



AN ROINN DLÍ AGUS CIRT AGUS COMHIONANNAIS  
DEPARTMENT OF JUSTICE AND EQUALITY

**Irish Naturalisation and Immigration Service**



# **Policy Document on Non-EEA Family Reunification**

Irish Naturalisation and Immigration Service  
Department of Justice and Equality  
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## Executive Summary

The purpose of this document is to set out a comprehensive statement of Irish national immigration policy in the area of family reunification. It is recognised that more comprehensive and transparent guidelines are necessary to assist applicants and decision makers in this area. The policies outlined in this document will apply to all decision making in the immigration system in relation to family reunification cases in a harmonised way, incorporating both visa applications and the various leave to remain processes. The document also outlines some recommended administrative changes.

The guidelines do not create or acknowledge any new rights of family reunification. Ministerial discretion applies to most of the decision making in the area of family reunification and this will continue to be the case. It is more a question of providing greater detail on how that discretion is intended to be applied. The guidelines apply only in the area where Ministerial discretion is retained. For that reason, cases of the following type, where rights of reunification are essentially automatic once certain conditions are met, are excluded.

- Claims of entitlement to residence as the family member of EU nationals exercising rights of free movement (these are dealt with under the Free Movement Directive and the Regulations drawn up to give effect to the provisions the Directive)
- Cases involving the spouse and minor children of a refugee or a person granted subsidiary protection.

Family reunification must be seen in a wider context of public policy. Immigration control is the right and responsibility of the elected Government of the day and it may set down immigration policy in the public interest. The

State must strike a fair balance between the sometimes competing interests of the individual and of the community as a whole.

Applications for family reunification will be refused where a party to an application is a threat to public security, public policy or public health. In addition to ensuring that there is no threat to public policy, public security or public health, family reunification should not be an undue burden on the public purse.

Economic considerations are thus a very necessary part of family reunification policy. While it is not proposed that family reunification determinations should become purely financial assessments the State cannot be regarded as having an obligation to subsidise the family concerned and the sponsor must be seen to fulfil their responsibility to provide for his/her family members if they are to be permitted to come to Ireland.

It is intended however that family reunification with an Irish citizen or certain categories of non-EEA persons lawfully resident will be facilitated as far as possible where people meet the criteria set out in this policy although of course each case must be considered on its merits. It is considered as a matter of policy that family reunification contributes towards the integration of foreign nationals in the State. Special consideration will also be given to cases where one of the parties concerned is an Irish citizen child.

The paper sets out how the system should generally deal with certain categories of people who are seeking residence in Ireland based on their relationship with some other person already entitled to be here. The ultimate decision will depend both on the immigration status of the person with an entitlement to reside in Ireland (the sponsor) and the closeness of the relationship with the family member. Family reunification will operate on a differentiated basis depending on these factors.

The onus of proof as to the genuineness of the family relationship rests squarely with the applicant and sponsor whether that person is an Irish national or non-EEA national.

In facilitating family reunification due regard must also be had to the decisions which the family itself has made. If the family has elected to separate for many years it does not follow that the Irish State is obliged to facilitate its reconstitution in Ireland,

While this document does not propose any new or immediate requirements in the area of integration (e.g. language competency or knowledge of Irish society) it is proposed to undertake a further study of this issue on a horizontal basis for all classes of legal migration, looking not just at family reunification

A consolidated approach to the processing of family reunification cases within INIS is also proposed. At present there is no preclearance facility for applications from persons who do not need a visa to travel to Ireland. In such cases the person comes to Ireland and then applies. This is undesirable and it is intended over time that all new family reunification applications will be dealt with by way of application from overseas. There will be a standard application form and a fee (yet to be determined). It is also proposed to establish a central specialist family settlement unit to which all applications for reunification would be referred. Short stay visas for the purpose of family visits would continue to be dealt with through the visa system.

The document sets out the categories of person who may be a sponsor for the purposes of an application for family reunification. In all other cases the applicant will be required to apply in their own right as opposed to being sponsored by another person.

For the purposes of this document the different categorisations of family applied are

(a) Immediate Family

- Nuclear family – Spouse and children under the age of 18;
- de facto partners (for the purposes of this document a de facto relationship is a cohabiting relationship akin to marriage duly attested);

(b) Parents;

(c) Other family.

A standard requirement in all such cases is a clear commitment from both parties that they will live together permanently as husband and wife, civil partners or de facto partners immediately following the outcome of the application in question or as soon as circumstances permit. Spouses must be a minimum 18 years of age. Consideration was given to imposing a higher threshold of 21 but this was decided against. All marriages must be legally contracted, freely entered into and with both parties free to marry at the date of the marriage. The marriage must also be capable of recognition under Irish law for other purposes outside of the immigration system.

The document also sets out how dependency is measured where this is adduced in support of an application for family reunification.

It is intended to adopt a targeted and streamlined approach as regards residency requirements for non-EEA sponsors, with high skilled workers, entrepreneurs, researchers and others able to apply immediately for family reunification on behalf of their family members. A 2 year waiting time is applied in the case of certain other categories.

Reflecting the balance of interests referred to and the economic factors that must bear on decision making, sponsors will have to achieve minimum levels of earnings prior to being eligible to sponsor a family member. This will be set at a cumulative gross earnings figure of €40k over 3 years where the sponsor is

an Irish citizen and a higher level where the sponsor is a non-EEA national. Social welfare payments will not be reckonable as earnings for this purpose.

The financial thresholds will rise significantly where the application is made in respect of a dependent elderly parent. Any grant of immigration status in such cases will be subject to strict conditions aimed at protecting the public purse. These will include medical insurance and financial guarantees.

The document also addresses the situation where an application is made on the basis of parentage of an Irish citizen child. Such cases do not fall strictly into the category of family reunification or settlement since the child cannot be a sponsor, however it was considered important to make provision for them in the document. Clearly not all cases are the same and each has to be looked at in the light of the factual circumstances and the best interests of the child. While it is not possible to be prescriptive in advance of the circumstances of the case being considered, it is intended as a matter of general policy, to grant immigration permission where the parent can demonstrate that an active and continuous involvement in the citizen child's life, providing real emotional and/or financial support.

In cases involving persons who have been granted refugee status or subsidiary protection the reunification of immediate family members is already dealt with under the 1996 Refugee Act. However the Minister has discretion to grant immigration status to other dependent family members of a refugee. There are already procedures in place for assessing applications in respect of dependants of refugees and persons granted subsidiary protection. This includes a detailed questionnaire issued and assessed by the Office of the Refugee Application Commissioner. These will continue to apply.

In any decision to refuse an application, reasons shall be given. Where an application is refused the applicant may appeal the decision to INIS. The appeal will be considered within the parameters of the policy set out in this



document. As set out in the Programme for Government, it is intended to establish a statutory appeals system. This will be done through provisions in the Immigration Residence and Protection Bill. When this statutory appeals system is in place, applications for family reunification will be incorporated into it.

Immediate family members of Irish citizens granted immigration status through the family reunification process will have the right to work without employment permits and to establish or manage/operate a business in the State. They should receive a Stamp 4 immigration permission. Immediate family members of non-EEA sponsors or non-immediate family of Irish Citizens will, if granted immigration permission, continue to be subject to the employment permit requirements as operated by the Department of Jobs, Enterprise and Innovation. They will be entitled to apply for immigration status in their own right under the various channels available (student, work permit, business permission etc.)

The 2004 Immigration Act does not provide for the registration of children aged under 16. The Immigration Residence and Protection Bill intends to abolish this limitation. However, in the interim, it is now proposed as part of policy on family reunification to provide for specific immigration permission for such children on an administrative basis. This will allow the children to establish their personal residence history at an earlier date.

Any entitlement to residence obtained through family reunification obtained as a result of fraud, false information or misrepresentation or abuse of rights (including by way of marriage of convenience) shall be forfeit and no immigration benefit may be accrued from time spent in Ireland on this basis.

Applications (assuming all required information has been submitted) should ideally be dealt with within 6 months or 12 months of application depending on the category.

The broad guidelines set out in this document, which will be supplemented where necessary by more detailed material on the website of the Irish Naturalisation and Immigration Service (INIS), will apply from 1 January 2014. Administrative changes recommended in the document will be implemented over time.

## **Part 1**

### **General Orientation**

#### **1. Introduction**

- 1.1 The purpose of this document is to set out a statement of Irish national immigration policy in the area of family reunification. In particular, it will outline in a more transparent manner the way in which the Irish Naturalisation and Immigration Service and the Immigration system generally will deal with cases involving issues of family reunification. The document is in two Parts. Part 1 provides the context within which family reunification policy is set down. Part 2 consists of a more detailed analysis of the individual policy issues arising and then sets down guidelines for dealing with family reunification cases, including certain organisational changes.
- 1.2 Immigration on a significant scale is a relatively recent phenomenon in Ireland. Between the 2002 census and that of 2011 the percentage of non-Irish people resident in the State rose from 5.8% to 12%. While much of the increase was attributable to EU accession by 12 additional States, the population from third countries has also increased significantly in recent years. Consistent with the experience of other migration destination countries, this leads to an increase in demand for family reunification and such cases will inevitably form a major part of the immigration case load. Understandably it is also a matter of key importance to migrants themselves.

- 1.3 At present there is no single overarching written policy in place. That is not to say that no policy exists, or that none is applied but rather the policy is contained not within a central immigration code but rather in a patchwork of guidelines, policy directions and elements of custom and practice, in addition to legal and other precedents across the immigration system. This potentially provides for both gaps and anomalies. What is needed therefore is an overarching set of principles that apply in family reunification cases across the immigration system. However it is not intended that family reunification decisions merely become a box-ticking exercise where decisions are made automatically. Instead the focus will be on establishing clearer consistent parameters within which all individual decision makers can operate covering visas and the various “leave to remain” considerations that are made in different parts of the organisation. Decisions must of course continue to be made on the basis of consideration of all of the relevant facts of a particular case.
- 1.4. Ireland (like the UK) does not participate in the EU Directive on Family Reunification.<sup>1</sup> Therefore, family reunification is solely a matter of national immigration policy and subject to the jurisdiction of the Irish Courts. However, even the EU Directive, while providing a common framework, leaves a large amount of discretion to national immigration systems. By and large the national policy set out in this document will cover the same ground as in the EU instrument. Regard has also been had in the preparation of this document to the comparative systems and practices in other common law jurisdictions where those are relevant to the Irish situation.
- 1.5 The scope of this document is limited to family reunification determinations that are made on the basis of Ministerial discretion in exercise of Irish immigration policy. Cases where the rights of the

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<sup>1</sup> Council Directive 2003/86/EC on the right to family reunification

individual and the rules that apply regarding applications are already set out in legislation will not be covered. The two categories excluded from scope on this basis are

- Claims of entitlement to residence as the family member of EU nationals exercising rights of free movement (these are dealt with under the Free Movement Directive and the Regulations drawn up to give effect to the provisions the Directive)
- Cases involving the spouse minor children and dependents of a refugee or a person granted subsidiary protection.

1.6 The purpose of the document is not to circumscribe Ministerial discretion, which will of course remain but rather to locate it in the overall framework where the elected Government of the day determines immigration policy and then sets out how that policy might apply in individual cases. In other words the Minister's discretion will be largely exercised through setting down overall policies and parameters with some margin of appreciation retained by decision makers in exercising their professional judgement on the Minister's behalf.

1.7 It is also important to remember that family reunification must be seen in a wider context of public policy where there are often competing social and particularly economic interests. Thus the fact that it may be to the benefit of a family with non-EEA family members to reside together in Ireland does not necessarily mean that the correct public policy response is to facilitate this request. In considering applications from family members INIS must, of course, establish at the outset that there is a genuine family relationship in existence. In relation to considering the interests of the community as a whole INIS must ensure, as far as possible, that there is no threat to public policy, public security or public health, that there is no abuse of family reunification

arrangements and that there is not an undue burden placed on the taxpayer by family members seeking to reside in the State. This is in addition, in individual cases, to remaining vigilant against trafficking or smuggling, ensuring that consent of the parties is freely given and that, in the case of children, there is full parental consent to their coming to live in Ireland. See Appendix B.

- 1.8 It is intended however that family reunification with an Irish citizen or certain categories of non-EEA persons lawfully resident will be facilitated as far as possible where people meet the criteria set out in this policy. It is considered as a matter of policy that family reunification contributes towards the integration of foreign nationals in the State. Special consideration will also be given to cases where one of the parties concerned is an Irish citizen child.
- 1.9 It should be recalled that the family reunification channel is not the only option open to a person seeking to reside in Ireland with a family member. There exist a variety of other immigration channels whereby a person may qualify for Irish residence in their own right, as a worker, student or otherwise. The arrangements set out here are without prejudice to the right of the foreign national to apply on other grounds.
- 1.10 This document deals with the question of entry to the State and to the initial decision in family reunification. It does not address issues of renewal of permission other than in general terms.
- 1.11 It is also clearly the case that issues involving family rights will arise in other proceedings, in particular those arising under Section 3 of the 1999 Immigration Act. In such proceedings the central issue is that of possible deportation of a foreign national and a key, though not exclusive, consideration is the implications for the family unit of such deportation. It is not proposed to set down parameters for such cases in this

document nor would it be desirable to do so. Cases involving deportation must be considered on the basis of all relevant factors and each case will have certain elements that might distinguish it from others.

- 1.12 While this document sets down guidelines for the processing of cases, it is intended that decision makers will retain the discretion to grant family reunification in cases that on the face of it do not appear to meet the requirements of the policy. This is to allow the system to deal with those rare cases that present an exceptional set of circumstances, normally humanitarian, that would suggest that the appropriate and proportionate decision should be positive.

## **2. A Balancing of Rights**

- 2.1 The European Convention on Human Rights Act 2003 requires all State authorities to perform their functions in a manner compatible with the Convention. The right to respect for family life within the meaning of Article 8 of the European Convention on Human Rights and Fundamental Freedoms places both positively and negatively stated obligations on the State. The right to live with one's close family may result in negatively stated Convention obligations when, for example, the deportation of a family member would breach the family's rights, or may be positive when the family member ought to be allowed enter and reside in the State. The policy set out in this document addresses the latter element insofar as the family members are seeking to enter and reside in Ireland.
- 2.2 It is important not to confuse rights to family life with rights to family reunification. The Convention does not give an automatic right to a foreign national to enter or to reside in a particular country. This has been confirmed repeatedly by the European Court of Human Rights and, further, the Court has said that the State must strike a fair balance between the sometimes competing interests of the individual and of the community as a whole (this issue is revisited further on in this paper in relation to the economic aspects of family reunification). In this the state enjoys a wide margin of appreciation. The Court has also stated that Article 8 does not entail a general obligation for a State to respect immigrants' choice of the country of their residence and to authorise family reunion in its territory.
- 2.3 In similar manner, the status of the family enshrined in Article 41 of the Irish Constitution bears on immigration decisions. Once again, however, this Article does not stand alone and cannot be construed as predetermining the outcome of individual cases.





### 3. Government Policy Choices

- 3.1 As outlined in the Supreme Court judgement in the Bode<sup>2</sup> case, immigration control is the right and responsibility of the Government of the day. Moreover the Court found that immigration is not a right but rather a “gift” of the State. The exercise of that right on behalf of the State, or the way in which the State dispenses the immigration gift is not a matter of absolute discretion. It is subject to the Constitution, the European Convention on Human rights, as described above, and such statute law as exists. Immigration decisions must be proportionate and not capricious. Everyone is entitled to fair procedure, overseen via judicial review before the courts.
- 3.2 Nevertheless it is the prerogative of the elected Government to set down immigration policy in the public interest. That public interest consideration involves necessary trade-offs between competing interests. Decisions in individual cases are then made within the parameters outlined in Government policy.
- 3.3 It follows therefore that this policy document does not create or acknowledge a free standing right of family reunification but rather sets out how, as a matter of policy, the State intends to deal with family reunification cases, in accordance with public policy and in observance of constitutional, ECHR and other rights of the parties and of society in general.

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<sup>2</sup> Bode (A Minor) -v- Minister for Justice, Equality & Law Reform & Ors, [2007] IESC 62 (2007)., Supreme Court [S.C. No: 485 of 2006]

## **Part 2**

### **Family Reunification Policy**

#### **A. Key Policy issues**

##### **4. Nature of Family?**

4.1 This paper does not attempt to establish a rigid definition of what constitutes a family. Any references to family should therefore be read in a vernacular as opposed to strict legal sense. What the paper will do however is set out how the system should generally deal with certain categories of people who are seeking migration to Ireland based on their relationship with some other person already entitled to be here. Not all categories of family member are covered by this policy. However it is important to bear in mind that any person is potentially free to make an application to the Minister for permission to reside in Ireland in their own right and also to adduce inter alia in their application any relationships of blood or otherwise with an Irish national or resident.

4.2 At the same time, and while the term “family member” may be capable of being read very broadly, not all family members have the same standing. This is long established in many spheres including succession, marriage and immigration (including matters relating to the Free Movement of Persons within the EU). It follows that in any analysis of how a person might expect to fare in an immigration determination, and without prejudice to a detailed consideration of individual

circumstances arising in the particular case, there must be deemed to exist a sliding scale of relationships with those having the closest connection generally having the greatest call on a positive outcome to an immigration determination, all other things being equal. It is also entirely reasonable in public policy terms to “set the bar” for family reunification much higher where more distant relationships are involved to the point that the prospects of success in certain cases must be regarded as remote unless very exceptional circumstances exist.

- 4.3 With this in mind this document sets down broad policy guidelines for the main categories of family relationships and also to outline some broader parameters for dealing with more distant relationships.
- 4.4 It is not proposed that domestic staff or unrelated members of the general household would be covered by this policy. Domestic staff, irrespective of whether they live with the family or how long they have been part of the household, would be subject to the employment permits regime and have to apply, independently and in their own right, as workers rather than as a member of the household. Such applications for employment permits would be considered on their merits. As a matter of public policy however, migration for the purposes of domestic service, is not encouraged and the employment terms and conditions that a domestic worker is entitled to in Ireland may be radically different from those in the country of origin.
- 4.5 Some account must also be taken of the circumstances of any family separation and the actual relationship between the parties. In this regard, a family member who has been long separated from a person resident in Ireland may have a weaker claim on reunification than one where the parties have until recently been a close family unit. A family that has voluntarily sundered itself as a speculative means of securing

Irish residence for one member must also dilute its own claims to reconstitution as a unit in Ireland (see Section 6 of this document)

- 4.6 In all immigration matters, as a matter of policy if not of law, a civil partnership contracted in Ireland, or an overseas civil partnership recognised in Irish law, is treated as being fully equivalent to marriage.

## 5. Differentiated Family Reunification

- 5.1 The outcome of an immigration decision in the area of family reunification depends on a number of factors. One of these is the security of the residence of the person with whom they seek to be reunited. For the purposes of this document those persons are referred to as the sponsor. Immigration status is not uniform, ranging from limited or conditional permissions at the lower end of the scale up to long term residence without condition. The most secure status of all is obviously that of a citizen. It is considered the policy adopted should reflect the differing levels of tenure of the sponsor. However family reunification can never become automatic or unconditional and it would be undesirable if family reunification were seen to be happening “over the head” of the elected Government or in a manner that is inimical to its stated public policy.
- 5.2 Where the sponsor is a non-EEA national it is intended that different access to family reunification will generally be granted depending on the immigration status of the sponsor. These will range from student cases, where access to family reunification is either not permitted or highly restricted, to more generous provisions for persons, for example with long term residence status.
- 5.3 Irrespective of the status of the sponsor, family reunification in all cases must be subject to proper checks and balances against immigration abuse, such as marriage of convenience<sup>3</sup>, and each case must be looked at on its merits, taking into account the immigration history of the parties and also the general issues of social and economic policy. The onus of proof as to the genuineness of the family relationship rests squarely with the applicant and sponsor whether that person is an Irish

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<sup>3</sup> A marriage of convenience for the purposes of this document is defined as a marriage entered into for the predominant purpose of obtaining an immigration advantage for one of the parties.

national or non-EEA national. This policy will not affect the visa requirement for those coming from countries where such applies<sup>4</sup>.

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<sup>4</sup> A list of currently visa required countries is contained at  
[http://www.inis.gov.ie/en/INIS/\(List%20of%20Countries\)%20S.I.%20417%20of%202012%20Schedule%201.pdf/Files/\(List%20of%20Countries\)%20S.I.%20417%20of%202012%20Schedule%201.pdf](http://www.inis.gov.ie/en/INIS/(List%20of%20Countries)%20S.I.%20417%20of%202012%20Schedule%201.pdf/Files/(List%20of%20Countries)%20S.I.%20417%20of%202012%20Schedule%201.pdf)

## **6. Reconstituting the Family Unit**

- 6.1 In some cases, for economic or other reasons, a family may remain separate for a long time, in some instances for many years. One member may go abroad to work and to continue to support the family in their home country via remittances. Ireland's fairly short history as a country of immigration destination has also evidenced significant levels of migration where one individual comes to Ireland, leaving family behind, and seeks to secure leave to remain, in some cases following a lengthy legal process. It is legitimate in such cases, without undermining the validity of the residence of the migrant who may have ultimately become naturalised or impugning their actions, to take account of the fact that the family has elected to separate. Moreover, the longer the elective separation, the weaker must be the claim to reconstitution of the family in Ireland. It is not intended to be prescriptive in respect of this issue but rather to highlight it as a highly relevant consideration in any case processing.
- 6.2 It might also be recalled that in some cases leave to remain in Ireland was granted by the Minister subject to the express limitation that no rights to be joined by spouse or other family member would flow from the status being granted. Therefore, the family must be deemed to have made an informed choice in favour of Irish immigration status for certain members over the alternative of all residing together in their country of origin.



## **7. Public Security, Public Policy and Public Health**

- 7.1 A critical element in all immigration decisions is the protection of the State, its citizens and persons present within it. Applications for family reunification will be refused where a party to an application is a threat to public security, public policy or public health.
- 7.2 It is not proposed to provide rigid definitions of these concepts which must in any case be taken to have their common meaning. However by way of example a person could be refused on grounds of public security if they posed a threat to the State or another State through terrorism or support of terrorist activities, if they posed a threat of incitement to hatred, if they posed a risk of criminal behaviour, of violence against one or more persons. A criminal record will not automatically exclude a person from consideration for family reunification but it clearly is highly influential in any consideration of the merits of the individual case.
- 7.3 Public policy is a broader term and would add concepts such as the economic and social wellbeing of the State. Immigration policy is not made in isolation, but is informed by a wide range of government policies in different areas. Concerns of public policy should inform all immigration decisions and this applies also in the case of family reunification. The State is entitled to have an immigration policy and to change that policy from time to time in accordance with its wider public policy interests.
- 7.3 Public health considerations primarily arise in the context of contagious diseases for instance in the case of a pandemic or where diseases are subject to the International Health Regulations for the time being adopted by the World Health Assembly of the World Health Organisation.



## 8. Economic Impact

- 8.1 Immigration can bring significant economic advantages by growing the domestic market for goods and services and through the direct contributions of migrant workers both in terms of output and taxation. At the same time there can be substantial costs in terms of education<sup>5</sup>, housing, healthcare and welfare arising from family migration. Economic considerations are therefore a very necessary part of family reunification policy.
- 8.2 However the immigration authorities do not determine eligibility for State funded services and in many cases, particularly as regards social welfare payments, the eligibility conditions are the same for Irish citizens as for migrants. If entitlement becomes a given for any person who meets certain residency requirements then expenditure control must inevitably become front-loaded through the immigration system. In other words, the immigration system must restrict entry to significant numbers of persons who if allowed to come to Ireland would give rise to substantial liabilities in terms of State services. At the same time, when a person is granted immigration permission and it is made conditional on not being a burden on the State, failure to abide by this condition may lead to termination of permission, notwithstanding any eligibility rules that may be in place by State sector providers of services as regards access to those services. This represents what might be referred to as an “immigration Contract”.
- 8.3 It is not proposed that family reunification determinations should become purely financial assessments. Nevertheless, the State cannot be regarded as having an obligation to subsidise the family concerned and the sponsor must be seen to fulfil their responsibility to provide for his/her family members if they are to be permitted to come to Ireland.

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<sup>5</sup> Estimated at €8K approx per child p.a – source: Dept. Education and Skills

Where the sponsor, is an Irish citizen the economic assessment would be less onerous than for non-EEA sponsors.

- 8.4 It is a question of finding the correct balance between rights and responsibilities. All other things being equal however, a non-EEA resident of Ireland in active well paid employment will have a considerably greater opportunity of being joined by family members than a person who is subsisting on State supports. Indeed a person who is unable to support him/herself cannot expect the State to assume the necessary financial obligations on his/her behalf.
- 8.5 Further matters that require consideration include, whether family reunification should be immediate or instead be subject to some form of probationary period. At present family reunification for the holders of "Green Card" employment permits is immediate. This is based on a number of assumptions that may or may not turn out to be well founded. These are: that the employment will be sustained, that the salary level will be realised and that it is sufficient to maintain the family. Given that some categories of green card holder will be obtaining a salary of just €30k it is considered that the current policy requires some refinement.

## 9. Integration Requirements

- 9.1. Integration related requirements have become increasingly common in other EU jurisdictions when dealing with family reunification cases. Other than signalling an intention to introduce language competency as a requirement for citizenship and long term residence, such provisions have been absent from the Irish immigration framework. While this document does not propose any new or immediate requirements in this area it does recognise the legitimacy of such provisions. As a basic level, and avoiding getting into definitions of what constitutes “integration”, it is highly undesirable that migrants should live for extended periods or permanently in Ireland without being able to speak English. Indeed most immigration channels to Ireland for non-EEA persons have either an explicit (e.g. students on academic programmes) or implicit (e.g. in the case of foreign workers) language requirement. It is reasonable to incorporate such a test into the immigration system for family reunification cases also.
- 9.2 It is proposed to undertake a further study of this issue on a horizontal basis for all classes of legal migration, looking not just at family reunification. Among the issues to be considered will be the level of language competence required and whether this competence should be attained before travelling to Ireland or within a set (probationary) time thereafter. It should also consider the question of whether tests of knowledge of Irish society and culture should become a feature of the immigration system and, if so, at what points (e.g. at citizenship stage or perhaps earlier). These tests have been used in a number of other jurisdictions.

## 10. Preclearance

10.1 Unlike the position in the UK or in the Schengen zone, the rules for visa requirements in Ireland do not distinguish between short and long term stays. A foreign national is either visa required or visa exempt, irrespective of the length of stay or its purpose. As a result, family reunification applications from non visa required persons are made only when the person is already in Ireland. This gives rise to a number of problems including:

- Lack of certainty for the applicant;
- The maximum stay on an entry permission is 90 days which is an unreasonably short time to deal with a complicated application and a decision that will have significant consequences. In addition, the applicant may seek to remain (legally or illegally) while the case is being considered;
- Family reunification cases are considered by more than one Unit in INIS which gives rise to potential inconsistencies of approach;
- Where family reunification is refused the applicant is already in Ireland and then may become a problem and could involve lengthy and costly deportation proceedings that could have been avoided.
- The potential for abuse of short stay visa applications, ostensibly for short family visits or tourism, as a means of gaining access to the State in order to make an application for residence sur place on a more permanent basis.

10.2 This is an unsatisfactory situation and there is a strong case for putting in place a formal visa requirement for long stays or some alternative pre clearance process. Moreover there is a clear argument in favour of having a single family reunification Unit within INIS to consider all family reunification cases for both visa free and visa required countries. Theoretically all family reunification applicants could

become visa required but in practice this would be virtually impossible to achieve if other forms of long stay permissions did not have a similar visa requirement<sup>6</sup>. Therefore it is planned that INIS establish a centralised Family Settlement Unit which will deal with all applications. Short stay visas for the purpose of family visits would continue to be dealt with through the visa system.

- 10.3 While it is envisaged that pre-clearance is the most appropriate way in which to proceed in this area, there will inevitably be cases where the applicant seeks to apply from within the State. One category where it is obviously permissible to apply from within the State is comprised of persons who already have a residence status in their own right but of an inferior or more restricted nature (for example, as a student) and they seek to “upgrade” this on the basis of their relationship with, say, an Irish citizen. Beyond this group however the general policy should be to refuse to accept applications from within the State except in cases where there are special humanitarian circumstances. It may also be appropriate to operate a higher fee for in-country applications. These provisions relate to family reunification applications only and are without prejudice to any possibilities the foreign national might have to apply for an upgrade or extension of their status in their own right (i.e. not based on their relationship with another person).

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<sup>6</sup> Bearing in mind that the visa requirement has to be implemented by carriers when deciding to permit passengers to travel.

## **11. Processing & Fees**

- 11.1 Irrespective of whether some form of family reunification pre-clearance is introduced, it is proposed that all cases should be the subject of a standardised application form. The introduction of an application form is required as it puts visa required and non visa nationals on the same level in terms of fully setting out their circumstances in order to obtain a family Reunification status. It also ensures transparent and consistent information gathering which will assist both the applicant and the official considering the case.
- 11.2 Family reunification applications are among the most labour intensive in the immigration caseload. At present however the only fee charged (other than the standard registration fee for successful applicants) is in respect of a D visit visa (€60). This situation needs to be reviewed and a much more realistic approach taken in respect of costs.



## **B. Detailed Guidelines**

### **12 Qualified Sponsor**

- 12.1 At present family reunification decisions are made on the basis of a connection between the person seeking residence in Ireland and some other person who has a status within the State (either as a citizen or a non-EEA resident). This person is referred to as the sponsor. The application is seen as a joint undertaking and pursuant to a shared wish that the applicant be allowed to live in Ireland. However the term “sponsor” cannot be an empty one. That person must be seen as assuming certain responsibility for the family member they are seeking to bring to live in Ireland. It is intended in any event to formalise the role and responsibilities of sponsor within the system.
- 12.2 An application for family reunification should be made jointly by the sponsor and the family member where the latter is an adult and by the sponsor only in the case of a child.
- 12.3 The Sponsor of an application for Family Reunification may be one of the following
- an Irish citizen residing or intending to reside in Ireland;
  - A lawfully resident foreign national as an Employment Permit Holder<sup>7</sup>;
  - A lawfully resident foreign national with an immigration stamp 4 (including long term residents). Where the Stamp 4 holder is a refugee or person granted subsidiary protection, section 20 of this document applies;
  - A lawfully resident foreign national with an immigration stamp 5 (denoting that their residence is without condition as to time);

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<sup>7</sup> This includes those holding what are referred to as “Green Card” Employment Permits

- a Researcher under a Hosting Agreement;
- a PhD student studying for a doctorate accredited in Ireland;
- a Minister of Religion with an immigration Stamp 3.

Eligibility to make application as a sponsor in no way prejudices the outcome of the application or confers of itself an entitlement to obtain family reunification.

12.4 In all other cases the applicant will be required to apply in their own right as opposed to being sponsored by another person. This does not however prevent their including in the set of relevant circumstances pertaining to their application a relationship with another person resident in Ireland or entitled to be so.

12.5 Persons who are resident in Ireland as students, other than those pursuing a PhD, are not currently eligible as sponsors. There are some limited exceptions provided in respect of students, for instances where they come within a scholarship programme from another country. However it is considered there may be other students who would be in a position to make full financial provision for their dependents during their stay and that such persons could also be eligible to act as sponsors although perhaps not in the initial stages of their stay. However once the student has demonstrated academic progress and evidence of the necessary funds to support family members then they could be permitted to be joined by family members. This category of student would need to be pursuing an Irish degree award<sup>8</sup> at a minimum of honours bachelor level<sup>9</sup>. The specific details as regards eligibility will be addressed, by way of amendment, under the separate immigration policy arrangements for international students<sup>10</sup>.

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<sup>8</sup> E.g. HETAC

<sup>9</sup> Level 8 and above on the National Framework of Qualifications

<sup>10</sup> New Immigration Regime For Full Time Non-EEA Students

[http://www.inis.gov.ie/en/INIS/Students%20BookletA4%20\(white%20cover\)%20sept%202010.pdf/Files/Students%20BookletA4%20\(white%20cover\)%20sept%202010.pdf](http://www.inis.gov.ie/en/INIS/Students%20BookletA4%20(white%20cover)%20sept%202010.pdf/Files/Students%20BookletA4%20(white%20cover)%20sept%202010.pdf)



## 13 Family Member

13.1 An application for family reunification is a function of two people, namely the sponsor and the family member and is based on their association. Not all family members have the same potential access to family reunification and there is also differentiation among the various category of sponsor. Therefore, combining both elements, the probability of success must inevitably vary considerably. For instance, an application for family reunification of the spouse of an Irish national will have a much stronger case than that of a sibling seeking reunification with a non-EEA national.

13.2 For the purposes of this document, the different categorisations of family applied are:

(a) Immediate Family

- Nuclear family – Spouse and children under the age of 18<sup>11</sup>;
- de facto partners (for the purposes of this document a de facto relationship is a cohabiting relationship akin to marriage duly attested);

(b) Parents;

(c) Other family.

13.3 A person aged over 18 years of age would be permitted to apply where he/she is dependant on the care of the parent sponsor, directly or indirectly, due to a serious medical or psychological problem which makes independent life in the home country impossible. Adopted children and children in the care of a sponsor are included in this definition provided that the adoptions are recognised under Irish law. In the latter cases INIS may undertake an extensive examination of the

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<sup>11</sup> This can be extended to a maximum age of 23 where the child is in full time education and remains dependent on the parent

circumstances to confirm that the sponsor is caring for the child and, where relevant, that the other parent has agreed to the child's move to Ireland. In cases involving a child, the best interests of that child will be a key consideration in any decision made.

13.4 The onus will be on the applicants for family reunification to satisfy the immigration authorities that the familial relationship is as claimed. This is particularly important where children are involved. In certain cases where reasonable doubt exists, the parties may be asked to provide DNA evidence in support of the claimed relationship. Guidelines regarding DNA evidence and the circumstances in which it might be used are set out in Appendix A.

13.5 Adopted children are dealt with in the same manner in family reunification cases as other children. In addition to the regular considerations regarding children, the key considerations are that:

- the adoption has either been carried out in Ireland or, in the case of foreign adoption, is recognised under Irish law;
- there has been a genuine and complete transfer of parental responsibility, with emotional and financial support now provided by the adoptive parents;
- the adopted child has the same rights as any other child of the adoptive parents
- the child is under 18 years of age.

13.6 It is not intended to address the question of surrogacy in this paper not least given that the legal position in that respect is evolving. However when all matters relating to parenthood have been established in accordance with the applicable law and based on the facts of the case then the general principles set out in this document would apply.

13.6 It is recognised that as marriages end and other relationships form there will be households that include children other than those of the sponsor. Where it can be clearly established that the step-children of the new marriage or civil partnership are fulltime members of the sponsor's household they will be eligible to be treated as part of the nuclear family on the same basis as any other children the couple might have. Where shared/joint custody arrangements are involved (i.e. where the non sponsor adult has only partial custody of the child), the consent will be required of the other parent to the child residing in Ireland. It must be understood in such cases that the presence of the child in Ireland confers no rights whatever to the other parent to visit or reside in Ireland and consent would have to be informed accordingly.

## 14. Dependency

- 14.1 For the purposes of this policy document, "Dependency" means that the family member is (i) supported financially by the sponsor on a continuous basis and (ii) that there is evidence of social dependency between the two parties. The degree of dependency must be such as to render independent living at a subsistence level by the family member in his/her home country impossible if that financial and social support were not maintained. A minor child living with its parents will be automatically assumed to be their dependant.
- 14.2 Adult persons who claim dependency are not persons of independent means, and vice versa. This is an important distinction from the points of view of both lodging and examining applications. Persons who claim dependency are saying that they rely for their subsistence on a family member who is resident in Ireland. Officials examining such applications must be satisfied - by the applicant - that the family member is actually dependent on the sponsor.
- 14.3 "Dependency" for immigration purposes and in respect of an adult must be pre-existing and sustained prior to the making of the application for family reunification. It must also be established that the dependency existed while the dependant was living in their home country.
- 14.4 The financial support must be not just welcome but must be essential for the on-going support and subsistence of the family member. It must be at a level where the absence of the sponsor in the home country of the family member makes independent life unsustainable.
- 14.5 Applications that involve a claim of dependency or exceptional or compassionate circumstances must be assessed in the light of all

relevant factors. These will include the existence of other family members, particularly in the country of origin, who could or should provide alternative support to the applicant.

14.6 The immigration authorities must also be satisfied that family dependency has not been constructed as a means of facilitating the immigration of the person in question.

14.7 It should also be noted that evidence of having maintained a dependant in a country that has a comparatively low level of per capita income is not of itself an indicator of capacity to do so in the event of that person being permitted to live in Ireland where costs are much higher.



## **15. Eligibility requirement for Spouse, Civil Partner or De Facto Partner**

15.1 The spouse, civil partner or de facto partner must be at least 18 years of age at the time of their application for family reunification. Consideration was given to adopting a higher minimum age of 21 years as a means of discouraging forced marriages or unions where the youth of one party rendered them vulnerable. However, it has been decided for the present to retain the current position whereby the age threshold for spousal family reunification is the same as applies in respect of eligibility to marry within the State<sup>12</sup>. While it is possible in many jurisdictions to marry at a younger age and a court dispensation may in certain circumstances be obtained within this State to set aside the age limit for one or both parties, it is not intended to follow this through in terms of family reunification. The 18 year limit will be maintained.

15.2 As a general principle applicable to all decision making, marital relationships or those involving civil partnership (CP) must be monogamous, freely entered into by both parties, lawfully conducted and recognised under Irish law. Cases involving de facto relationships must be exclusive for the full duration of the qualifying period set out under section 15.3 below.

15.3 The following relationship durations will apply in order to establish eligibility.

- For marriage or civil partnership no minimum duration of the marriage will be required;

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<sup>12</sup> the UK applied such a minimum age but it was rejected by the Court of Appeal in the “Quila and others” case.

- De facto Partnerships (whether heterosexual or same sex) must have existed in a relationship akin to marriage including cohabitation for 2 years prior to application for family reunification.

- 15.4 A standard requirement in all such cases is a clear commitment from both parties that they will live together permanently as husband and wife, civil partners or de facto partners immediately following the outcome of the application in question or as soon as circumstances permit. A declaration to this effect will form part of the application process.
- 15.5 Entry to the State for the purpose of entering into a marriage or civil partnership may be permitted provided that the immigration officer or visa officer, as appropriate, is satisfied that the marriage/CP is not a marriage/CP of convenience. Permission granted in these cases will be provisional, and not more than 6 months duration at the end of which period the marriage/CP must have been registered. Any financial or other requirements applicable to those married or in a civil partnership will also apply to persons intending to marry.
- 15.6 Proxy marriages<sup>13</sup> may be recognised under Irish law. Where this is the case the marriage will meet the requirements of this policy. However, a proxy marriage gives rise to additional concerns not only in immigration terms but also for the protection of the parties. The immigration authorities will enquire into the circumstances of the marriage and must be satisfied that the marriage is genuine and freely entered into by both parties and that is not a device aimed predominantly at securing an

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<sup>13</sup> where an appointed substitute (proxy) stands in for a party to the marriage at the ceremony. In some cases both parties may be represented by proxies. Such marriage is considered to have been contracted in the country in which the ceremony took place.

immigration advantage. The parties must also be able to show that they have met each other in person.

## 16. Residency requirements for non-EEA national to sponsor family members

16.1 At present, there is no overall policy as to residency duration for sponsors. The arrangements that are currently in place relate primarily to persons here for economic reasons where the issue of being joined by family was a key consideration in their decision to come to Ireland. The current arrangements are as follows insofar as the nuclear family and de factor relationships are concerned:

### Immediate family reunification (i.e. with the primary migrant)

- Green Card Holders
- Investors
- Entrepreneurs
- Business Permission Holders
- Researchers (under the EU scheme administered by Immigration Policy in conjunction with IUA and DJEI)
- Work Permit Holders from non-visa required countries
- Scholarship programme students (e.g. KASP<sup>14</sup>)
- PHD students (subject to the student making academic progress and time limits on the research project)<sup>15</sup>.

### After one year

- Work Permit holders from visa required countries

16.2 It is appropriate to review the above arrangements and also to make provision as to residency requirements for other sponsors. It should be borne in mind that the residency requirements are just one of the conditions that must be met. In other words an entitlement to bring in

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<sup>14</sup> King Abdullah Scholarship Programme – funded by the Saudi Government

<sup>15</sup> Terms and conditions for student permission are subject to review from time to time

family does not automatically flow from a particular duration of residence. Other, and in particular financial, conditions also apply.

16.3 It is considered that the current arrangements for work permit holders on low salaries who do not qualify for a green card need to be tightened and harmonised. In the current recession it must be accepted that employment and its remuneration is less secure than during the economic boom. Therefore a proven and sustained capacity to earn sufficient income so as to provide for the needs of dependants is advisable. At the same time, Ireland's economic interests require that our immigration system be competitive in its dealings with sought after high skilled migrants and those best placed to contribute to economic growth.

16.4 The following arrangement should therefore apply to non-EEA national sponsors seeking to be joined by their nuclear family members or de facto partners:

Category A (Eligible to sponsor applications for immediate family reunification -including being accompanied by family members on arrival<sup>16</sup>)

- Green Card Holders
- Investors
- Entrepreneurs
- Business Permission Holders
- Researchers
- INIS Approved Scholarship programme students (e.g. KASP)
- Intra Corporate Transferees

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<sup>16</sup> Refugees and subsidiary protection status holders can apply for family reunification on grant of status but the process is set out in the 1996 Refugee Act

- PhD Students (subject to conditions including no recourse to social welfare payments)
- Full time non-locum doctors in employment

Category B (Eligible to sponsor applications for family reunification after 12 months)

- Non Green Card Employment Permit Holders
- All Stamp 4 holders not covered by other more favourable arrangements
- Ministers of Religion (there is a case for putting these in cat A provided they are maintained by the church)

Category C (not eligible to sponsor)

- All other non-EEA nationals

16.5 The sponsorship requirements for sponsorship for other than nuclear family members should be 2 years in the case of category A and 5 years for category B. Exceptions would only be made on humanitarian grounds.

## 17. Financial resources for family reunification (nuclear family and de facto partners)

17.1 Reflecting the balance of interests referred to earlier in this paper and the preference that Irish citizens should enjoy, the following financial guidelines will be applied in respect of family reunification applications involving immediate family. It should of course be borne in mind that the financial capacity is just one of the conditions to be satisfied for family reunification to take place.

### Where Sponsor is Irish Citizen

17.2 An Irish citizen, in order to sponsor an immediate family member, must not have been totally or predominantly reliant on benefits from the Irish State for a continuous period in excess of 2 years immediately prior to the application and must over the three year period prior to application have earned a cumulative gross income over and above any State benefits of **not less than €40k**.

### Where Sponsor is non-EEA National

17.3 In the case of a non-EEA sponsor in CAT A, family reunification may take place prior to any earnings being accrued and the immigration status granted to the sponsor is such as to assume certain levels of income (e.g. green card holder or researcher) either immediately or in the future or on the basis that the sponsor falls into a category whose migration to Ireland is promoted as part of Government policy. However a sponsor must continue to meet the terms of the permission in order to maintain their own and the family's entitlement to reside here and evidence of this must be provided by the sponsor at the time of the renewal of permission. In the case of green card holders and researchers this will include achieving the levels of earnings projected. For PhD students there are time limits applied to the study and academic progress must be demonstrated. This is in addition to the

requirement that there be no recourse to social welfare payments<sup>17</sup>. For immigration purposes it is assumed that any additional costs to the State such as those which may accrue from the education of the sponsor's minor(s) are accepted.

- 17.4 Category B sponsors must have a gross income in each of the previous 2 years in excess of that applied by the Department of Social Protection in assessing eligibility for Family Income Supplement (FIS)<sup>18</sup> and the expectation must be that this level of income will be maintained.
- 17.5 Declared and verified savings by the applicant or sponsor may be taken into account in assessing cases which fall short of the income thresholds set out above. (A suggested approach would be to annualise the savings as income spread over a 5-10 year period). Alternatively, a nominal income may be determined based on the amounts involved.
- 17.6 The FIS does not apply in cases of couples where there are no children. Therefore, a minimum level of gross income in such cases would be - €30,000. This is the minimum salary for which an employment permit would issue. Families with children would require the following net incomes per week (based on FIS):-

1 child - €506  
2 children - €602  
3 children - €703  
4 children - €824  
5 Children - €950

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<sup>17</sup> In accordance with the New Regime for Non-EEA students. Such arrangements may be reviewed from time to time.

<sup>18</sup> The Family Income Supplement (FIS) will be used as a key criterion in assessing whether a family member can join a non-EEA worker in the State. As the FIS thresholds are liable to change, the family Reunification policy in this respect will be kept under review.



- 17.7 However, these figures are for guideline purposes and represent a minimum financial requirement. For instance a case could be presented where a worker is on a marginal salary and admission would give rise to an immediate obligation by the State to provide education to a number of school going children<sup>19</sup>. The State's liability in this respect would need to be considered, even where the family appeared to exceed the financial levels applicable to the FIS. Visa/Immigration officers will have some discretion in this area and also in cases where there are doubts regarding the sustainability of earnings.
- 17.8 The onus will be on the applicant to satisfy the immigration authorities as to the level of earnings or financial resources and to provide any evidence required in support thereof. The immigration authorities may also consult directly with the Revenue Commissioners as appropriate.

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<sup>19</sup> \Current estimates the annual cost of school education at approximately €8,000 per child.

## **18 Elderly Dependent Parents**

- 18.1 The issue of elderly dependent parents has arisen in a number of cases involving both Irish and non EEA nationals sponsors. This form of migration is however can be hugely problematic and is subject to considerable restriction in many jurisdictions, in some cases with extreme waiting times. It is of course entirely understandable that an Irish citizen or a non-EEA national lawfully resident in the State would wish to have his or her elderly parent residing with them so as to ensure their wellbeing as they get older and for the general enrichment of family life. However, it must also be acknowledged that the potential financial liability for the State of providing medical treatment, perhaps nursing home care and other services to an elderly person who is unable to support themselves is very considerable.
- 18.2 The Irish State is simply not in a position to take on financial responsibilities of this nature, nor should it be expected to do so. Moreover, even where the family in Ireland is willing to assume the initial responsibility of providing for their relative and has a good faith intention to continue to do so, circumstances can change. If the family becomes unable or unwilling to assume the costs of maintenance, then the State could be faced with an invidious choice between assuming the financial burden from the public purse or seeking to deport an elderly person who cannot provide for him/herself. This is not to say that there should be an absolute bar on all such applications but rather that a highly restrictive approach should be taken. Ultimately emigration, including that by Irish people, is undertaken with no legitimate expectation of ever being joined by parents.
- 18.3 The issue of dependency was referred to earlier and these principles will apply also in the case of dependent elderly relatives. The onus of proof as to dependency is entirely on the sponsor and the dependant and

the default position for such migration, given the financial risk to the State is a refusal. However each case must be viewed on its particular merits to see if there are exceptional circumstances that would warrant a positive decision. The onus must however be on the family to show that there is no viable alternative to the parents coming to Ireland. In reality, such alternatives are very often available, for example, where the parent has the financial resources to meet their needs and is physically capable of independent living; where other family members are in the country and capable of providing support or where homecare can be funded by the Irish resident through remittances. Moreover, the option of family members leaving Ireland to care for their elderly dependent relative in the country of origin cannot be discounted merely on the basis that it is not the option preferred by the family.

- 18.4 Given the level of risk, which cannot be fully mitigated by undertakings of financial support by family members, the financial thresholds for earnings to support an elderly dependent relative must be high enough to meet the foreseeable expense. Therefore a sponsor of an elderly dependent relative will be required to have earned in Ireland each of the 3 years preceding the application an income after tax and deductions of not less than €60K in the case of one parent and €75k where 2 parents are involved. Where the elderly dependent relative has a guaranteed income into the future this can be used to partially offset the financial limits (bearing in mind however that a person with a sufficient personal income for their needs cannot reasonably be regarded as financially dependent).
- 18.5 The following conditions should be applied to migration of this nature if approved.

- Elderly dependent relatives must be covered by private medical<sup>20</sup> cover at or above the level of VHI plan D or equivalent;
- The sponsor will be required to sign a legal undertaking to the effect that they will bear personal complete financial responsibility for the elderly dependent relative and that any State funds availed of by the relative will be reimbursed by them. The possibility of requiring the family to establish a financial bond for this purpose remains open;
- The Sponsor will be required to make detailed provision for the accommodation of the elderly dependent relative.

18.6 The permission granted will be regarded as temporary but renewable on an annual basis providing the conditions are met. The immigration stamp applicable will be Stamp 0. This category would not be reckonable for Long Term residence or naturalisation. Explicit exclusion of such residence from reckonability will ultimately require legislation (e.g. within the Immigration Residence and Protection Bill) but it can in the interim be implemented administratively given the Minister's absolute discretion in determining applications for naturalisation. In effect persons receiving permission under Stamp 0 would be fully aware that it does not carry an expectation of leading to citizenship.

18.7 Applications for family reunification in cases involving elderly dependants can only be made from outside the State and will be subject to a preclearance procedure and application fee. Applications will not be accepted in respect of a person who has come to the State on a visitor visa and then seeks leave to remain. This is in order to maintain separate immigration channels for those seeking to reside in Ireland and those who may wish to come on an extended visit but without the intention of residence. If applications for residence were permitted from within the State it would inevitably make the visitor

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<sup>20</sup> This requirement will continue to apply irrespective of whether a person would be eligible for State-funded health services.

visa process more restrictive and indeed undermine the visit visa route, ultimately to the detriment of those who merely want to visit family.

- 18.8 Applications involving elderly dependent relatives other than parents will only be accepted in truly exceptional circumstances even where all financial and other conditions are met. In the ordinary course claims by such persons to come to Ireland are not sustainable and the more distant relationship with the sponsor further lessens any claim they might have to a positive decision].

## 19 Irish Citizen Children– Applications for Parental Migration

- 19.1 The normal situation in respect of a family reunification application is where one person with “tenure” (either as a citizen or resident) seeks to sponsor a family member. However there will be cases where a parent seeks residence in Ireland on the basis of their citizen (minor) child. In these circumstances the child cannot be said to sponsor the parent. The basis of the application in such cases is that the parent’s presence and residence in Ireland is necessary for the financial and emotional support of the child. Such cases do not fall strictly into the category of family reunification or settlement. However, for completeness it is necessary to make reference to them in this document.
- 19.2 Clearly not all cases are the same and each has to be looked at in the light of the factual circumstances. In addition to the family rights under the European Convention on Human Rights and the Irish Constitution, certain rights are also held by the Court of Justice of the European Union (CJEU) to attach to EU citizens. The Court’s judgement in the Zambrano case, as refined in subsequent cases<sup>21</sup>, provided for a derived right of residence for the parents of the EU citizen child where the child would otherwise lose the useful effect of its EU citizenship by being forced, as a minor, to leave the Union with its parents. While in reality the application of the Zambrano judgement is more limited and dependent on circumstances than is sometimes appreciated, it is nevertheless a key consideration in any case to be assessed.
- 19.3 In many cases involving an Irish citizen child no “Zambrano issues” arise because the child is not at risk of removal (essentially constructive deportation) from the country, for instance where one of the parents is an Irish national or some other person whose right to reside is not in question. However, and while it is not possible to be prescriptive in

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<sup>21</sup> Eg *McCarthy V Secretary of State* (C-439/09) *Dereci & Others* (C-156/11),

advance of the circumstances of the case being considered, it is intended as a matter of general policy, to grant immigration permission where the parent can demonstrate an active and continuous involvement in the child's life, providing real emotional and/or financial support. Account would of course have to be taken of any issues relating to the conduct (including criminality, domestic violence etc.) of the applicant. In addition, the factors set out in Section 6 of this document would also be relevant to any determination.

- 19.4 Where the child is Irish born but not entitled to citizenship the provisions of EU law as arising in Zambrano and later cases do not apply and the adult cannot base an application for residence on the birthplace of the child.
- 19.5 A particular class of case that could arise is where a family residing abroad (most likely in the country of birth of most of its members) contains one minor child who is an Irish citizen. Clearly the Irish citizen child has a right to reside in the State. The parents do not and cannot claim personal rights of residence merely by dint of parentage. It is the child's rights that are in question and the residence of the parents is considered with reference to the contribution their presence in the State would contribute to the child's enjoyment of its rights as a citizen. The nature of the application therefore in this case would be for the admission to Ireland of one or more parent in the company of their minor child (or older child who suffers from a mental or physical disability that renders independent living impossible).
- 19.6 It must be taken that, in order to exercise his or her right to reside in the State, the child must be in the care of a responsible adult but this of itself does not necessarily dictate the outcome of any decision on the immigration application of the parents or indeed those of siblings. Each case needs to be looked at on its merits taking into account the family

situation and the composition of the family unit. In some cases there may be an ongoing cohabiting relationship between the parents taking joint care of the child. In other instances the family unit could be based on one parent, with the child's other parent estranged or in a new relationship. It might also be observed that a series of linked applications, seeking to bring to Ireland both parents and all siblings, on the basis of the citizenship of a single minor would seem to go beyond what is reasonable, particularly if the State would be required to provide financial support for the family.



## **20 Multiple applications for spousal reunification/ Polygamy**

- 20.1 A sponsor who is joined by a spouse/partner in Ireland will, in the event of the termination of the marriage or civil partnership (by divorce or dissolution), be ineligible to be joined by a further spouse or partner until a minimum 7 years have elapsed from the date of the first spousal permission. This 7 year waiting period will also be applied where the sponsor was him/herself granted permission to reside in Ireland as the non-EEA spouse/partner of an EU national exercising their rights of free movement. Where there are reasonable grounds to suggest that the earlier marriage or partnership was one of convenience further permissions may be refused even where the periods set out above have been exceeded.
- 20.2 Cases will arise where a prospective sponsor remains legally married to one person while in a de facto relationship with another. In general the expectation would be that the parties would have obtained a divorce but this is not always possible for various reasons. While the circumstances of each case need to be examined on their merits it is proposed as a general rule that the 7 year time limit set out above would apply in these cases also. In addition, the sponsor would be required to furnish documentary evidence of legal separation. The qualification period for the de factor partner would commence not from the commencement of the new relationship but from the date of the evidence of separation.
- 20.3 Irish law does not recognise polygamous marriage and indeed a potentially polygamous marriage is not without difficulty. Therefore, an application for spousal family reunification involving a sponsor who is married polygamously (under the laws of another state, albeit that the union is not recognised in Ireland) will be rejected. Where a sponsor is

married to one person only but the marriage is potentially polygamous given the capacity to contract a subsequent marriage, the spousal application may be permitted but subject to the proviso that no subsequent marriage contracted while the first union is subsisting will have any recognition for immigration purposes even in the event of the sponsor subsequently obtaining a divorce from the earlier spouse.

- 20.4 All marriages must be legally contracted, freely entered into and with both parties free to marry at the date of the marriage. The marriage must also be capable of recognition under Irish law for other purposes outside of the immigration system.

## 21 Decision Making Process

- 21.1 Applications (assuming all required information has been submitted) for family reunification for immediate family members in Category A of Section 16 of this document and for Irish Citizens should be dealt with within 6 months of application. A 12 month target will apply in other cases. However, it must be made clear that these are business targets for the immigration service. Accordingly, they in no way constitute legal obligations or convey any indication that a case not completed within the timeframe will in default of decision be resolved in the applicant's favour.
- 21.2 The onus is on the applicant and sponsor to be fully transparent and to engage with the immigration services in respect of any queries raised in respect of their application.
- 21.3 In any decision to refuse an application, reasons shall be given. These may include, inter alia, one or more of the following:
- Refused on grounds of public policy, public security or public health;
  - Refused on financial criteria (to include failure to meet the income levels specified or uncertainty of future income);
  - Refused on grounds that any commitments entered into by the applicant or sponsor might not be met;
  - Refused on the basis of previous immigration history of the applicant or sponsor where this is considered on reasonable grounds to be relevant;
  - Refused due to inadequate or inconsistent information;
  - Refused to false documents or deception (see also Section 25 of this document);

- Refused due to failure to establish that special circumstances exist that would warrant an exception;
- Refused due to failure to establish the existence, durability or closeness of relationship (this condition may also apply where the family has voluntarily separated itself);
- Refused where in the opinion of INIS the marriage, partnership or adoption was contracted for the sole or predominant purpose of facilitating the family member to enter and reside in the State.

21.4 Where an application is refused the applicant may appeal to INIS. The appeal must be in writing and must be received by INIS within two calendar months of the date of the issue of the decision by INIS. There will not be an application form for this purpose. The appeal may be submitted to INIS by the sponsor or by a legal representative of the sponsor. The appeal may be supported by documentary evidence, statements etc. additional to the documents submitted with the earlier application and it is the responsibility of the sponsor and/or the family member(s) and/or the legal representative to identify and submit whatever documents they deem appropriate in support of the appeal.

21.5 An appeal will be considered by a different officer and, where possible, one who is more senior than the original decision maker. In circumstances where this is not practicable, they may be of the same grade as the original decision maker. The officer determining the appeal may:

- (i) confirm the decision, or
- (ii) confirm the decision and impose conditions or amended conditions, or

(ii) set aside the decision and substitute his or her determination of the application.

21.6 The application and any appeal will be considered within the parameters of the policy set outlined in this office and in line with any more detailed operational guidelines as may be developed. The appeals officer may make further enquiries into any aspect of the application and any decision to deny the appeal may be based on the original grounds for refusal or any new grounds he/she may consider to be justified. Applicants will, however, be given the opportunity to address any new grounds for refusal before a final decision is made.

21.7 As set out in the Programme for Government, it is intended to establish a statutory appeals system. This will be done through provisions in the Immigration Residence and Protection Bill. When this statutory appeals system is in place, applications for family reunification will be incorporated into it.

## **22 Conditions and Entitlements**

- 22.1 Immediate family members of Irish citizens granted immigration status through the family reunification process will have the right to work without employment permits and to establish or manage/operate a business in the State. They should receive a Stamp 4 immigration permission.
- 22.2 The 2004 Immigration Act does not provide for the registration of children aged under 16. The Immigration Residence and Protection Bill proposes to abolish this limitation. However, in the interim, it is intended as part of policy on family reunification to provide for specific immigration permission for such children on an administrative basis. This will allow the children to establish their personal residence history at an earlier date.
- 22.2 Immediate family members of non-EEA sponsors or non-immediate family of Irish Citizens will, if granted immigration permission, continue to be subject to the employment permit requirements as operated by the Department of Jobs, Enterprise and Innovation. They will be entitled to apply for immigration status in their own right under the various channels available (student, work permit, business permission etc.)

## 23 Change in Circumstances/Retention of Status

- 23.1 Immigration permission granted for the purposes of family reunification will be dependent on the continued residence of the status of the sponsor. In cases where the sponsor leaves the country it would be expected in the normal course that the accompanying family members would also depart.
- 23.2 In the event of the death of the sponsor, departure from the State of the sponsor, divorce or annulment of a civil partnership, the family member must notify the immigration authorities and may apply to INIS for a change of status. The possibility to apply for a change of status is currently facilitated by INIS on a case by case basis. The “changed status” which may be granted to the family member will depend on that family member’s new situation (e.g. are they working, studying, dependent on another resident, etc.) and the circumstances of the change.
- 23.2 Other matters that will be considered in respect of the change of status application will include:
- The immigration status (if not a citizen) of the sponsor;
  - the length of time the sponsor has resided in Ireland;
  - the purpose of their stay;
  - compliance with previous immigration conditions;
  - conduct;
  - The duration of the marriage/civil partnership or de facto relationship
  - Any children of the relationship
  - any other relevant matter.
- 23.3 Where the sponsor dies, the circumstances of the case will be considered on its merits, taking into account the factors set out in the

previous paragraph, but a sympathetic view would be taken. As a guideline, a person who has resided here for two years prior to the death of the sponsor should be granted immigration permission in their own right. Where the period of residence prior to death is less than this but extensions but sufficient time should be allowed to the person concerned either to make arrangements for returning to their country or origin or, in the alternative, seeking employment in Ireland as a means of staying on.

- 23.4 In the event of divorce, dissolution of a civil partnership or legal separation, a general requirement in respect of application for retention of immigration status, would be for the parties to have been married or in a civil partnership for at least 3 years beforehand with the last 2 years at least spent residing in Ireland.
- 23.5 In cases where a foreign national who derives their immigration status from that of their spouse/partner or other person is the victim of domestic violence at the hands of that person, there is already a process in place in INIS to allow the victim to apply for immigration status in their own right, outlining their circumstances. A number of persons have already made applications through this process and obtained immigration status independent from that of the perpetrator. This process will continue to be applied and it is important to highlight that in this document. Guidelines on this process are available on the INIS website<sup>22</sup>.
- 23.5 Where there is no change of circumstances family members may still apply for an independent immigration permission having resided lawfully in the State for at least 5 years. This is reasonable in view of the current eligibility criteria for naturalisation. However, long term

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<sup>22</sup> <http://www.inis.gov.ie/en/INIS/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf/Files/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf>



residence ought to be widely permitted as not every foreign national wishes to acquire Irish citizenship. The current long term residence arrangements are considered too restrictive whereby some classes of genuine long-term residents are excluded. This is being addressed separately from this paper.

- 23.6 It will be possible for persons refused a change of status or an independent permission to appeal the decision

## **24 General Provisions**

### **Fraud & Abuse of Rights**

- 24.1 Any entitlement to residence obtained through family reunification obtained as a result of fraud, false information or misrepresentation or abuse of rights (including by way of marriage of convenience) shall be forfeit and no immigration benefit may be accrued from time spent in Ireland on this basis.
- 24.2 Where the Immigration Authorities have reasonable grounds for believing that an immigration benefit has been obtained in the circumstances described in the preceding paragraph the application can be reopened and appropriate enquiries made. A negative inference may be drawn from any refusal to cooperate with such enquiries.
- 24.3 Where an application is made on a fraudulent basis the immigration authorities may refuse to accept further applications from the person involved for a specified period.

### **Extended Visitor Status**

- 24.4 A visitor is limited to 90 days stay in Ireland. If they wish to stay longer than this and are permitted to do so they are required to register with the Garda National Immigration Bureau (GNIB). This becomes a form of temporary residence. This scenario may arise in family cases where a parent wishes to spend a number of months (for instance following the birth of a grandchild). Consideration will be given to establishing a form of immigration status that would make it easier for visitors to obtain an extension of their stay (for example to 180 days) but without conferring either residency rights or any expectation thereof. The status would be that of extended visitor and the holder would have no entitlements to

State services irrespective of the duration of the stay. Any subsequent application for family reunification (in the nature of settlement in Ireland) would only, save in exceptional circumstances, be considered after the person has returned home. Legislative change may be required to cater for this form of status.

## **25 Implementation**

- 25.1 These policy changes signal the broad direction of the Government's approach as regards family reunification. They will be supplemented by more detailed guidelines in certain areas and these will be available on the website of the Irish Naturalisation and Immigration Service (INIS) as they are developed.
- 25.2 The specific criteria set out in the document will apply from 1 January 2014. Applications on hand at the date of publication will be dealt with in accordance with current policy unless the new guidelines are more favourable in which case they will be applied.
- 25.3 Other organisational changes, such as the establishment of a general pre clearance process will be implemented over time. This will also apply to any changes in the area of granting children immigration status in their own right. This will be done on a phased basis and will not commence immediately. Further details of the implementation schedule in this area will be posted on the INIS website over time.

## **Appendix A**

### **Guidelines on DNA sampling for the purposes of Family Reunification**

1. The provision of DNA evidence in support of an application for family reunification may be proposed either by INIS or the applicant.
2. The provision of DNA evidence is not be a mandatory requirement of an application.
3. If DNA evidence is not supplied, a decision will be based on other evidence of parentage supplied.
4. No negative inference will be drawn merely from the fact that the applicant does not wish to undergo DNA testing.
5. A positive DNA result will, however, be accepted by INIS as proof of natural parentage. However, this would need to be assessed against the question of legal parentage.
6. Applicants will, in most cases, be responsible for the cost of the DNA testing.
7. Testing companies and authorities, and persons supervising testing and donation of samples, must be approved in advance by INIS but will be strictly independent in the conduct of the testing.

## **Appendix B**

### **Guidelines on Parental Consent in cases of Family Reunification**

In order to ensure that family reunification arrangements cannot be used as a means of facilitating child abduction (including in scenarios where one parent seeks to remove the child from the lawful custody of the other) it must be clearly established that both parents consent to the movement of their child.

In many cases it is likely that both parents will seek to have the child with them as part of the family unit. However where the parents are divorced, separated or do not have a relationship as a couple and where one parent is seeking to bring the child to Ireland as part of a family unit, the consent of the other parent must be obtained and furnished in support of the application for family reunification.

Where consent is required, a signed original letter of consent must be provided, supported by the passport or identity card of the person concerned for the purposes of signature verification.

There may be cases however where there are some suspicion as to the veracity of the documentation. In such cases it may be made a requirement that the other parent should present themselves at the Irish visa office or embassy/consulate to confirm their consent in person.

Where the child is coming from a country where there is no Irish representation it should be a requirement that the parents present themselves to the foreign ministry of their own country to have the consent verified.

Where the consent of the other parent is not required for any of the following reasons

- Death on one parent;
- Mental incapacity;
- Identity of the father of the child is not known;
- Sole custody granted to one parent without visitation rights to the other.

Verified official documentation must be provided to support the dispensing of the requirement for such consent