

SUBSIDIARY LEGISLATION 217.06**FAMILY REUNIFICATION REGULATIONS**

5th June, 2007

*LEGAL NOTICE 150 of 2007.***Part I****Preliminary**

1. (1) The title of these regulations is the Family Reunification Regulations. Title and purpose.

(2) The purpose of these regulations is to implement the provisions of the European Union Directive 2003/86/EC on the right to family reunification.

2. In these regulations, unless the context otherwise requires: Interpretation.

"average wage" means the average annual gross wage published by the National Statistics Office in the Labour Force Survey;

"the Director" means the Director for Citizenship and Expatriate Affairs;

"family reunification" means the entry into, and residence in, Malta by family members of a third country national residing lawfully in Malta in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

"minor" means a person who has not attained the age of eighteen years;

"residence permit" means a permit issued under article 4A of the Immigration Act, and in particular means an authorization of any type giving the right of residence within the territory of Malta to a third country national who is not dependent upon a citizen of the Union; Cap. 217.

"sponsor" means a third country national residing lawfully in Malta who applies for the members of his family to join him for family reunification purposes;

"third country national" means any person who is not a citizen of the Union.

Part II**Application for Family Reunification**

3. (1) The sponsor shall be entitled to apply for family reunification subject to the following conditions: Conditions applicable to family reunification.

(a) if the members of his family are third country nationals; and

(b) he is holding a residence permit valid for a minimum period of one year; and

(c) he has reasonable prospects of obtaining the right of

permanent residence.

(2) The sponsor shall not be entitled to apply for family reunification if he -

- (a) has applied for recognition of refugee status and his application has not yet been decided;
- (b) is authorised to reside in Malta on the basis of temporary protection or awaiting a decision thereon;
- (c) is authorised to reside in Malta on the basis of a subsidiary form of protection or awaiting a decision thereon.

Part III

Family Members

Family members for the purpose of family reunification.

4. (1) Subject to the provisions of Part V and of regulations 18, 19 and 20, the Director shall authorise the entry and residence of the following family members:

- (a) the sponsor's spouse who shall be twenty-one years of age or over:

Provided that in the event of a polygamous marriage, where the sponsor already has a spouse living with him in Malta, the Director shall not authorise the family reunification of a further spouse;

- (b) the unmarried minor children of the sponsor and of his spouse, including children adopted in a manner recognized by Maltese law;
- (c) the unmarried minor children, including adopted children, of the sponsor or of the spouse, as the case may be, where the sponsor or the spouse has custody and the children are dependent on him.

(2) In the case of children whose custody is shared between the sponsor and his spouse, the Director may authorize their reunification, provided that the other party sharing custody has given his or her agreement.

Part IV

Submission and Examination of the Application

Submission of application.

5. (1) An application for entry and residence shall be submitted to the Director by the sponsor.

(2) The sponsor may not submit an application for family reunification before he has resided legally in Malta for a minimum period of twelve months.

Documentary evidence.

6. The application for family reunification shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in regulations 4, 11, 12 and 13 as well as by certified copies of travel documents of the family members.

- 7.** In order to obtain evidence that a family relationship exists, the Director may decide to carry out interviews with the sponsor and his family members and conduct other investigations that may be necessary. The Director may carry out interviews.
- 8.** The application shall be submitted by the sponsor and examined by the Director when the family members are residing outside Malta. Application while outside Malta.
- Provided that in appropriate circumstances, the Director may accept an application submitted whilst the family members are already in Malta.
- 9.** (1) The Director shall give the sponsor, who has submitted the application for family reunification, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged: Notification of the decision.
- Provided that in exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in this subregulation may be extended.
- (2) The Director shall give the reasons for his decision when rejecting the application.
- (3) In the event that the Director fails to give a decision within the period specified in subregulation (1), the application shall automatically be passed on for appeal to the Immigration Appeals Board in terms of regulation 22.
- 10.** When examining an application, the best interests of minor children shall be taken into consideration. Minors.
- Part V**
- Requirements for the Exercise of the Right to Family Reunification**
- 11.** (1) The Director may reject an application for entry and residence, refuse to renew or withdraw a residence permit of family members on grounds of public policy, public security or public health. Public policy, public security or public health.
- (2) When taking the relevant decision in accordance with subregulation (1), the Director shall consider, besides the provisions of regulation 21, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.
- (3) Renewal of the residence permit of a family member may not be withheld, and removal from Malta may not be ordered by the Director, on the sole ground of illness or disability suffered after the issue of the residence permit.
- 12.** When submitting the application for family reunification, the sponsor shall provide evidence that he has - Evidence to be submitted with the application.
- (a) documents attesting the family relationship that exists with the persons who are the subject of the application;
- (b) accommodation regarded as normal for a comparable family in Malta and which meets the general health

and safety standards in force in Malta;

- (c) sickness insurance in respect of all risks for himself and the members of his family;
- (d) stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system in Malta and which would be equivalent to, at least, the average wage in Malta with an addition of another twenty percent income or resources for each member of the family who will be the subject of the family reunification application.

Prior lawful stay.

13. The Director shall not allow the members of the family of the sponsor to join him in Malta unless he has stayed lawfully in Malta for a period of two years:

Provided that in exceptional circumstances the Director may allow the family members to join the sponsor in Malta before the said period of two years.

Part VI

Entry and Residence of Family Members

Acceptance of application.

14. (1) As soon as the application for family reunification has been accepted, the Director shall authorize the entry of the family member or members who were the subject of the application, and every facility for obtaining the required visas shall be given to the persons concerned.

(2) The family members shall be granted a first residence permit of at least one year's duration which shall be renewable:

Provided that the duration of the residence permits granted to the members of the family of the sponsor shall, in principle, not extend beyond the date of expiry of the residence permit held by the sponsor.

(3) The sponsor and the family members may be required to attend, and successfully complete, courses in the Maltese language.

Entitlements of the family members.

15. The family members of the sponsor shall be entitled, in the same way as the sponsor, to:

- (a) access to education;
- (b) access to employment and self-employed activity:

Provided that when the sponsor has access to employment and self-employment without the need for an assessment of the situation of the labour market, the said family members shall not be entitled to access in the same way as the sponsor for the first twelve months following their arrival in Malta and for such period of twelve months after their arrival, their access to employment or self-employment shall be subject to an assessment of the situation of the labour market in Malta and the requirement of an employment licence;

- (c) access to vocational guidance, initial and further

training and retraining.

16. (1) Upon the expiry of a period of five years' residence in Malta and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or the child who has reached majority shall be entitled, upon application, to an autonomous residence permit:

Entitlement to autonomous residence permit.

Provided that, in the case of the breakdown of the marriage, the Director may limit the granting of such permit to the spouse only.

(2) The autonomous residence permit is valid for a period of one year and shall be renewable.

(3) During the period of five years referred to in subregulation (1), a temporary absence from Malta shall not interrupt such period and such absence shall not be taken into account in the compilation of the said period when the periods of absence are shorter than six consecutive months and do not exceed the total of ten months within the five year period:

Provided that, for exceptional reasons of a temporary nature, the Director may consider a longer period of absence as not interrupting the said period of five years.

17. (1) The Director shall issue an autonomous residence permit to the widow, to the minor child and to the child who has reached the age of majority in the event of the death of the sponsor after having obtained a residence permit for reasons of family reunification.

Entitlement to autonomous residence permit in particularly difficult circumstances.

(2) The Director shall issue an autonomous residence permit to a person who, having entered Malta on the basis of a family reunification permit, such person is subsequently found to be in particularly difficult circumstances following a breakdown of the marriage.

18. The Director may reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew a family member's residence permit, in the following circumstances:

Rejection, withdrawal or refusal to renew a family residence permit.

(a) where the conditions laid down by these regulations are not, or are no longer, satisfied:

Provided that, when renewing the residence permit, the contributions of the family members to the household income shall be taken into account where the sponsor fails to prove that he has the sufficient resources referred to in regulation 12(d) without recourse to the social assistance system;

(b) where the sponsor and his family members do not, or no longer live, in a real marital or family relationship;

(c) where it is found that the sponsor is already married;

(d) where it is shown that the family reunification permit was based on false or misleading information, false or

falsified documents, or otherwise fraudulently obtained; and

- (e) where it is shown that the marriage or adoption which are the subject of the application for family reunification was contracted solely for the purpose of enabling the person concerned to enter or reside in Malta.

Withdrawal or refusal to renew permit when sponsor's residence ends.

19. The Director may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under regulations 16 and 17.

Specific checks and inspections may be carried out.

20. The Director may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage or adoption of convenience as defined by regulation 18(d) and (e). Specific checks may also be undertaken on the occasion of the renewal of residence permits of family members.

Consideration of family relationships.

21. Before rejecting an application, withdrawing or refusing to renew a residence permit or deciding to order the removal of the sponsor or members of his family, the Director shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in Malta and of the existence of family, cultural and social ties with such person's country of origin.

Right of appeal.

22. The sponsor and the members of his family shall have the right to appeal to the Immigration Appeals Board against a decision taken by the Director rejecting the application for family reunification or refusing to renew or withdraw a residence permit.