izmailovic & Anor v The Commissioner of An Garda Síochána & Ors* [2011] IEHC 32 (High Court of Ireland January 31, 2011). Last accessed 9 July 9, 2012 at <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/5a4cc9278c675fe08025782c0052cea6?OpenDocument>
- Lamasz & Anor -v- MJELR* [2011] IEHC 50 (High Court of Ireland February 16, 2011). Last accessed 9 July 2012 at <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/0d534d5eb5b161bb80257863004ebbf3?OpenDocument>
- Lobe and Osayande v Minister for Justice, Equality and Law Reform* [2003] 3 ICLMD 57 (Supreme Court of Ireland January 23, 2003). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IESC/2003/3.html>
- M. -v- F.* [2011] IEHC 415 (High Court of Ireland May 27, 2011). Last accessed 9 July 2012 at <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/59e7763b90f5c9f7802579880053db08?OpenDocument>
- M & Ors v MJELR* [2009] IEHC 500, High Court of Ireland November 23, 2009). Last accessed 9 July 2012 at <http://courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/77fcc46a8e68d1be802576bf004de4c1?OpenDocument>
- M. v The Minister for Justice, Equality and Law Reform* [2007] IEHC 234 (High Court of Ireland July 17, 2007). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IEHC/2007/H234.html>
- Marckx v Belgium* [1979-1980] 2 EHRR 330 (European Court of Human Rights June 13, 1979). Last accessed 9 July 2012 at <http://www.bailii.org/eu/cases/ECHR/1979/2.html>
- Meadows -v- Minister for Justice Equality and Law Reform* [2010] IESC (Supreme Court of Ireland January 21, 2010). Last accessed 9 July 2012 at http://ie.vlex.com/vid/meadows-justice-equality-law-reform-74770289?ix_resultado=1.0&query%5Bbuscable_id%5D=IE&query%5Bbuscable_type%5D=Paais&query%5Bq%5D=Meadows+
- Metock and Others v Minister for Justice, Equality and Law Reform* [2008] C-127/08 (High Court of Ireland March 14, 2008). Last accessed 9 July 2012 at <http://www.bailii.org/eu/cases/EUECJ/2008/C12708.html>
- Mohamud & Anor v MJELR* [2011] IEHC 54 (High Court of Ireland February 18, 2011). Last accessed 9 July 2012 at

<http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/6655df2acf08b1e98025785e003519be?OpenDocument>

O. v The Minister for Justice, Equality and Law Reform [2008] IEHC 80 (High Court of Ireland February 19, 2008). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IEHC/2008/H80.html>

O'Donoghue and Others v United Kingdom Application No. 34848/07 (European Court of Human Rights December 14, 2010). Last accessed 22 October 2012 at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-102266>

O'Leary & ors v MJELR [2012] IEHC 80 (High Court of Ireland February 24, 2012). Last accessed 9 July 2012 at <http://courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/8b6a1705251051f2802579eb0049ca63?OpenDocument>

O'Leary & ors v MJELR [2011] IEHC 256 (High Court of Ireland June 30, 2011). Last accessed 9 July 2012 at <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/16a9c141a75b5853802578cb004e71a1?OpenDocument>

Oguekwe v Minister for Justice Equality and Law Reform [2008] IESC 25 (Supreme Court of Ireland May 1, 2008). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IESC/2008/S25.html>

POT v The Minister for Justice, Equality and Law Reform [2008] IEHC 361 (High Court of Ireland November 19, 2008). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IEHC/2008/H361.html>

Raducan v Minister for Justice, Equality and Law Reform [2011] IEHC 224 (High Court of Ireland June 3, 2011). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IEHC/2011/H224.html>

R (On The Application of Baiai and Others) V Secretary of State For The Home Department [2007] EWCA Civ 478 (House of Lords July 3, 2008). Last accessed 10 July 2012 at <http://www.bailii.org/uk/cases/UKHL/2008/53.html>

S. v MJELR [2011] IEHC 92 (High Court of Ireland March 23, 2011). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IEHC/2011/H92.html>

Sivsvade & Ors -v- Minister for Justice & Ors [2012] IEHC 244 (High Court of Ireland, June 21, 2012). Last accessed 19 October 2012 at <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/443e02fda11f041780257a3700377087?OpenDocument>

Saleem & Anor -v- MJELR & Ors [2011] IEHC 49 (High Court of Ireland February 16, 2011). Last accessed 9 July 2012 at <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/6d4865db665f23b18025786200288dda?OpenDocument>

Tagni v MJELR [2010] IEHC 85 (High Court of Ireland March 12, 2010). Last accessed 9 July 2012 at <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/67e4cef1f140317f80257735004ad398?OpenDocument>

U. v Minister for Justice, Equality and Law Reform [2010] IEHC 371 (High Court of Ireland September 29, 2010). Last accessed 9 July 2012 at <http://www.bailii.org/ie/cases/IEHC/2010/H371.html>

X Adeoye v Minister for Justice, Equality and Law Reform (High Court October 25, 2011) [unreported]. Last accessed 10 July 2012 at http://www.emn.ie/cat_search_detail.jsp?clog=6&itemID=360

4. Statistics

CSO (2012a). *This is Ireland: Highlights from Census 2011, Part 1*. Last accessed 21 May 2012, at <http://www.cso.ie/en/census/census2011reports/>

CSO (2012b). *Statistical Tables and Appendices*. Last accessed 21 May 2012, at <http://www.cso.ie/en/media/csoie/census/documents/census2011pdr/Tables%20and%20Appendices.pdf>

CSO (2012c). *Women and Men in Ireland 2011*. Last accessed 20 December 2012, at <http://www.cso.ie/en/media/csoie/releasespublications/documents/otherreleases/2011/Women%20and%20Men%20in%20Ireland%202011.pdf>

CSO (2011). *Components of Population Change*. Last accessed 21 May 2012, at <http://www.cso.ie/en/media/csoie/census/documents/Commentary%20part%202.pdf>

CSO (September 15, 2011). *Population and Migration Estimates: April 2011*. Last accessed 21 May 2012, at <http://www.cso.ie/en/media/csoie/releasespublications/documents/population/current/Population%20and%20Migration%20Estimates%20April%202011.pdf>

Eurostat (2012). *First Permits Issued for Family Reasons by Reason, Length of Validity and Citizenship - Annual Data*. Last accessed 10 July 2012, at http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database

OECD (2011). Ireland. In OECD, *International Migration Outlook 2011* (288–289). Paris: OECD Publishing Retrieved 21 May 2012, at http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/international-migration-outlook-2011/ireland_migr_outlook-2011-24-en

Appendix I – Overview of the Third Country National Residence Categories and Residence Stamps in Ireland⁴⁶

This an outline of the main immigration stamps as currently used by the immigration authorities. The immigration stamp is endorsed in the holder's passport and, in conjunction with the Certificate of Registration issued by GNIB, is evidence of the permission to be in the State.

| Main Residence Stamps | Main categories of Persons permitted to be in the State |
|--|---|
| <p>STAMP O (Temporary and Limited Permission) This person is permitted to remain in Ireland on condition that the holder does not receive State benefits and has private medical insurance. The holder must be fully supported by a sponsor in the State and/or is of independent means. The holder is not entitled to work or engage in a trade, business or profession unless specified in INIS letter.</p> | <ul style="list-style-type: none"> • A service provider sent to Ireland by an overseas company to carry out a particular task for a limited time • An extended visit in exceptional humanitarian circumstances • Visiting academics |
| <p>STAMP 1 This person is permitted to remain in Ireland on conditions that the holder does not enter employment unless the employer has obtained a permit, does not engage in any business or profession without the permission of the Minister for Justice and Equality and does not remain later than a specified date. Generally issued for periods of 1-2 years.</p> | <ul style="list-style-type: none"> • Non-EEA national issued with a work permit • Non-EEA national issued a Green Card Permit • Non-EEA national who have been granted permission to operate a business in the State (Business Permission) • Working Holiday Authorisation holder |
| <p>STAMP 1A This person is permitted to remain in Ireland for the purpose of full time training with a named body until a specified date. Other employment is not allowed.</p> | <ul style="list-style-type: none"> • Non-EEA national studying accountancy |
| <p>STAMP 2 This person is permitted to remain in Ireland to pursue a course of studies on condition that the holder does not engage in any business or profession other than casual employment (defined as 20 hours per week during academic term and up to 40 hours per week during academic holidays) and does not remain later than a specified date. Also the person has no recourse to public funds unless otherwise provided.</p> | <ul style="list-style-type: none"> • Non-EEA national attending a full time course of study |

⁴⁶ Source: INIS: <http://www.inis.gov.ie/en/INIS/Pages/Stamps>

| | |
|--|---|
| <p>STAMP 2A This person is permitted to remain in Ireland to pursue a course of studies on condition that the holder does not enter employment, does not engage in any business or profession, has no recourse to public funds and does not remain later than a specified date.</p> | <ul style="list-style-type: none"> • Non-EEA national attending course of study not recognised by the Department of Education and Science |
| <p>STAMP 3 This person is permitted to remain in Ireland on conditions that the holder does not enter employment, does not engage in any business or profession and does not remain later than a specified date. No recourse to public funds.</p> | <ul style="list-style-type: none"> • Non-EEA visitor • Non-EEA retired person of independent means • Non-EEA Minister of Religion and Member of Religious Order • Non-EEA spouse/dependant of employment permit holder • Two-month Recovery & Reflection period for possible victim of trafficking |
| <p>STAMP 4 This person is permitted to remain in Ireland until a specified date, generally a minimum period of 6 months and up to a maximum period of 5 years. Full access to the labour market permitted. Conditions attaching to residence permit and rights and entitlements to access social protections, education and housing, etc. may vary depending on reason for grant of permit.</p> | <ul style="list-style-type: none"> • Non-EEA spouse/civil or de facto partner of Irish citizen • Refugees/Subsidiary Protection • Non-EEA family member of refugee/subsidiary protection status holder • Non-EEA parent of Irish citizen child • Non-EEA worker having already fulfilled employment permit conditions (Stamp 1) for 2-5 years • Long-Term residents • Six-month Temporary Residence Permit for suspected victim of trafficking |
| <p>STAMP 4 EU FAM This person is permitted to remain in Ireland until a specified date, generally a five year period but can be for lesser period depending on stated activity of EU citizen. Full access to the labour market.</p> | <ul style="list-style-type: none"> • Non-EEA family member of EU citizen where family member qualifies under the European Communities (Free Movement of Persons) Regulations 2006 and 2008 |
| <p>STAMP 5 This person is permitted to remain in Ireland without condition as to time</p> | <ul style="list-style-type: none"> • Legally resident non-EEA nationals having completed eight years legal residence in Ireland. |
| <p>STAMP 6 This person is permitted to remain in Ireland without conditions</p> | <ul style="list-style-type: none"> • Dual nationals |

Appendix II

Applying for Family Reunification – Case Studies

The various chapters of this report have set out the relevant legislation and administrative procedures governing applications for family reunification in Ireland, as well as providing some sense of the issues arising in the Irish context.

In this appendix, the experiences of some of the individual interviewees who have applied for family reunification are set out in more detail. The sample case studies are intended to provide a broader insight in their experiences and perspectives of the initial application process, as well as life in Ireland for themselves and their family after arrival in Ireland. The case studies reflect the experiences of the individuals who consented to participate in this study and do not necessarily reflect the experiences of all migrants living in Ireland who may have applied for family reunification.

Details from these cases studies and the experiences of the other interviewees, as well as quotes, have also been used throughout other chapters to illustrate some of the points made in different sections.

IBC/05 Case Study

P1 is a Nigerian citizen who came to Ireland in 2003 where she was later granted residence status as the parent of an Irish citizen child (IBC/05). She and her husband (**P2**) have five children together (three sons and two daughters), two of whom are Irish citizens. **P2** applied for asylum in 2006 which was refused and a deportation order was made. **P1** applied for family reunification with her husband on the basis of their Irish citizen daughter in 2006. This was refused on the grounds that he had not been resident in Ireland and that the deportation order had not been revoked. **P2** was deported to Nigeria in 2008 while his wife was pregnant with their fifth child. She was left to run their two successful businesses which the couple had established in the meanwhile enabling the family to be wholly self-sufficient and independent of State support. Because **P1** saw herself unable to cope with the cumulative emotional and physical stressors of being a single parent of five young children as well as a dual business owner, she saw herself compelled to close both businesses. She is now in receipt of social welfare benefits. **P2** appealed the deportation order in 2009 and eventually, the case was brought before the High Court. To this date, this case is still pending. Following the *Zambrano* judgement in 2011, **P2** filed a new application to join his family. He was required to provide evidence of paternity. Following the positive results of DNA testing, he was granted Stamp 3 status in 2012 which allows him to reside, yet not to work in Ireland. Eventually, this was changed to a Stamp 4 status.

Both **P1** and **P2** agree that reunification has had a positive impact on their family life as **P2** can now take on what he considers to be his paternal duties. As a result of that, they suggest that their children's psychological well-being has improved considerably which also shows in their academic achievements.

Refugee Case Study

P6 is an Irish citizen from the Democratic Republic of Congo (DRC) who came to Ireland as an asylum seeker in 1997. He was granted refugee status in 1999. He subsequently applied for reunification with his Congolese family including his wife, three daughters and three sons. He was reunited with his family in 2000.

While the application for family reunification was approved the first time, challenges arose during the application process. First, there was no Irish embassy in the then war-torn DRC to which the application could have been made and thus, the application had to be processed in Dublin. Second, the absence of a telephone in his hometown complicated the communication with his family, not least regarding the required documents that needed to be transmitted from DRC to Ireland. Third, because of financial difficulties family reunification was delayed by six months; however, P6 was able to secure the help of the British Red Cross who financed and organised the transfer of the family members. Fourth, concern for the welfare of his family in DRC exacerbated by uncertainty regarding their transfer to Ireland made the delay a difficult experience.

Although P6 now sees himself and his family - who all have become Irish citizens - relatively well integrated and professionally successful, they faced initial obstacles that needed to be overcome. Adequate housing needed to be found to accommodate the whole family. This posed a mainly financial challenge; as his professional qualifications were not recognised in Ireland, P6 returned to university. Further, residing in Ireland involved a period of adjustment to a different climate and culture, but most importantly, a different language. This barrier led to the retro-gradation of P6's children at school by two to three years which was not adjusted subsequently alongside with their linguistic advances. Language difficulties also complicated P6's wife's pursuit of her own professional career.

While P6 feels that he and his family have fulfilled their part of any integration contract, he is adamant that the realisation of integration requires improvements in the areas of language support, education and employment as well as civic rights.

Non-EEA worker/long-term resident

P4 arrived in Ireland in 2005 on the basis of a work permit. He was granted long-term residence in 2010 and has applied for citizenship. Before his current employment, he was exploited by another employer who did not pay his wages on a regular basis. This made it very difficult for him to financially support his family.

He returns to Pakistan every year to visit. Between visits, he keeps in touch with his family via daily telephone calls. The separation from his family has not been easy for him, as he finds himself compelled to put off his children who cry and continue to ask him about his next visit.

P4 had a Stamp 4 for 1 year before applying for family reunification in August 2011. He did not apply sooner because of his uncertain situation when he first arrived and was exploited. He thought the application would be easy as he has lived in Ireland lawfully for five years, working full-time and paying tax. He found it difficult to communicate with the Irish consulate: the fax did not work and no e-copies of documents were accepted. After four months, the application was refused on the grounds of insufficient funds and doubts regarding the authenticity of the documents provided. After he first lodged the application, his residence permit was due for renewal and he submitted a copy of his new registration card. This was rejected on the grounds that it did not match the first registration card, which had expired.

He appealed the decision with the help of a local agent in Pakistan but the appeal was refused in March 2012. He has found this very hard. He feels aggrieved as a law-abiding person separated from his family for six years that the system is not fair. He wonders would it have been easier had he tried

to bring his family through a 'back door'. He is intending to re-apply for one of his sons to come and might use a lawyer this time.

EU citizen

P9 is a Dutch citizen moved to Ireland in 2007 for full-time employment. His wife is Sudanese and they enjoyed a long-distance relationship for five years before marrying overseas in January 2009. After the wedding, they applied for her visa and he returned to Ireland to go back to work after six weeks. As an EU citizen he thought the process would be easy but a few weeks later, the visa was refused on the grounds of insufficient documents (failure to provide translation of marriage certificate). They appealed but the application was refused again for a different reason. The marriage was deemed to have been by 'proxy', meaning that one of them was not considered to be present at the ceremony. This was not actually the case and they had provided proof by way of photos of the occasion and both of their signatures. As there was no further appeal, they re-applied for a new visa but this time they were both more stressed and worried. The visa application was again refused, this time on financial grounds and insufficient documents (failure to provide a tax certificate). On this occasion P9 decided to seek legal advice for the appeal. The visa was approved in August 2009, eight months after they had married and they were very happy to finally be reunited.

After her arrival in the country, she applied for the residence permit and was granted a temporary 6 month residence permit. The application was refused on the grounds that he was not working. Sometime between applying and being determined, he had been made redundant. They got legal advice and applied for a review of the decision arguing that he retained his worker status and should have been considered as a job seeker. However, her initial temporary residence card expired and under a new administrative policy she was only permitted to register temporarily on a Stamp 3, which prohibited her from working. Luckily P9 also found a new job and, eventually, in October 2010, she finally was granted her residence permit for five years.

He describes his wife's first year in Ireland as stressful and filled with worry as she felt no stability and had difficulties looking for work. Throughout the family reunification process they were advised that there were at least five occasions on which they would have had sufficient grounds for seeking relief in the courts but they were reluctant to go this route. Now, with her residence permit she has a right to work and can continue her education and make future plans. The couple now have a young child who is an Irish citizen and are expecting a baby later this year. With children they believe they will be better integrated by meeting people and making friends through the crèche and schools in their local community.

Spouse of Irish citizen

P8 is a US American citizen who came to Ireland on a study permit to pursue a postgraduate degree in 2006 after maintaining a long distance relationship with her now husband - an Irish citizen - for two years during which period she visited Ireland temporarily several times. After her graduation in 2007, she was granted a six months graduate permit, which enabled her to find a temporary job as a maternity leave cover. She perceives the temporality of her residence as their push to get married in order to sustain the relationship.

While she experienced the actual residence application process following her marriage as relatively straightforward and trouble-free – "like signing up for a gym" - she pointed out to the difficulties of accessing clear and concise information which she eventually obtained from GNIB. She was granted a Stamp 4 status for one year initially within the same month of applying in 2008, after which she was

simply required to report back to GNIB. Her residence permission was then renewed for another three years.

Although she acknowledges her residence status in Ireland is relatively stable, she has been considering applying for citizenship instead of continuing to renew her Stamp 4 residence permit. This is because she perceives her status as being entirely dependent on her marriage clashing with the realities and requirements of modern life. She sees this dependency as potentially obstructive to her and her husband's freedoms to be able to live and take up employment outside Irish/European borders if they need or wish to do so, both together and individually. In her husband's current job he may have to relocate temporarily to the Middle East and it is unclear to them both what impact this has on her permission to stay in Ireland during that time or, if she relocates with him temporarily, what impact that will have on her residence history and citizenship application.

P8 feels that her nationality as an American citizen facilitated both the application process and her overall integration into Irish society. However, while this clearly is an advantage to her situation, she also mentions that to her the system seems to treat certain foreign nationals less favorably than others.

Naturalised Irish Citizen

P7 is an Irish citizen of Chinese descent. She and her husband are in full-time employment and they own property in Ireland. They are wholly self-sufficient and independent of State support.

P7's mother is her only close relative remaining in China and while it is not important to her to have her mother – who also maintains relations in China - in Ireland on a permanent basis, she would like her to be able to visit regularly and stay with P7's family for an extended period of time. P7 maintains that her mother is a great help to her, not least because she takes care of her grandchildren during her visits. P7 is concerned about the strain the long journey between Ireland and China puts on her mothers; she is also worried about her children not being able to communicate well with their grand-mother as without practice they tend to unlearn their Chinese again. Further, in her mother's absence, P7 feels compelled to hire a childminder which she describes as difficult for the children.

Between 2001 and 2010, P7 filed an application for a visit visa for her mother at the Irish embassy in China on an annual basis. This allowed her to stay for three months. They applied for an extension on the visa with the Department of Justice during the mother's stay in Ireland. As the application was not approved before her visa was due to expire, P7's mother returned to China within the initial three months timeframe with travel documents provided by the Chinese embassy. When they applied for another visa in the following year, it was refused on the grounds that she had overstayed her previous visa. The decision was appealed and the visa was granted subsequently provided the mother would agree not to overstay three months. P7 reports that the difficulty of visit visas lies within the discretionary nature of the system which leaves her and her mother in the limbo of not knowing whether extensions will be granted or not. It is her experience that extensions are mostly granted, yet sometimes refused. This makes it problematic to make arrangements.

Because of the tiresome nature of the journey, in 2010, they filed an application for residency which was unsuccessful despite P7's assurances that she and her husband are able to provide for her mother so that she will not become a 'burden' on the State.

They filed two more applications for a three months visit visa in 2010 and 2012 followed by an application for an extension which was approved. They are now considering applying for a long-term visa.

This is a report compiled by the Immigrant Council of Ireland between April and October 2012.

It outlines the current legislative and administrative policies and procedures governing applications for family reunification in Ireland. On the basis of in-depth interviews with a range of stakeholders, as well as existing published research, the report also documents the experiences of both migrants and Irish citizens, who have applied for family reunification with family members from outside the EU in relation to integration. Furthermore, the views of service providers and legal practitioners regarding current legislation and policy procedures governing family reunification and integration is also encompassed in the report.

