



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate C: Fundamental rights and Union citizenship
Unit C.2: Union citizenship and Free movement
Head of Unit

Brussels, 07 AOUT 2014

e-mail:

Dear Ms

I refer to your letter of 28 July 2014 concerning the problems you have encountered in the UK which was registered under reference number [redacted] (please quote this reference in any further correspondence).

Article 21(1) of the Treaty on the Functioning of the European Union stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. The respective limitations and conditions are to be found in 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. You can download consolidated version of the Directive in English at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20110616:EN:PDF>.

Under the conditions of the Directive (notably Articles 7(2) and 10 of the Directive), family members can live together with the EU citizen in the host Member State and be issued with a residence card attesting their right of residence.

However, as provided in Article 3(1) of the Directive, this Directive only applies to EU citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them.

EU citizens residing in the Member State of their nationality cannot benefit from the rights granted to EU citizens who exercised the above right and moved to another Member State. However, the Court of Justice of the European Union extended this favourable treatment also to those EU citizens who return to their home Member State after having exercised their right and resided in another Member State¹.

In relation to the rights of returning UK nationals, the applicable UK rules are to be found in the Immigration (European Economic Area) Regulations 2006, as amended.

¹ Judgments of the Court of 7 July 1992 in case C-370/90 *Singh* (Rec.1992, p. 1-4265), of 11 December 2007 in case C-291/05 *Eind* (Rec. 2007, p. 1-10719), and of 12 March 2014 in case C-456/12 *O and S*.

1) Regulation 9 of the 2006 Regulations extends the rights granted in the UK to non-UK EU citizens and also to UK nationals on the condition that the UK national is residing in an EEA State as a worker or self-employed person or was so residing before returning to the UK.

The Commission considers that the case law of the Court covers all EU citizens, regardless of the capacity in which they resided in the host Member State before the return and the capacity in which they will reside in the Member State of their nationality upon return².

In June 2013 the Commission initiated infringement proceedings against the UK under Article 258 of the Treaty on the Functioning of the European Union (TFEU) for failure to transpose EU law on free movement of EU citizens on returning nationals correctly. The proceedings are on-going.

2) Regulation 9 of the 2006 Regulations was further amended by the Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2013 that entered into force on 1 January 2014 and introduced the so-called 'centre of life' requirement.

Regulation 9 of the 2006 Regulations requires that the returning UK national must have transferred the centre of his life to another Member State and that factors relevant to whether the centre of life has been transferred include the period of residence in the host Member State, the location of the UK national's principal residence and the degree of his integration in the host Member State.

From the perspective of EU law, the Court of Justice in its ruling in *O and B* explicitly confirmed that provisions of the Directive apply by analogy upon return to the Member State of origin.

The Court of Justice considered that the derivative right of residence for family members of returning nationals can be subject to certain conditions as to the intention to settle in the host Member State, the quality of residence there and whether the family life was created or strengthened in the host Member State.

In this context, the Court of Justice found that residence in the host Member State pursuant to and in conformity with the conditions set out in Articles 7(1) of the Directive was, in principle, evidence of settling there and therefore of the EU citizen's genuine residence in the host Member State and went hand in hand with creating and strengthening family life in that Member State.

Similarly, residence of non-EU family members pursuant to and in conformity with the conditions set out in Article 7(2) of the Directive creates, on the EU citizen's return to his Member State of origin, a derived right of residence, on the basis of Article 21(1) TFEU, for the family member with whom that EU citizen lived as a family in the host Member State.

It is for the national authorities or courts to determine whether EU citizens have settled in the host Member State and whether, on account of living as a family during that period of genuine residence, their family members enjoyed a derived right of residence there under the Directive.

The UK criterion of having transferred one's centre of life to the host Member State is not contemplated in the Directive and would not appear to be equivalent to the conditions spelt out in *O and B*, in particular where examining the location of the principal residence and the degree of integration in the host Member State. The location on EU citizens' principal residence or their degree of integration do not play any role in examining whether the residence is in line with Article 7 of the Directive.

² This interpretation would appear to be supported by recent judgment of the Court of Justice in case C-456/12 *O and B*, available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-456/12>.

The Commission envisages contacting the UK authorities shortly in relation to the January amendment of Regulation 9 of the 2006 Regulations and asking for their observations on the compliance with EU law on free movement of EU citizens, as interpreted by the Court of Justice.

We will keep you informed about the developments, if you wish so.

The fundamental right of free movement guaranteed by EU law to EU citizens and their family members is the most cherished right in the European Union – considered as practically synonymous with Union citizenship. EU citizens feel understandably distressed when facing obstacles and difficulties where there should be none.

Our enforcement measures with the UK authorities are not likely to be concluded within a short time-frame, in particular before your appeal hearing on I hope that the
information contained in this letter will help you to ensure that your EU rights are duly respected.

Yours sincerely,



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