JUDGMENT OF THE COURT (Grand Chamber)

9 January 2007 *

In Case C-1/05,

REFERENCE for a preliminary ruling under Article 234 EC, made by the Utlänningsnämnden (Sweden), by decision of 30 December 2004, received at the Court on 4 January 2005, in the proceedings

Yunying Jia

v

Migrationsverket,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, P. Kūris and E. Juhász, Presidents of Chambers, J.N. Cunha Rodrigues (Rapporteur), K. Schiemann, U. Lõhmus, E. Levits and A. Ó Caoimh, Judges,

* Language of the case: Swedish.

Advocate General: L.A. Geelhoed,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 21 February 2006,

after considering the observations submitted on behalf of:

— Ms Jia, by M. Johansson, advokat,

— the Swedish Government, by K. Norman and A. Falk, acting as Agents,

— the Belgian Government, by M. Wimmer, acting as Agent,

— the Netherlands Government, by H.G. Sevenster, C. ten Dam and C. Wissels, acting as Agents,

— the Slovak Government, by R. Procházka, acting as Agent,

— the United Kingdom Government, by S. Nwaokolo, acting as Agent, and by M. Hoskins and J. Stratford, Barristers,

— the Commission of the European Communities, by M. Condou-Durande and L. Parpala, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 April 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14) and of Article 43 EC.

2 The reference was made in the context of an appeal by Ms Jia, a retired Chinese national, against a decision of the Migrationsverket (Immigration Board, Sweden) rejecting her application for a long-term residence permit in Sweden.

Legal context

Community legislation

3 Article 1(1) of Directive 73/148 provides:

'The Member States shall, acting as provided in this Directive, abolish restrictions on the movement and residence of:

(a) nationals of a Member State who are established or who wish to establish themselves in another Member State in order to pursue activities as self-employed persons, or who wish to provide services in that State;

...

(d) the relatives in the ascending and descending lines of such nationals and of the spouse of such nationals, which relatives are dependent on them, irrespective of their nationality.'

4 Article 3 of that directive states as follows:

'1. Member States shall grant to the persons referred to in Article 1 right to enter their territory merely on production of a valid identity card or passport.

2. No entry visa or equivalent requirement may be demanded save in respect of members of the family who do [not] have the nationality of a Member State. Member States shall afford to such persons every facility for obtaining any necessary visas.'

5 Article 4(3) of that directive provides:

'A member of the family who is not a national of a Member State shall be issued with a residence document which shall have the same validity as that issued to the national on whom he is dependent.'

6 Article 6 of the directive states:

'An applicant for a residence permit or right of abode shall not be required by a Member State to produce anything other than the following, namely:

(a) the identity card or passport with which he or she entered its territory;

(b) proof that he or she comes within one of the classes of person referred to in Articles 1 and 4.'

7 Article 8 of Directive 73/148 provides:

'Member States shall not derogate from the provisions of this Directive save on grounds of public policy, public security or public health.'

National legislation

8 It is apparent from the order for reference that the Swedish law governing aliens essentially consists of the Utlänningslagen (Aliens Act) (1989:529) ('the Act') and the Utlänningsförordingen (Aliens Ordinance) (1989:547) ('the Ordinance'). In that regard, the order gives the following information.

9 Chapter 1 of the Act provides that an alien entering or staying in Sweden is to have a visa unless he has a residence permit or is a citizen of one of the Nordic countries. The Government may prescribe other exceptions to the visa stipulation. An alien staying in Sweden for more than three months is to have a residence permit unless he is a citizen of a Nordic country.

10 The third paragraph of subsection 1 of Section 4 of Chapter 2 of the Act provides that a residence permit may be issued to an alien who is a close relative of someone domiciled in Sweden or who has been granted a residence permit to settle in Sweden and who has been a member of the same household as that person. Under Section 5 of Chapter 2 of the Act, an alien who wishes to have a residence permit in Sweden must have acquired such a permit before entering the country. An application may not be allowed after entry into Swedish territory. However, a residence permit may in particular be issued after entry to an alien who, in accordance with the third paragraph of subsection 1 of Section 4 of Chapter 2 is a close relative of someone domiciled in Sweden and the alien cannot reasonably be required to return to another country to make the application there.

11 In accordance with Section 14 of Chapter 2 of the Act, the Government may prescribe that an application for a residence permit may be granted if it is pursuant to an agreement with a foreign State. The Ordinance contains such provisions in Chapter 3, Sections 5a, 5b and 7a.

12 Thus, Section 7a of Chapter 3 of the Ordinance provides that an application for a residence permit can be accepted even if the application is made or examined while the alien is in Sweden, if the application is made by an alien who is a national of a Member State of the European Economic Area (EEA) or of Switzerland. Under Chapter 3, Section 5b of the Ordinance, the same applies to applications made by a member of that alien's family. According to Section 5a of Chapter 3 of the Ordinance, a residence permit is to be granted to an alien who can show a valid passport or identity card, is a national of a country in the European Economic Area (EEA) or of Switzerland and fulfils the requirements of the 2nd to 7th or 10th indents of that section. The second indent provides that self-employed persons who can show by one document that they are self-employed, are to be granted a residence permit valid for five years and that the permit may be renewed. Finally, under Section 5b of Chapter 3 of the Ordinance, a residence permit is also to be granted to an alien who is related in one of the ways specified in points 1 to 5 of the first subsection of the provision to a citizen of an EEA State.

13 According to the order for reference, residence permits are to be granted to the alien, on the same terms as to the citizen of an EEA State to whom the alien is related, upon production of a valid passport, identity card, certificate of kinship or certificate showing that the alien is dependent on the citizen of the EEA State or his or her spouse. The alien is, in many cases, also to produce the documents or evidence necessary to prove the relationship to the citizen of the EEA State as required under points 1 to 5 of Section 5b of Chapter 3 of the Ordinance. The first point of that section provides that, to be classified as a member of the family of a self-employed person, the alien is required to be related in one of the following ways to a citizen of the EEA State: as a spouse, child under 21 years of age or dependent on that citizen for support, or an immediate direct relative in the ascending line (in the immediately preceding generation) of either the citizen of the EEA State or his or her spouse and dependent on them for support.

14 Pursuant to point 2 of paragraph 1 of Section 1 of Chapter 4 of the Act, an alien may be refused entry if he lacks a visa, residence permit or other permit required for entry, residence or employment in Sweden.

15 Finally, the order for reference states that Section 6 of Chapter 4 of the Act provides that if a residence permit application is rejected or a residence permit revoked while the alien is in Sweden, a refusal-of-entry or expulsion order is to be made at the same time unless there are special grounds to the contrary.

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 The son of Ms Jia, Mr Shenzhi Li, also a Chinese national, has been resident in Sweden with his wife, Ms Svanja Schallehn, since 1995. Ms Schallehn, who has German nationality, is self-employed in Sweden. She holds a residence permit issued to her as a national of a Member State, which is valid until 3 July 2006 inclusive. Mr Shenzhi Li holds a residence permit as a spouse of a Community national, with the same term of validity as that of his wife.

17 On 2 May 2003 the Swedish Embassy in Beijing granted Ms Jia a visitor's visa valid until 21 August 2003 inclusive for one entry into the Schengen States for a visit of a maximum of 90 days. Ms Jia entered the Schengen States via Stockholm/Arlanda airport on 13 May 2003. On 7 August 2003 she applied to the Migrationsverket for a residence permit, on the basis that she is related to a national of a Member State.

18 With a view to obtaining the residence permit, Ms Jia put forward, inter alia, the following arguments: she draws a pension of SEK 1 166 per month from China and her husband, Mr Yupu Li, draws a pension of approximately SEK 1 000 per month; she and her husband live in very straitened circumstances in China; they would not

be able to support themselves without the financial contribution from their son and his wife; and they cannot claim any financial help from the Chinese authorities. In support of her application, Ms Jia produced a certificate of relationship to Mr Shenzhi Li from the Beijing Notary Public Office and a certificate from her former employer, China Forestry Publishing House, stating that she is financially dependent on her son and daughter-in-law.

19 On 7 April 2004 the Migrationsverket decided to reject Ms Jia's application on the ground that there was insufficient proof of the situation of financial dependence and ordered that she should be returned to her country of origin or to another country if she showed that another country would accept her. On 14 May 2004 Ms Jia appealed to the Utlänningsnämnden (Alien Appeals Board) against the Migrationsverket's decision.

20 It is also apparent from the order for reference that, on 3 September 2003, the Migrationsverket granted Mr Yupu Li a national visa valid for one entry into Sweden and for a visit of a maximum of 180 days. On 10 March 2004 he applied for a residence permit on the same ground as Ms Jia. His application was rejected by the Migrationsverket on 17 September 2004 and Mr Yupu Li appealed to the Utlänningsnämnden against the Migrationsverket's decision. According to the order for reference, the Utlänningsnämnden had not yet begun to examine Mr Yupu Li's appeal when the present reference to the Court of Justice for a preliminary ruling was made.

21 According to the Migrationsverket, 'dependence' on a national of a Member State (or his spouse) implies that there should be a real need for financial or other support which is regularly met by the family members established in the Member State. It should therefore not be a question of occasional need or acceptance of a contribution which is not strictly necessary to support the person in question. It is also necessary to take account of the need for support in the country of origin rather than the need for support on possible relocation to a Member State. Dependence must also be established by way of a certificate or other documents and

it is not contrary to the provisions of Community law to require proof that there is a dependent relationship. It is not an absolute requirement that an applicant should be able to show a certificate of dependence from the authorities of the country of origin, such a certificate being merely an example of what may be used to show financial dependence. However, a mere undertaking from a Community national or his spouse to support his parents is not sufficient for it to be considered that there is the dependence necessary for a residence permit to be granted.

22 The Utlänningsnämnden notes, inter alia, that, according to the case-law of the Court (Case 316/85 *Lebon* [1987] ECR 2811, paragraphs 20 to 22) the fact that a citizen of the Union supports a relative is decisive in determining whether there is dependence and it is not necessary to establish the reasons for such dependence. What constitutes a situation of dependence cannot, however, be clearly defined. It is possible either to take the view that such a situation exists when a member of the family of a Community national needs financial assistance from him to attain or maintain a desired standard of living, or to consider that a situation of dependence arises when the member of the family could not attain a minimum acceptable standard of living in his country of origin or in his country of usual residence without that financial assistance.

23 Furthermore, in the view of the Utlänningsnämnden, according to Article 6 of Directive 73/148, an applicant for a residence permit is not to be required to produce anything other than the identity card or passport with which he or she entered the territory of the Member State in question and proof that he or she comes within one of the classes of person referred to in Articles 1 and 4 of that directive. In that context, the question arises whether, in addition to the certificate showing the relationship, proof of the situation of dependence may be required. It cannot be said to be clear whether a certificate from the relative or Community national can be regarded as proof per se that there is a situation of dependence.

24 The Utlänningsnämnden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) a. In the light of the judgment in Case C-109/01 [*Akrich* [2003] ECR I-9607], is Article 10 of Regulation (EEC) No 1612/68 [of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968(II), p. 475)] to be interpreted as meaning that a national of a non-Member State related to a worker as specified therein must be lawfully within the Community in order to have the right permanently to reside with the worker — and, in the same way, is Article 1 of Directive 73/148 to be interpreted as meaning that the right to permanent residence of a relative of a citizen of the Union, who is a national of a non-Member State, presupposes that the national of a non-Member State is lawfully resident in the Community?

b. If Directive 73/148 is to be interpreted as meaning that lawful residence within the Community is a requirement in order for a relative of a citizen of the Union, who is a national of a non-Member State, to be able to claim the right to permanent residence under the directive, does that then imply that the relative is to hold a current residence permit valid for or intended to lead to permanent residence in one of the Member States? If there is no permanent residence permit is a residence permit granted on other grounds for a shorter or longer stay sufficient, or is it, as in the case pending before the Utlänningsnämnden, sufficient if the relative applying for a residence permit holds a valid visa?

c. If a relative of a citizen of the Union, who is a national of a non-Member State, cannot benefit from the right to permanent residence under Directive 73/148 because he is not lawfully resident in the Community, does a refusal to grant a relative a residence permit for permanent residence thus restrict the right of the citizen of the Union to freedom of establishment under Article 43 EC?

d. If a relative of a citizen of the Union, who is a national of a non-Member State, cannot benefit from the right to permanent residence under Directive 73/148 because he is not lawfully resident in the Community, is the right of the citizen of the Union to freedom of establishment under Article 43 EC restricted if the relatives of the citizen of the Union are deported because an application for a national residence permit cannot be accepted after entry into Sweden?

(2) a. Is Article 1(1)(d) of Directive 73/148 to be interpreted as meaning that "dependence" means that a relative of a citizen of the Union is economically dependent on the citizen of the Union to attain the lowest acceptable standard of living in his country of origin or country where he is normally resident?

b. Is Article 6(b) of Directive 73/148 to be interpreted as meaning that the Member States may require a relative of a citizen of the Union who claims to be dependent on the citizen of the Union or his/her spouse to produce documents, in addition to the undertaking given by the citizen of the Union, which prove that there is a factual situation of dependence?'

The questions

Question 1(a) to (d)

25 By this question, the referring court asks essentially whether Community law, in the light of the judgment in *Akrich*, requires Member States to make the grant of a residence permit to a national of a non-Member State, who is a member of the family of a Community national who has exercised his right of free movement, subject to the condition that that family member has previously been lawfully resident in another Member State.

26 In the judgment in *Akrich*, the Court held that, in order to be able to benefit, in a situation such as that at issue in the proceedings which gave rise to that case, from the rights provided for in Article 10 of Regulation No 1612/68, a national of a non-Member State married to a citizen of the Union must be lawfully resident in a Member State when he moves to another Member State in which the citizen of the Union is establishing or has established him or herself.

27 With reference to that judgment, the referring court wishes to know more precisely whether the condition of previous lawful residence mentioned above also applies to Ms Jia's situation.

28 In order to answer that question, it is helpful to recall the facts of the case which gave rise to the judgment in *Akrich*.

29 The referring court in that case was seised of an action against the refusal of the United Kingdom authorities to grant a residence permit to Mr Akrich, a national of a non-Member State married to a United Kingdom national. Mr Akrich did not have the right of residence in the United Kingdom and he had agreed to be deported to Ireland where he joined his wife who had installed herself there shortly before. The couple intended to return to the United Kingdom by taking advantage of Community law so that Mr Akrich could enter that country as the spouse of a citizen of the Union who had exercised her right to free movement.

30 It was in the light of that situation that the referring court involved had asked the Court what measures the Member States were entitled to take in order to combat steps taken by members of the family of a Community national who did not meet the conditions laid down by national law for entry and residence in a Member State.

31 In the case in the main proceedings, it is not alleged that the family member in question was residing unlawfully in a Member State or that she was seeking to evade national immigration legislation illicitly. On the contrary, Ms Jia was lawfully in Sweden when she submitted her application and Swedish law itself does not preclude, in a situation such as that in the main proceedings, the grant of a long-term residence permit to the person concerned, provided that sufficient proof of financial dependence is adduced.

32 It follows that the condition of previous lawful residence in another Member State, as formulated in the judgment in *Akrich*, cannot be transposed to the present case and thus cannot apply to such a situation.

33 The answer to Question 1(a) to (d) must therefore be that, having regard to the judgment in *Akrich*, Community law does not require Member States to make the grant of a residence permit to nationals of a non-Member State, who are members of the family of a Community national who has exercised his or her right of free movement, subject to the condition that those family members have previously been residing lawfully in another Member State.

Question 2(a) and (b)

34 Article 1(1)(d) of Directive 73/148 applies only to 'dependent' relatives in the ascending line of the spouse of a national of a Member State established in another Member State in order to pursue activities as a self-employed person.

35 According to the case-law of the Court, the status of 'dependent' family member is the result of a factual situation characterised by the fact that material support for that family member is provided by the Community national who has exercised his right of free movement or by his spouse (see, in relation to Article 10 of Regulation No 1612/68 and Article 1 of Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26), *Lebon*, paragraph 22, and Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, paragraph 43, respectively).

36 The Court has also held that the status of dependent family member does not presuppose the existence of a right to maintenance, otherwise that status would depend on national legislation, which varies from one State to another (*Lebon*, paragraph 21). According to the Court, there is no need to determine the reasons for recourse to that support or to raise the question whether the person concerned is able to support himself by taking up paid employment. That interpretation is dictated in particular by the principle according to which the provisions establishing the free movement of workers, which constitute one of the foundations of the Community, must be construed broadly (*Lebon*, paragraphs 22 and 23).

37 In order to determine whether the relatives in the ascending line of the spouse of a Community national are dependent on the latter, the host Member State must assess whether, having regard to their financial and social conditions, they are not in a position to support themselves. The need for material support must exist in the State of origin of those relatives or the State whence they came at the time when they apply to join the Community national.

38 That is the conclusion that must be drawn having regard to Article 4(3) of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition, 1968(II), p. 485), according to which proof of the status of dependent relative in the ascending line of a worker or his spouse within the meaning of Article 10 of Regulation No 1612/68 is to be provided by a document issued by the competent authority of the 'State of origin or the State

whence they came', testifying that the relative concerned is dependent on the worker or his spouse. Despite the lack of precision as to the means of acceptable proof by which the individual concerned can establish that he falls within one of the classes of persons referred to in Articles 1 and 4 of Directive 73/148, there is nothing to justify the status of dependent relative in the ascending line being assessed differently according to whether the relative is a member of the family of a worker or of a self-employed worker.

39 In accordance with Article 6(b) of Directive 73/148, the host Member State may require proof that the applicant comes within one of the classes of person referred to in particular in Article 1 of that directive.

40 When exercising their powers in this area Member States must ensure both the basic freedoms guaranteed by the EC Treaty and the effectiveness of directives containing measures to abolish obstacles to the free movement of persons between those States, so that the exercise by citizens of the European Union and members of their family of the right to reside in the territory of any Member State may be facilitated (see, by analogy, Case C-424/98 *Commission* v *Italy* [2000] ECR I-4001, paragraph 35).

41 With regard to Article 6 of Directive 73/148, the Court has held that, given the lack of precision as to the means of acceptable proof by which the person concerned can establish that he or she comes within one of the classes of persons referred to in Articles 1 and 4 of that directive, it must be concluded that evidence may be adduced by any appropriate means (see, inter alia, Case C-363/89 *Roux* [1991] ECR I-1273, paragraph 16, and Case C-215/03 *Oulane* [2005] ECR I-1215, paragraph 53).

42 Consequently, 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, albeit appearing particularly appropriate for that purpose, cannot

constitute a condition for the issue of a residence permit, while a mere undertaking from a Community national or his spouse to support the family member concerned need not be regarded as establishing the existence of that family member's situation of real dependence.

43 In those circumstances, the answer to Question 2(a) and (b) must be that Article 1(1)(d) of Directive 73/148 is to be interpreted to the effect that 'dependent on them' means that members of the family of a Community national established in another Member State within the meaning of Article 43 EC need the material support of that Community national or his or her spouse in order to meet their essential needs in the State of origin of those family members or the State from which they have come at the time when they apply to join the Community national. Article 6(b) of that directive must be interpreted as meaning that proof of the need for material support may be adduced by any appropriate means, while a mere undertaking from the Community national or his or her spouse to support the family members concerned need not be regarded as establishing the existence of the family members' situation of real dependence.

Costs

44 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Having regard to the judgment in Case C-109/01 *Akrich* [2003] ECR I-9607, Community law does not require Member States to make the grant of a residence permit to nationals of a non-Member State, who are members of the family of a Community national who has exercised his or her right of free movement, subject to the condition that those family members have previously been residing lawfully in another Member State;**

2. **Article 1(1)(d) of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services is to be interpreted to the effect that 'dependent on them' means that members of the family of a Community national established in another Member State within the meaning of Article 43 EC need the material support of that Community national or his or her spouse in order to meet their essential needs in the State of origin of those family members or the State from which they have come at the time when they apply to join that Community national. Article 6(b) of that directive must be interpreted as meaning that proof of the need for material support may be adduced by any appropriate means, while a mere undertaking from the Community national or his or her spouse to support the family members concerned need not be regarded as establishing the existence of the family members' situation of real dependence.**

[Signatures]