Court of Justice of the European Union
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Press and Information

Judgment in Case C-423/12
Reyes v Migrationsverket

To be regarded as a dependant of an EU citizen, a descendant who is over 21 years old and a third-country national, does not have to establish that he has tried all possible means to support himself

A Member State cannot require the descendant to prove, in order to obtain a residence permit, that he has tried unsuccessfully to find work or to obtain a subsistence allowance in his country of origin

EU law[1] extends the right of all EU citizens to move and reside freely within the territory of the Member States to the members of their family, whatever their nationality. Family members include, in particular, direct descendants who are less than 21 years old or who are dependent on the EU citizen.

Ms Flora May Reyes, who was born in 1987 and is a Philippines citizen, was left in the care of her maternal grandmother when she was three years old, because her mother had moved to Germany to work. Ms Reyes' mother obtained German citizenship. Ms Reyes was brought up by her maternal grandmother for her entire childhood and adolescence. She studied for two years at high school and four years at college when she was 17 to 23 years old. After having undertaken training involving work experience, she qualified as a nursing assistant. After her exams, she helped her sister to look after her sister's children. Ms Reyes' mother remained in close contact with her family in the Philippines throughout that time by sending money each month to support them and pay for their studies and visiting them each year. Ms Reyes has never held a job and nor has she applied for any allowances from the Philippines social security authorities.

In 2009, the mother of Ms Reyes moved to Sweden to live with a Norwegian citizen whom she married in 2011. Since 2009, Ms Reyes' stepfather, who has resources in the form of a retirement pension, has regularly sent money to the Philippines to Ms Reyes and other members of his wife's family.

In 2011, Ms Reyes entered the Schengen area. She applied for a residence permit in Sweden as a family member of her mother, on whom she claimed that she was dependent. Her application was rejected since she had not proved that the money which was indisputably transferred to her by her mother and her partner had been used to supply her basic needs in the form of board and lodging and access to healthcare in the Philippines. Nor had she shown how her home country's social insurance and security system could assist a citizen in her situation. However, she did show that she held qualifications from her country of origin and that she had also carried out work experience there. Furthermore, she had been economically dependent on her grandmother throughout her childhood and adolescence.

The Migrationsöverdomstolen (Administrative Court of Appeal for Immigration matters, Stockholm), before which the case is now pending, has asked the Court of Justice whether a Member State may to require that, in order to be regarded as being dependent and thus to come within the definition of 'family member' set out in that provision, a direct descendant who is 21 years old or

[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the EU and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

older must show that he has tried without success to find employment or to obtain subsistence support from the authorities of the country of origin and/or otherwise tried to support himself. It also asks whether, in interpreting the term 'dependant', any significance attaches to the fact that a family member is deemed to be well placed to obtain employment and in addition intends to start work in the Member State.

In its judgment delivered today, the Court points out that, in order for a direct descendant, who is 21 years old or older, of an EU citizen to be regarded as a 'dependant' of that citizen, the existence of a situation of real dependence must be established. In order to determine the existence of such dependence, the host Member State must assess whether, having regard to his financial and social conditions, the descendant in question is not in a position to support himself. The need for material support must exist in the State of origin of that descendant or the State whence he came at the time when he applies to join that citizen. However, there is no need to determine the reasons for that dependence or therefore for the recourse to that support.

The fact that an EU citizen regularly, for a significant period, pays a sum of money to that descendant, necessary in order for him to support himself in the State of origin, is such as to show that the descendant is in a real situation of dependence vis-à-vis that citizen. That descendant cannot be required, in addition, to establish that he has tried without success to find work or obtain subsistence support from the authorities of his country of origin and/or otherwise tried to support himself.

The requirement for such additional evidence, which is not easy to provide in practice, is likely to make it excessively difficult for that descendant to obtain the right of residence in the host Member State. Furthermore, it is not excluded that that requirement obliges that descendant to take more complicated steps, such as trying to obtain various certificates stating that he has not found any work or obtained any social allowance, than that of obtaining a document of the competent authority of the State of origin or the State from which the applicant came attesting to the existence of a situation of dependence. The Court has already held that such a document cannot constitute a condition for the issue of a residence permit.

The Court therefore concludes that European Union law **precludes a Member State from requiring a direct descendant, who is 21 years old or older,** in order to be regarded as dependent and thus come within the definition of a 'family member' of an EU citizen, **to show that he has tried unsuccessfully to obtain employment or to obtain subsistence support from the authorities of his country of origin and/or otherwise to support himself.**

The Court adds that the situation of dependence must exist, in the country from which the family member concerned comes, at the time when he applies to join the EU citizen on whom he is dependent. The fact that a family member – due to personal circumstances such as age, education and health – is deemed to be well placed to obtain employment and in addition intends to start work in the Member State does not affect the interpretation of the requirement in that provision that he be a 'dependant'.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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