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Press and Information

PRESS RELEASE No 84/04

19 October 2004

Judgment of the Court of Justice in Case C-200/02

Kunquian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department

A YOUNG CHILD WHO IS A NATIONAL OF A MEMBER STATE IS ENTITLED TO RESIDE IN ANOTHER MEMBER STATE IF HE OR SHE IS COVERED BY SICKNESS INSURANCE AND HAS SUFFICIENT RESOURCES

To reject an application for a long-term residence permit submitted by a mother – who is a national of a non-member country – would render the child’s right of residence entirely ineffective

Mrs Chen, a Chinese national and the mother of a child of the same nationality, went to Belfast, Northern Ireland, United Kingdom, in order to give birth to a second child there. Her daughter, Catherine, who was born several months later, obtained Irish nationality since under Irish law any person born on the island of Ireland may acquire Irish nationality. However the child was not entitled to obtain either British nationality or Chinese nationality.

Mrs Chen and her daughter are living at present in Cardiff, Wales, United Kingdom, where Catherine receives private medical services and child-care services in return for payment. Mrs Chen and Catherine are not dependent on United Kingdom public funds and are covered by sickness insurance.

Having been refused a long-term residence permit, Mrs Chen and her daughter lodged an appeal. The Immigration Appellate Authority asked the Court of Justice to give a ruling as to whether Community law confers on Catherine and her mother a right to reside in the United Kingdom.

Catherine's right of residence

The Court pointed out first that the right of citizens of the European Union to reside in another Member State is granted to every citizen of the Union by the EC Treaty, subject to limitations and conditions laid down by the Treaty and provisions adopted for its implementation.

The Member States may require nationals of a Member State who wish to reside in their territory to have, for themselves and for the members of their family, sickness insurance covering all risks in the host Member State and sufficient resources to ensure that, during their period of residence, they do not become a burden on the social assistance scheme of the host Member State.

Catherine has both sickness insurance and sufficient resources, provided by her mother, not to become a burden on the United Kingdom social assistance scheme.

The Court ruled that **the fact that Catherine does not possess the necessary resources herself is irrelevant because Community law does not lay down any requirement as to the origin of such resources**, particularly since provisions which uphold a fundamental principle such as the free movement of persons must be interpreted broadly.

Finally, with regard to the fact that Mrs Chen's move to Ireland was expressly intended to enable the child she was expecting to acquire Irish nationality, the Court made it clear that **the United Kingdom cannot reject Catherine's application for a residence permit on the sole ground that her acquisition of Irish nationality was intended to secure a right of residence under Community law for a national of non-member country**. As the Court has held in the past, the conditions for the acquisition and loss of nationality are a matter for each Member State and **a Member State cannot restrict the effects of the grant of the nationality of another Member State**.

Mrs Chen's right of residence

Community law guarantees dependent ascendant relatives of the holder of a right of residence a right to install themselves with that person. According to the case-law of the Court of Justice, that situation is characterised by the fact that the material support of the ascendant is provided by the person holding the right of residence. Since Mrs Chen is in the opposite situation, she could not therefore enjoy a right of residence on that basis.

However, the Court held that **to refuse Mrs Chen a right to reside with her daughter in the United Kingdom would render her daughter's right of residence totally ineffective**. For Catherine to be able to enjoy her right of residence, she must, as a young child, be entitled to be accompanied by her mother, who is her carer.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: Dutch, English, French, German, Greek, Italian, Polish, Portuguese, Spanish

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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