ESA - Complaints against Norway in the area of family reunification under EEA law

Reference is made to your letter of 1 April 2014 to the Ministry of Labour and Social Affairs concerning complaints against Norway regarding the rights to family reunification under EEA law and earlier correspondence on the same item.

The Ministry of Labour and Social Affairs will comment on the conclusions made by the Authority’s Internal Affairs Directorate in the same order as the letter from ESA.

1. Is the national law too restrictive compared to Article 3(2)(a) and 3(2)(b).

Section 19-7 of the Immigration regulation is meant to clarify who is considered a family member in addition to those mentioned in Section 110 of the Immigration Act. This includes cohabitants as long as you can prove your relationship with the EEA-national. The background for the difference between the wording in EEA law and the Immigration Act is that a cohabitant already is equated with spouses in parts of the national law. A cohabitant is defined as a family member in the Immigration regulation. A cohabitant of an immigrant has the right to family reunification after the Immigration Act.

There are some exceptions from the general rule, ref. Section 49 of The Immigration Act, which states that if there are compassionate grounds other family members can be
I granted a residence card.

2. The application for family reunification should be submitted within three months from the return of the Norwegian national to Norway.

The general rule is that there should not exceed more than three months between the Norwegian nationals returning to Norway and the time for the family member to submit an application for a residence card after the return of the Norwegian national. The reason why the period running from the return of the Norwegian national and the application as a main rule should not exceed three months is that it shows the degree of relationship between the family member and the returning Norwegian national. If there is a substantial amount of time after the return of the Norwegian national and the application for a residence card, you may ask how genuine the connection is. If the period exceeds more than three months, the Norwegian Directorate of Immigration normally asks the applicant why it has not been applied earlier. The Directorate can make exceptions from the general rule if e.g. there are health reasons, if you are finishing your final studies, employment reasons or any other practical reasons for the delay. There is an individual assessment in each specific case where the timeline would be an element.

3. The requirement of having lived together with the family member in another EEA State before returning to Norway.

According to Immigration Regulations Section 19-6 and 9-2 the same condition of two years of cohabitation applies both the third country national coming directly from a third country or via a EEA country. The right to family reunification where the parties have lived together for two years follows from The Immigration Act chapter 6. The criteria shows the durability between the family member and the returning Norwegian national and that the regulation in the Immigration Act is consistent.

There are some exceptions from the general rule, ref. Section 49. For further information see point one above in the letter.

4. The requirement on previous income under national law applied to returning Norwegian nationals.

There is a requirement to previous income under the Norwegian national law if you apply for family reunification if you have not exercised your free movement rights. For persons who have exercised their right of free movement before applying for a family reunification there is no such criteria. As a general rule it is not unreasonable to require that a person who brings his/her family to Norway, also is capable to take care of his family economically.
5. and 6.
The status of a returning Norwegian national while receiving maternity benefit and the requirement of being economically active in the state residence.

As it follows from the Circular No A1-1/2014 there is no requirement as such, that the returning Norwegian national has been economically active in the host member state. It is a part of the assessment which you have to take into consideration. It is not an absolute requirement. That means that non-economically active persons may claim family reunification. In other words, you may stay in another EEA State and receive maternity benefit and still apply for and may be granted family reunification.

7.
Reference to Case C-60/00 and Case C-457/12.

We seek to comply with our obligations under the Directive and to follow the relevant judgments. Strong humanitarian considerations may always be taken into account and may be of importance in the assessment.

8.
Making use of free movement in order to obtain rights under EEA law cannot, in the field of free movement of persons, create a presumption of abusive behaviour.

One of the purposes of the Circular is to reduce the risk of illegal entry and residence of family members, and provide protection against abuse of rights under EEA regulation. That does not imply that the national legislation does not build on the presumption of abusive behaviour. The Directive also states in art. 35 that the Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience.

Some of the issues need further clarifications. We will come back to this later.

Yours sincerely,

Solveig Lie
Deputy Director

Sarwat Ansar
Adviser