

# EUROPEAN PARLIAMENT

2004



2009

*Committee on Petitions*

26.09.2008

## NOTICE TO MEMBERS

Subject: **Petition 1307/2007 by Richard Willmer (British), on denial of the right of the wife of a British Citizen exercising treaty rights in Italy to accompany her husband to the UK**

### 1. Summary of petition

The petitioner is a British citizen living in Italy. He is in possession of an Italian Residence card. He married a Russian citizen and his wife was issued a Residence card for a family member of an EU citizen. They wanted to travel to UK to meet the petitioner's father, now resident outside the EEA, who was recently in the UK for a six week visit. It seemed clear to the petitioner that according to Directive 2004/38/EC that his wife could accompany him to the UK for up to three months if in possession of her valid Russian passport and her Italian residence card or solely in possession of their marriage certificate. Unfortunately the UK does not feel bound by the Directive: Article 2 of the Immigration Regulations 2006/1003 (The UK transposition of Directive 2004/38/EK) in breach of article 10 of the Directive states that the only residence card valid for entry in the UK is the one issued by the UK Authorities and not the residence card issued by any Member State. In view of this and to avoid any problems, even though they realised beforehand that his wife needed no visa or EEA Family permit, they began to apply for the latter. UK Visas made available a new EEA Family Permit form which asks for even more extensive documentation from both the EEA National (such as work contract, number of hours worked a month, total income etc) as well as from the family member( expired passports covering the last ten years, criminal records, names and dates of birth of both parents etc) . There is also mention that the family member may be required to provide biometric data ( fingerprints).These requirements go far beyond what is provided for by the Directive and it is the petitioner's understanding that the only documents that can be requested are his valid passport, his wife's valid passport and their marriage certificate. (Note that in the meanwhile, as all these procedures took a long time, his father left the UK). In the end the British authorities conceded that his wife would be permitted to enter the UK without the EEA family permit if she could prove that she was the family member of an EEA national and that the permit served more as a guarantee for the carrier that my wife would not be

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refused admittance than for anything else, which is an absurd reason for which to request a visa. The petitioner contacted both Solvit Italy and Solvit UK. Solvit Italy gave him an answer, after consulting Solvit UK to the sense that he is not covered by the Directive, as he was a British citizen returning to the UK on a visit, while Solvit UK insists my wife must apply for a visa under UK national law.

## **2. Admissibility**

Declared admissible on 5 May 2008. Information requested from Commission under Rule 192(4).

## **3. Commission reply, received on 26 September 2008.**

The petitioner, a UK national residing in Italy with his Russian spouse, alleges that the United Kingdom has breached Directive 2004/38/EC by requiring her to obtain an entry visa and to present a number of supporting documents. He also complains that when he wanted to travel to the UK with his spouse, the airline informed them that they would be refused boarding because the Italian Border Police would not allow his wife to travel to the UK without a visa.

Under Community law, where EU citizens are exercising the right to move and reside freely in the host Member State, their third country family members have the right to accompany or join them there and to obtain an entry visa for that purpose. These rights are derived from the family ties with EU citizens alone.

Although such third country family members may be required to have an entry visa, Article 5(2) of the Directive provides that the host Member State must grant them every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.

Moreover, possession of the valid residence card referred to in Article 10 of the Directive exempts such family members from the visa requirement.

In order to comply with those provisions of the Directive, the United Kingdom brought into force the Immigration (European Economic Area) Regulations 2006. Regulation 11(2) of the 2006 Regulations provides that a person who is not an EEA national must be admitted to the United Kingdom if he or she is a family member of an EEA national and produces on arrival a valid passport and an EEA family permit, a residence card or a permanent residence card.

Regulation 11(2) would appear to comply with Article 5(2) of the Directive. However, the UK authorities seem to interpret this Regulation as exempting from the visa requirement only holders of residence cards issued by the relevant UK authorities.

According to the terms of Article 5(2) of the Directive, in order to be exempt from the visa requirement, it is sufficient for family members to possess a valid residence card issued in accordance with Article 10 of the Directive. This provision is not limited to the Member State that issued the residence card. Such requirement goes beyond what is provided for in the Directive.

With regard to the supporting documents, as the third country family members' right to obtain an entry visa is derived from the family ties only, Member States may only require them to present documents attesting to their identity and family ties with the EU citizen.

The Commission has received several identical complaints, including one by the petitioner, and contacted the UK authorities on this matter on 27 March 2007. The UK authorities replied on 4 June 2007 informing us that they do not share the interpretation given by the Commission of Article 5(2) of the Directive and stating that the supporting documents help embassy staff to verify information provided by the applicants and to process applications as quickly and effectively as possible. The reply confirmed that there is no legal requirement to provide these supporting documents as the EEA family permit must be issued where the Entry Clearance Officer is satisfied that requirements under Regulation 12 of the 2006 Regulations are met. This argument is not fully convincing and the Commission envisages addressing this problem within the framework of the ongoing compliance check of the UK legislation with the Directive.

The petitioner's complaint has been officially registered under reference 2008/4161 in February 2008.

With regard to the refusal of the Italian authorities to let the petitioner's spouse travel to the UK, Article 4(1) of the Directive obliges the Italian authorities to grant third country family members travelling with an EU citizen to a host Member State or joining him/her there leave to leave their territory with a valid passport. In this respect, it is not permitted to restrict this right even when the national authorities consider that the family member concerned does not have a visa required to enter the host Member State.