



ROYAL NORWEGIAN MINISTRY
OF LABOUR AND SOCIAL AFFAIRS

EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels
BELGIUM

Your ref

Our ref

Date

15/967-

31 August 2020

Request for information concerning family reunification – follow up to Campbell

The Norwegian Ministry of Labour and Social Affairs refers to the letter from the EFTA Surveillance Authority (*“the Authority”*), dated 10 July 2020.

The question in the Authority's letter concerns the interpretation of Directive 2004/38/EC (Directive) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, and in particular Article 7 (1) (b) read in conjunction with Article 7 (2) thereof.

It follows from settled case law¹ from the European Court of Justice (ECJ) that to derive rights under the Directive, the EEA national must have had a genuine residence pursuant to and in conformity with the conditions set out in Article 7(1) and (2) of Directive, and have created or strengthened family life in the host EEA State.

The requirement of residence is expressed in the EFTA Court judgment in Case E-28/15 Jabbi, paragraph 80 and latest in EFTA Court judgment E 4/19 Campbell, paragraph 67:

“Therefore, “residence” must be interpreted as allowing reasonable periods of absence which may or may not be work-related, and which as to their duration do not contravene and are not inconsistent with a genuine residence. The notion of genuine residence requires that the circumstances of the situation as a whole are suited to creating or strengthening family life between the EEA national and the third-country national. Thus, any period of absence, considered in isolation or together, cannot be of such a duration or character that it inhibits the creation or strengthening of family life.”

The Authority asks, in essence, whether the Norwegian practice and position, regarding the requirement of *“genuine residence”* are in line with the EFTA Court's judgment in paragraph 67. Further, which measures Norway has taken or intends to take in order to bring the application of the requirement of genuine residence into compliance with the EEA law.

¹ Case C-456/12 O and B

To answer this follow up question the Ministry has requested information from the Immigration Authority's (UDI and UNE).

The Immigration Authority's views are that their assessment of the requirement is in line with the case law from the ECJ and EFTA Court. In that regard the judgement from the EFTA Court in *Campbell* gives guidance on the requirement "*genuine residence*" and "*continuous residence*". The Immigration Authority held that any period of residence pursuant to and in conformity with the conditions set out in Article 7(1) and (2) of the Directive, creates a derived right of residence for the third-country national family member upon the EEA national's return to her/his EEA state of origin. The notion of residence must be interpreted as allowing reasonable periods of absence, and which as to their duration do not contravene and are not inconsistent with the genuine residence.

The Ministry takes the same view as the Immigration Authority and remark that it follows from the Circular AI-2/2017 point 3 that the notion of continuity, referred to in *Jabbi* cannot be read as to exclude periods of absences from the host EEA State. Residence for the purpose of Article 7 of the Directive therefore does not require constant physical presence and allows temporary absences as part of the enjoyment of the right of residence itself.

Thus, the Ministry like to inform the Authority that we are in the process of making an assessment of the *Campbell* judgement and that we may make some adjustments to the Circular AI-2/2017 point 3.

Yours sincerely

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This document is signed electronically and has therefore no handwritten signature