

**Case C-200/02**

**Kunqian Catherine Zhu and Man Lavette Chen**

**v**

**Secretary of State for the Home Department**

(Reference for a preliminary ruling from  
the Immigration Appellate Authority)

(Right of residence — Child with the nationality of one Member State but residing in  
another Member State — Parents nationals of a non-member country —  
Mother's right to reside in the other Member State)

Opinion of Advocate General Tizzano delivered on 18 May 2004 . . . . . I - 9927  
Judgment of the Court (Full Court), 19 October 2004 . . . . . I - 9951

**Summary of the Judgment**

*Citizenship of the European Union — Right to move and reside freely in the territory of the  
Member States — Directive 90/364 — Minor who is a national of a Member State, is covered  
by sickness insurance and is in the care of a parent who is a third-country national having*

*sufficient resources for that minor and who is that minor's primary carer — Right of residence, both for the minor and for the parent, in another Member State — Conditions for the minor to gain nationality — Not relevant*

(Art. 18 EC; Council Directive 90/364)

Article 18 EC and Council Directive 90/364 on the right of residence confer on a young minor who is a national of a Member State, is covered by appropriate sickness insurance and is in the care of a parent who is a third-country national having sufficient resources for that minor not to become a burden on the public finances of the host Member State, a right to reside for an indefinite period in that State. In such circumstances, those same provisions allow a parent who is that minor's primary carer to reside with the child in the host Member State.

In that respect, the condition concerning the sufficiency of resources laid down in Directive 90/364 cannot be interpreted as meaning that the minor must possess those resources personally and may not use for that purpose those of a family member. Such an interpretation would add to that condition a requirement as to the origin of the resources which, not being necessary for the attainment of the objective pursued, namely the protection of the public finances of the Member States, would constitute a disproportionate interference with the exercise of the fundamental right of freedom of movement and of residence upheld by Article 18 EC.

In addition, the application of the Community provisions at issue cannot be refused to the persons concerned on the ground that the parent who is the primary carer has created, by means of a stay in a Member State, a situation in which the child expected would be able to acquire the nationality of another Member State in order thereafter to secure for the child and for him or herself a long-term right to reside. Under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality and it is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty.

(see paras 33, 36, 37, 39, 47, operative part)