

Chapter 5: The European context

5.3.1.1 Permanent residence

The Immigration (European Economic Area) (Amendment) Regulations 2012 SI 1547 give effect to *Lassa* [2010] EUECJ C-162/09, *Dia* [2011] EUECJ C-325/09s and *Ziolkowski* [2011] EUECJ C-424/10 by providing that residence under or in accordance with previous regulations does count towards establishing permanent residence.

5.5.3 Extended family members

The Advocate General's opinion in *Rahman* 83/11 March 27th 2012 was that:

(1) The Citizens Directive must be interpreted as requiring the Member States to facilitate entry and residence in their territory for all persons coming within the scope of that provision, which means that the persons concerned have the possibility to obtain a right of entry and residence following an extensive examination of their application, having regard to their personal circumstances and, in the event of a refusal, a sufficiently justified decision which is open to judicial redress procedures. That does not require the Member States to recognise an automatic right of entry and residence for other family members who are nationals of a non-member country and who meet the requirements of Article 10(2)(e) of Directive 2004/38.

(2) A Member State is precluded from refusing a national of a non-member country who comes within the scope of that provision residence in its territory, where that national wishes to reside with a member of his family who is a Union citizen, where such refusal has the effect of unjustifiably impeding the exercise of the right of the Union citizen concerned to move and reside freely within the territory of the Member States or causes a disproportionate impairment of his right to respect for private and family life.

(3) Article 3(2) of Directive 2004/38 confers on other family members who comply with the conditions laid down in that provision the right to rely on it before a national court in order, in particular, to disapply the particular requirements which would restrict its scope.

(4) Article 3(2)(a) of Directive 2004/38 must be interpreted to the effect that:

- it precludes national legislation which limits its scope to other family members who resided in the same State as the Union national before the Union national came to the host Member State;
- the notion of 'dependant' does not imply that dependency existed shortly before the Union citizen moved to the host Member State, and
- it does not preclude national legislation which makes entry and residence for a national of a non-member country subject to conditions as to the nature or duration of dependency, provided that those conditions pursue a legitimate objective, are appropriate for securing the attainment of that objective and do not go beyond what is necessary to attain it.

5.5.5 *Chen* – the self-sufficient child

After a long wait, the Immigration (European Economic Area) (Amendment) Regulations 2012 SI 1547 give effect to the *Chen* judgment. However, the regulations do this by introducing a new category of 'derivative residence' (reg 15A) for parents of children who would qualify for residence rights under the *Chen* judgment. It is doubtful whether this new category has any foundation in EU law.

5.6 Internal effect

The 2012 regulations give effect to *McCarthy* by redefining EEA nationals to exclude those who have dual British nationality.

5.8.2.1 Criminal convictions

In C-348/09 *PI* an Italian national who had lived most of his life in Germany was convicted of very serious child abuse over a sustained period. The CJEU held that it was open to the government to consider that this conduct came within the imperative grounds warranting deportation for someone with more than 10 years residence, partly because there is an EU directive which affirms the seriousness of child abuse.

In deciding whether to deport on imperative grounds, the state must consider whether the personal conduct of the individual represents a genuine, present threat affecting one of the interests of society. This would usually imply a propensity of the individual to act the same way again in the future. This must be checked in the present case because the German authorities were seeking to enforce the deportation order two years after the court had made it.