

**ESTONIAN MIGRATION FOUNDATION
EUROPEAN MIGRATION NETWORK**

FAMILY REUNIFICATION LAW IN ESTONIA

IV SMALL-SCALE STUDY

**TALLINN
JULY 2007**

TABLE OF CONTENTS

1. SUMMARY.....	3
2.1. INTRODUCTION.....	5
2.2. TERMINOLOGY.....	7
2.3. METHODOLOGY.....	9
3. NATIONAL FAMILY REUNIFICATION POLICY.....	10
3.1. OVERVIEW OF THE NATIONAL FAMILY REUNIFICATION POLICY UNTIL THE YEAR 2006.....	10
A. THE “MAYBE” CLAUSE.....	11
B. CONDITIONS FOR ENTRY INTO THE COUNTRY AND APPLICATION FOR RESIDENCE PERMIT.....	11
C. POLICY/PRACTICE BY FOLLOWING SPECIFIC ARTICLE OF THE DIRECTIVE.....	14
D. IMPLEMENTATION FOR CERTAIN GROUPS.....	24
3.2. DEVELOPMENT OF FAMILY REUNIFICATION POLICY DURING 2002-2006..	26
3.3. CONCLUSIONS ARISING FROM FAMILY REUNIFICATION POLICY AND ITS DEVELOPMENT.....	30
4. FAMILY MIGRATION STATISTICS.....	32
4.1. CONCLUSIONS ARISING FROM THE MIGRATION STATISTICS AND ITS DEVELOPMENT.....	34
5. OTHER RELEVANT ASPECTS.....	34
5.1. MIGRATION OF THIRD COUNTRY EMPLOYEES TO ESTONIA.....	34
5.2. INTEGRATION.....	35
6. CONCLUSIONS.....	37
ANNEXE 1 Distribution of residence permits in Estonia in 2006.....	38
ANNEXE 2 Application for the temporary residence permit as an exception in Estonia... 	38
ANNEXE 3 Immigration quota.....	39
ANNEXE 4 Amount of legal income 2006-2007.....	40
ANNEXE 5 Table 1.....	42
ANNEXE 6 Table 2.....	43
ANNEXE 7 Table 3.....	44
ANNEXE 8 USED LITERATURE.....	46

1. SUMMARY

As a member of the European Union (hereinafter referred to as EU), Estonia must apply the legal standards and Directives of the European Union. Estonia updates its legislation periodically according to the legal acts passed by the EU.

The main focus of this study lies on two acts, the Aliens Act and Act on Granting International Protection to Aliens and analysing their compliance with the Directive 2003/86/EC on the right to family reunification.

Directive 2003/86/EC was transposed to the Estonian legislation in 2006. Before the family reunification Directive 2003/86/EC the principle of the right to family reunification was based on Sections 26 and 27 of the Constitution of the Republic of Estonia. Respectively: “Everyone has the right to the inviolability of private and family life” and ” The family, being fundamental to the preservation and growth of the nation and as the basis of society shall be protected by the state”. Although the Constitution of the Republic of Estonia was passed already in 1992, the legal acts regulating aliens (the Aliens Act) were not in accordance with these principles. Only in 2002 was the Aliens Act brought into accordance with the Constitution of the Republic of Estonia and the spouse and child who is a minor of the citizen of Estonia and alien permanently residing in Estonia were exempted from the immigration quota.

The most important change in transposing the Directive 2003/86/EC to the Estonian legislation in terms of family reunification was that from 01.06.2006 the term for the residence permit for settling with a spouse was changed in the Aliens Act: now the temporary residence permit can be granted to settle with his or her spouse who resides in Estonia permanently and who is an Estonian citizen or to settle with his or her spouse who is an alien who has resided in Estonia for at least two years (before – at least five years) on the basis of a residence permit if the spouses share close economic ties and a psychological relationship, if the family is stable and the marriage is not fictitious, and if the application for a residence permit is justified.¹

The main amendments concerning family reunification have also been entered into the Act on Granting International Protection to Aliens regulating the proceedings concerning asylum seekers, which entered into force on 01.07.2006.

This study is built up according to the specifications and structure of a Small Scale Study IV. The introductory part gives an overview of the Estonian political landscape and main institutions that deal with migration and asylum issues in Estonia. The terminology part compares

¹ Compliance of §12¹(1) of the Aliens Act with Directive 2003/86/EC

compliance of the main terminology of the family reunification directive 2003/86/EC with the terminology used in Estonian legislation. Generally the main terminology is the same, however, there are some exceptions: namely, Estonian legislation lacks such definitions as *nuclear family* and *dependent*.

Chapter “Conditions for entry into the country and application for residence permit” gives a detailed article-by-article overview of how the family reunification directive 2003/86/EC has been transposed to the Estonian legislation.

Chapter ”Development of the family reunification policy during the years 2002-2006” sets forth three topics that have caused the most controversy and public discussion – immigration quota, foreign labour migration policy and fictitious marriages. Due to the fact that Estonia is strongly for strict immigration policy, the topics concerning simplification of immigration have always been under intense public scrutiny. Partly such position is understandable because 82% of the Estonian population is formed by Estonian citizens, 10% by aliens with undefined citizenship and 8% by citizens of another country (only in 1992 the situation was completely different: 68% of Estonian citizens and 32% of aliens), however, on the other hand by joining the European Union on 01.05.2004, Estonia has taken an obligation to favour not only the free movement of the citizens of the European Union between the member states but also improving the possibilities for working, family reunification, studying and asylum seeking of citizens of third countries.

The fourth part analyses family reunification in numbers in Estonia. Unfortunately it was not possible for us to obtain exactly the data foreseen in the specification of the work, however, to a certain extent the submitted statistical data does reflect the family migration in Estonia during the years 2002-2006.

The fifth part deals with the topics related to family migration: migration of the employees of third countries to Estonia and integration.

2.1. INTRODUCTION TO THE FAMILY REUNIFICATION TOPIC

Since the regaining of independence the Estonian immigration policy has been stable and changed little in its essence during the last ten years and similarly to the European Union member states it has been limiting to the immigration.

Estonia is an immigration target country mainly for the citizens of third countries (countries that are not EU member states). The majority of the countries of departure for immigration to Estonia are the CIS countries, first and foremost the Russian Federation. The immigration pressure from the CIS countries has been consistent and due to the accession of Estonia with the European Union there are no grounds for predicting the decrease of the immigration pressure, rather the increase. Approximately one-fourth of the immigration takes place for setting with a spouse or close relative living in Estonia or can be considered as family migration. A part of aliens applying for the residence permits for any grounds have no unavoidable reason for settling in Estonia, but are actually economic immigrants. In addition to immigration from the CIS countries, a significant increase of immigration can be observed also from other third countries (e.g. China and India).²

In the European countries as well as in Estonia the family migration forms predominantly the biggest type of migration, not considering persons seeking asylum (for example the example of the year 2006)³. In the European countries the family migration also forms the biggest share of the illegal immigration. Although Estonia has no exact data for that, considering the general behavioural tendencies of the immigrant population, there are no grounds to believe that this situation is different in Estonia. The second major type of migration is formed by arriving in Estonia with an aim of illegal working.

The European Council recognized at its extraordinary meeting held in Tampere on 15 and 16 October 1999 the need to harmonize the national legal acts dealing with allowing citizens of third countries to the country and the conditions of residence. Due to that the Council recognised especially that the European Union should legally ensure the equal treatment of the citizens of third countries living legally on the territory of the member states and that through a more efficient integration policy granting such people rights and obligations equal to those of the European Union citizens should be applied for. Family reunification is necessary for enabling family life. It helps to integrate citizens of third countries living in a member state by facilitating the creating of socio-cultural stability. Family reunification should in any case be possible in the case of nuclear family, i.e. spouse and children who are minors. The member states have to

² [http://materjalid.tmk.edu.ee/veiko_kopamees/RAHVASTIKUOIGUSE_KONSPEKT_2005_\(06.10.2005\).doc](http://materjalid.tmk.edu.ee/veiko_kopamees/RAHVASTIKUOIGUSE_KONSPEKT_2005_(06.10.2005).doc)

³ See Annexe 1

decide if they want to allow family reunification for immediately ascending relatives, adult unmarried children, unmarried or registered cohabitees and in the case of polygamous marriage, to the children who are minors of the second spouse and to a person applying for family reunification.⁴

In relation to Estonia's accession to the European Union on 01.05.2004 and the Schengen convention hopefully in December 2007, Estonia will have several additional obligations. When joining the European Union Estonia undertook the obligation to harmonize the European Union directives with its legislation. Joining with the Schengen regulation is a two-stage process. From the date of accession to the European Union Estonia had to implement the set of rules for citizens subject to the visa requirements and those from the countries exempt from the visa requirement, the uniform format for visas (visa-sticker), the uniform residence permit format, unified format for visa invitation, also several measures for preventing illegal immigration or travel in transit. The second stage starts by losing document control on internal borders or full implementation of the Schengen rules preceded by carrying out assessment missions by other Schengen member states and implementation of the second generation of the Schengen information system (SIS II). Estonia will have the obligation to apply the common visa policy, participate in the VISION⁵ consultation system and exchange information, including in the field of residence permits with the competent authorities of other member states. As compensation measure the internal control of aliens should be made more efficient.⁶

The most important legal acts regulating the migration issues in Estonia are: Aliens Act, Citizenship Act, Citizen of European Union Act, Constitution of the Republic of Estonia, Identity Documents Act, Act on Granting International Protection to Aliens (before Refugees Act), Administrative Procedure Act, Obligation to Leave and Prohibition on Entry Act and State Borders Act. The main international legal acts ratified in Estonia which influence the migration issues are: The main international legal acts influencing the migration issues in Estonia are: Convention on the Rights of Child, 1989, Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 New York protocol.⁷

In Estonia the Citizenship and Migration Board (hereinafter the CMB) deals with the processing of the applications of the aliens and citizens of the EU. Although the decision-making capacity (for example granting the residence permit, approval of the visa invitation etc) lies with the

⁴ Draft AA 2-1-1/6057

⁵ VISION- visa information system

⁶ [http://materjalid.tmk.edu.ee/veiko_kopamees/RAHVASTIKUOIGUSE_KONSPEKT_2005_\(06.10.2005\).doc](http://materjalid.tmk.edu.ee/veiko_kopamees/RAHVASTIKUOIGUSE_KONSPEKT_2005_(06.10.2005).doc)

⁷ 2006 policy report "Estonian migration and asylum policy", EMN Tallinn 2006

CMB, the Board has a very efficient cooperation with the Ministry of the Interior, Border Guard Administration, Police Board, Security Police and Ministry of Foreign Affairs.

2.2. Terminology

The following is an analysis of the compliance of the terminology of the EU Directive 2003/86/EC and Estonian legislation.

- *Nuclear family*. Estonian legislation has no such term, however, it is used in everyday language. The definition of nuclear family was introduced during the population census of Estonia in 2000.⁸

Nuclear family (family) – a nuclear family is formed by persons living in the same household who are related to each other as partners in marriage, partners in common-law partnership or as a parent and a child. Each member of a household can belong only to one nuclear family. The nuclear family can consist of:

- a. a married couple or a couple of cohabitees without children (childless couple),
- b. a married couple or a couple of cohabitees with children (a couple with children, the children need not to be of both),
- c. unmarried parent with a child (children)

Household – Persons who live together and are linked by the common use of all available household facilities form a household. A person living alone is also a household.⁹ A blood relationship or relationship by marriage between the members of a household is not essentially necessary.¹⁰

- *Third country national* is a definition uniform in the Directive as well as Estonian legislation¹¹. Third country national is an alien who is a citizen of a country other than a member state of the European Union, member state of the European Economic Area or the Swiss Confederation¹²
- *Refugee* - common understanding between the Directive and Estonian law¹³. is an alien who is residing outside the country of origin due to reasoned fear of persecution on the

⁸ <http://vana.www.postimees.ee:8080/leht/00/03/31/arvamus.htm>

⁹ Population and Housing Census Act §5(2)

¹⁰ http://pub.stat.ee/px-web.2001/Database/Rahvaloendus/16Sunnikoht._Vanemate_sunnikoht/rl11.htm

¹¹ Act on Granting International Protection to Aliens

¹² Act on Granting International Protection to Aliens § 2(2)

¹³ Act on Granting International Protection to Aliens

basis of race, religion, nationality, political convictions or belonging to a social group and cannot or due to fear does not want to receive protection from such country and for whom there are no circumstances excluding recognition as a refugee.¹⁴ The status of refugee is a status given for aliens who are recognized as refugees pursuant to the 1951 Geneva Convention Relating to the Status of Refugees amended by the 1967 New York protocol signed in of 31 January 1967.

- *Family Reunification* – the term is used since 2006 in the Act on Granting Aliens International Protection to Aliens, however, the term as such has not been elaborated on in the Act.
- *Residence permit* – common understanding between the Directive and Estonian law¹⁵, a residence permit is a permit for living in a country issued to an alien.
- *Unaccompanied minor* – the definition is mentioned in the law¹⁶ since 2006. A minor is a person under 18 years of age.
- *Dependent* – the Estonian legislation does not feature the direct term of dependant, however, there are terms “family member” and “sponsor”. Being a dependant of a family member is considered to be an economic dependence. Dependence ensured by a family member is considered:
 - 1) maintenance of a minor child by a parent;
 - 2) maintenance of an adult child who due to the health status or disability is not able to cope independently by a parent;
 - 3) maintenance of an adult child who is studying full time by a parent;
 - 4) maintenance by a spouse;
 - 5) maintenance of a parent who due to the health status or disability is not able to cope independently by a child.¹⁷

During the course of comparing the terminology it appears there is no direct equivalent in Estonian for all English definitions and many of the terms have not been explained as independent terms in Estonian legislation, however, they are used in general use of language.

¹⁴ Act on Granting International Protection to Aliens § 4 (1)

¹⁵ Aliens Act § 11

¹⁶ Act on Granting International Protection to Aliens § 6

¹⁷ Aliens Act § 4³

2.3. Methodology

This study is compiled according to the specifications and structure of Small Scale Study IV of the European Migration Network. The study uses mainly comparative methodology, comparing Directive 2003/86/EC and two acts in which the Directive has been transposed: Aliens Act and Act on Granting International Protection to Aliens.

Due to the fact that Estonian legislation does not clearly define the term of dependent, this study uses mainly the term of family member, which principally should correspond to the term of dependent.

Due to the fact that granting residence permits is within the area of responsibility of the CMB, we sent an inquiry to them in order to obtain statistical data. Unfortunately, the CMB replied that their information system is not adjusted to collect as precise data as requested by the specification of Small Scale Study IV. We also contacted the Statistical Office of Estonia and the Population Register, however, they did not have such detailed data either.

3. NATIONAL FAMILY REUNIFICATION POLICY

3.1. Overview of the national family reunification policy until the year 2006

The family reunification right is provided for in the Constitution of the Republic of Estonia passed on 28 June 1992:

§ 26. Everyone has the right to the inviolability of private and family life. State agencies, local governments, and their officials shall not interfere with the private or family life of any person, except in the cases and pursuant to procedure provided by law to protect health, morals, public order, or the rights and freedoms of others, to combat a criminal offence, or to apprehend a criminal offender.

§ 27. The family, being fundamental to the preservation and growth of the nation and as the basis of society shall be protected by the state. Spouses have equal rights. Parents have the right and the duty to raise and care for their children. The protection of parents and children shall be provided by law. The family has a duty to care for its needy members.¹⁸

Directive 2003/86/EC is transposed to two Acts in Estonia:

- Aliens Act (AA) entered into force on 12.07.1993. Directive 2003/86/EC was harmonised in the Estonian legislation on 01.06.2006. The AA was generally in conformity with the Directive 2003/86/EC. Only some provisions needed adjustment.
- Act on Granting International Protection to Aliens entered into force on 01.07.2006 (previously the status of asylum seekers and refugees was regulated by the Refugees Act). Directive 2003/86/EC was harmonised to the Estonian legislation on 01.07.2006.

The main changes from the point of view of family reunification in the Aliens Act have been:

- From 01.10.2002 the following are not considered under the immigration quota:
 - 1) the spouse of an Estonian citizen or of an alien who resides in Estonia on the basis of a residence permit
 - 2) a minor child, adult child, parent, grandparent or ward of an Estonian citizen or of an alien who resides in Estonia on the basis of a residence permit.¹⁹
- From 01.10.2002 granting residence permits for settling with a spouse was defined more clearly: A temporary residence permit may be issued to an alien to settle with his or her spouse who resides in Estonia permanently and who is an Estonian citizen or to settle with his or her spouse who is an alien who has resided in Estonia for at least two years on the basis of a permanent residence permit if the spouses share close economic ties and a

¹⁸ Constitution of the Republic of Estonia § 26, § 27

¹⁹ Aliens Act § 6(2¹)

psychological relationship, if the family is stable and the marriage is not fictitious, and if the application for a residence permit is justified.²⁰

- From 01.06.2006 the term of residence permit for settling with a spouse was amended: A temporary residence permit may be issued to an alien to settle with his or her spouse who resides in Estonia permanently and who is an Estonian citizen or to settle with his or her spouse who is an alien who has resided in Estonia for at least two years (previously five years) on the basis of a residence permit if the spouses share close economic ties and a psychological relationship, if the family is stable and the marriage is not fictitious, and if the application for a residence permit is justified.²¹
- Before the Act on Granting International Protection to Aliens, until 30.06.2006 the family reunification principle was regulated in general in the Refugees Act. Section 14(5) of the Refugees Act of 01.05.2003 established that all the same social rights that the refugees have extend to the family members of the refugees.²² Previously it was not regulated. The same wording of the amendment of the Act §16 provides granting of residence permits to the family members of aliens (within the meaning of the Refugees Act).²³ Previously the granting of residence permits to family members of refugees was not regulated.²⁴

3.1. a) The “Maybe” clause

The transposition of the Directive is described in further detail in Section C of this Chapter.

b) Conditions for entry into the country and application for residence permit

The bases for entry into Estonia, stay, living and working in Estonia of third country nationals and of the legal responsibility of an alien are regulated in Estonia with the Aliens Act (hereinafter AA).

The AA²⁵ regulates the bases for granting temporary residence permits in Estonia. A temporary residence permit may be issued to aliens:

- 1) for employment;
- 1¹) for enterprise;
- 2) for study in an educational institution according to the application of the educational institution;

²⁰ Aliens Act § 12¹ (1)

²¹ Aliens Act § 12¹ (1)

²² Refugees Act § 14 (5)

²³ Refugees Act § 16

²⁴ CMB response to the Estonian Migration Foundation 3-2/2007-19

²⁵ Aliens Act § 12 (1)

- 3) in order to settle with a close relative permanently resident in Estonia;
- 4) whose permanent legal income ensures their subsistence in Estonia;
- 5) whose application for a residence permit is based on an international agreement.

Furthermore, on the basis of the AA²⁶ a temporary residence permit may be issued to an alien who is married to a person permanently resident in Estonia.

From the point of view of family reunification the settling with a spouse and close relative are of first and foremost importance. A temporary residence permit may be issued to the following aliens to settle with a close relative who is an Estonian citizen or to settle with a close relative who is an alien who has resided in Estonia for at least two years on the basis of a residence permit:

- 1) to a minor child in order to settle with a parent who permanently resides in Estonia;
- 2) to an adult child in order to settle with a parent who permanently resides in Estonia if the child is unable to cope independently due to health reasons or a disability;
- 3) to a parent or grandparent in order to settle with his or her adult child or grandchild who permanently resides in Estonia if the parent or grandparent needs care which it is not possible for him or her to receive in the country of his or her location or in another country and if his or her permanent legal income or the permanent legal income of his or her child or grandchild who legally resides in Estonia ensures that the parent or grandparent will be maintained in Estonia;
- 4) to a person under guardianship in order to settle with the guardian who permanently resides in Estonia if the permanent legal income of the guardian ensures that the person will be maintained in Estonia.²⁷

A temporary residence permit may be issued to an alien to settle with a close relative in cases mentioned in Clauses 1), 2) and 4) of §12³ of the Aliens Act provided that the close relative for the purposes of settling with whom the residence permit is applied for has received a temporary residence permit.

Upon the issue of a residence permit in the case specified in clause 1), the rights and interests of the minor child shall be taken into consideration above all. A residence permit shall not be issued if the settling of the child in Estonia would damage his or her rights and interests and if his or her legal, financial or social status may deteriorate as a result of settling in Estonia. In the case of shared custody the consent of the party sharing the custody is required.²⁸ For the purposes of the

²⁶ Aliens Act § 12 (2)

²⁷ Aliens Act § 12³ (1)

²⁸ Aliens Act § 12³ (2)

AA a minor child shall be any person under 18 years of age. A person who is married, has a separate family or leads an independent life is not deemed to be a minor child.²⁹

Pursuant to Article 4(3) of Chapter II of Directive 2003/86/EC the member states may issue a residence permit also to the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or to a third country national who is bound to the sponsor by a registered partnership and to the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons applying for family reunification, i.e. the registered partners are considered equal to spouses. Estonia is not implementing this Article of the Directive in the Aliens Act, however, it has been regulated in the Citizen of European Union Act. A citizen of the European Union (except a citizen of Estonia) may, for the purposes of family reunification, invite to settle in Estonia a family member who is his or her dependant or member of household in the country of origin.³⁰

Article 4(5) of Chapter II of the Directive concerning in the case of a person applying for family reunification and his or her spouse, a requirement that they both be of a minimum age, and at maximum 21 years, before the spouse is able to join the person applying for family reunification has also not been transposed due to the fact that the Estonian migration policy does not yet see a need for that.

Issues concerning asylum seekers and their family members has been regulated in Act on Granting International Protection to Aliens (hereinafter AGIPA).

1. The family members of an asylum seeker shall be:

- 1) his or her spouse;
- 2) his or her unmarried and minor child, including adopted child;
- 3) his or her and his or her spouse's unmarried and minor child, including adopted child.

2. The family members of a refugee and a person receiving supplementary legal protection shall be:

- 1) his or her spouse;
- 2) his or her and his or her spouse's unmarried and minor child, including adopted child;
- 3) his or her and his or her spouse's unmarried minor child under guardianship and dependant, including adopted child. In the case of shared custody the consent of the party sharing the custody is required;

²⁹ Aliens Act § 4¹

³⁰ Citizen of European Union Act § 3(1) 4)

- 4) his or her and his or her spouse's unmarried and adult child if the child is unable to cope independently due to health reasons or a disability;
- 5) a parent or grandparent depending on him or her or his or her spouse if the country of origin lacks support arising from other family relations.

3. The family members an unaccompanied minor refugee and an unaccompanied minor subject to additional legal protection shall be:

- 1) his or her parent;
- 2) his or her guardian or any other family member if he or she has no parents or they cannot be found, except in case if it would contradict the rights and interests of the minor.

4. The family members of a person under temporary protection shall be:

- 1) his or her spouse;
- 2) his or her and his or her spouse's unmarried and minor child, including adopted child;
- 3) a close relative not mentioned in Clauses 1) and 2) of this Subsection who lived with him or her in the country of origin and was dependant of him or her.

Family members mentioned in this Act are considered as a family provided that the family existed in the country of origin, thus, in the case of a marriage that the marriage was entered into before arrival in Estonia.³¹

Pursuant to Article 9(2) of Chapter V of the Directive the member state may issue a permit for family reunification to family members other than those listed above, if they are dependant of the refugee. This provision has not been transposed to the Estonian legislation.

c) Policy/practice by following specific Article of the Directive:

Article 5

➤ Pursuant to Article 5 of the Directive 2003/86/EC the Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members. Pursuant to the AA, the application is submitted by a person who wishes to obtain the residence permit, thus a family member not a person applying for family reunification (AA § 11¹ (1) - An alien may submit an application for a temporary residence permit to a representation of Estonia which, after identification of the applicant, shall forward it to the Citizenship and Migration Board for processing.) At the same

³¹Act on Granting International Protection to Aliens § 7

time Section 11¹ (2) of the AA provides a number of exceptions³², including Clause 6) - aliens to whom the Citizenship and Migration Board has granted such permission as an exception on the condition that they are unable to apply for a residence permit at a representation of Estonia for good reason may apply for a temporary residence permit at the Citizenship and Migration Board.³³ (See Annexe 2)

- The decision competence for issuing residence and work permits lies with the CMB in the case of regular migration as well as granting international protection.
- The identification procedure of persons seeking asylum are the following:
 - photographing and fingerprinting of an alien who is at least 14 years of age;
 - forwarding of the data of an asylum seeker who is at least 14 years of age for comparing to the Eurodac system
 - biological sampling and fingerprinting of an alien who is at least 14 year of age, if his or identification or filiation cannot be established otherwise.

The AGIPA in force from 01.06.2006 gives the administrative authorities the right to take biological samples from all asylum seekers and fingerprinting asylum seekers who are under 14 years of age if his or her identification or filiation cannot be established otherwise. A person under 14 years of age can be fingerprinted and biological samples taken from him or her in protection of his or her rights and interests.^{34 35}

- Marriage is certified by a marriage certificate. Pursuant to Regulation ³⁶ a document certifying entry into marriage is submitted for application for the temporary residence permit to settle with a spouse permanently residing in Estonia if the marriage has been entered into outside Estonia. If necessary, an official of the CMB shall check the fictitiousness or actuality of the marriage by cross-examining each of the spouses separately, furthermore, house visits are made and relatives are questioned. The decision to declare a marriage fictitious can only be made by the court.

³² Exceptions to § 11¹ (2) of the Aliens Act are set forth in Annexe 1

³³ Draft Aliens Act 437

³⁴ This provision is necessary first and foremost for the protection of the rights and interests of a child and in order to avoid and discover cases of human trafficking, child abuse and misuse. It may, for example, prove to be necessary to use the respective data to establish the identity of a child or to check the alleged relation. Considering that these are persons with restricted active legal capacity arising from their age, their rights and interests should first and foremost be protected by administrative authorities in the proceeding of which the respective case is, by providing the suitable possibilities for them in the law. In many European Union member states there have been cases where the asylum seekers lie to be minors or adult asylum seekers have claimed other people's children to be theirs

³⁵ Draft Granting Aliens International Protection Act 6057

³⁶ Section 20(1) 2) of Regulation No 364 "The procedure for the application and granting, and the extension and declaration of invalidity of the temporary residence permit and the procedure for the registration of the absence of aliens from Estonia"

The Directive states that in the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse. The Member States may also limit the family reunification of minor children born from a polygamous marriage. The AA sets no restrictions to the reunification of a child and a parent on the basis of if the child is born from a marriage, also there are no exceptions for children born from polygamous marriages. Thus the AA does not restrict reunification of children born from polygamous marriage with their parents who live in Estonia, although Estonia has no such experience.³⁷

➤ Broken family - a residence permit to settle with a spouse shall be revoked or the extension thereof shall be refused if:

- 1) the basis or grounds for the issue of the residence permit have ceased to exist;
- 2) the marriage has been terminated;
- 3) one or both spouses do not reside in Estonia permanently;
- 4) at least one of the conditions specified in subsection (2) is not complied with.

A residence permit issued to settle with a spouse may be revoked within four years after the issue of the residence permit.³⁸

A residence permit issued to settle with a close relative residing in Estonia shall be revoked or the extension thereof shall be refused if:

- 1) the basis or grounds for the issue of the residence permit have ceased to exist;
- 2) the close relative for the purposes of settling with whom the residence permit was issued or the alien does not reside in Estonia permanently;
- 3) the close relative for the purposes of settling with whom the residence permit was issued fails to ensure that the alien is maintained in Estonia.

A temporary residence permit issued to settle with a close relative shall be revoked concurrently with the revocation of the residence permit of the close relative for the purposes of settling with whom the residence permit was issued. The residence permit of a minor child shall not be revoked and extension thereof shall not be refused if this does not correspond to the rights and interests of the child.³⁹

After five years of living in Estonia on the basis of temporary residence permit, an alien has the right to apply for long-term residence permit, provided that he or she complies with the conditions for the issue of long-term residence permit.

➤ Generally a preceding two-year period is required, however, Section 12¹ (2) of the AA makes an exception by providing that in the cases specified in clauses 13² (1) 1)-7) or subsection

³⁷ Draft Aliens Act 437

³⁸ Aliens Act § 12¹ (8), (9)

³⁹ Aliens Act § 12³ (5), (6), (7)

13² (1¹) of the Aliens Act, a temporary residence permit may be issued to an alien to settle with a spouse provided that the spouse has received a residence permit for employment, a residence permit for enterprise or a residence permit for study in doctorate study⁴⁰. When applying for a temporary residence permit to settle with a close relative exceptions are provided for in Section 12³ (1¹).⁴¹

Article 7

➤ Directive 2003/86/EC allows requesting the applicant proof of the fact the person applying for family reunification has sufficient financial means provided for in the Directive (suitable dwelling, health insurance). Pursuant to Section 12¹(2) if an alien applies to settle with his or her spouse who resides in Estonia, his or her spouse must have permanent legal income to ensure that the family is maintained in Estonia or the joint permanent legal income of the spouses must ensure that the family is maintained in Estonia, the family must have a registered residence and an actual dwelling in Estonia, and the alien must have an insurance contract guaranteeing that any costs related to his or her medical treatment as a result of illness or injury during the period of validity of the residence permit applied for will be met. A close relative for the purposes of settling with whom a residence permit is applied for must have a registered residence and an actual dwelling in Estonia and he or she shall bear all the costs related to the care and medical treatment of the alien (AA Section 12³(3)). Furthermore the alien must have during the validity of the residence permit applied for an insurance contract that would ensure payment of the medical expenses arising from his or her illness or injury.

➤ The family members do not have to comply with integration measures.

Article 8

➤ Under the Aliens Act⁴², the sponsor person who is a third country national should be residing with the condition of permanent residence in Estonia for two years. In case of Estonian citizen, no requirement of residence is asked. The new act, AGIPA regulating the residence permit application of the family member of a refugee or person in subsidiary protection or temporary protection, says that a family member of a refugee or a person who has subsidiary protection or temporary protection must apply within 3 months period for the family

⁴⁰ Draft Aliens Act 437

⁴¹ 1) to a minor child in order to settle with a parent who permanently resides in Estonia;
2) to an adult child in order to settle with a parent who permanently resides in Estonia if the child is unable to cope independently due to health reasons or a disability;
4) to a person under guardianship in order to settle with the guardian who permanently resides in Estonia if the permanent legal income of the guardian ensures that the person will be maintained in Estonia.

⁴² Aliens Act

reunification after the member of the family with whom he or she wants to settle has got its residence permit in Estonia.

Article 9

➤ All family reunification provisions in AGIPA are related to family relationship that predates the entry of the refugee. If the refugee marries after the entry, the family member might not get access to family reunification. Due to the fact that pursuant to the Act⁴³ the family members are considered as a family in case if the family existed already in the country of origin, including if the marriage was entered into before arriving in Estonia. If an asylum seeker gets married after the entry, other legal norms than AGIPA will apply. The residence permits will be considered under the Aliens Act.⁴⁴

Article 12

➤ According to §46 section 4 of the AGIPA:
“ If the reunification of a family is possible in other country, in applying for residence permits to family members, an alien with who they are planning to stay is required to have permanent legal income that ensures the support of the family in Estonia, the family is required to have actual place of residence in Estonia and the family member of an alien is required to have a valid health insurance agreement that ensures the covering of his or her medical costs with regard to an illness or injury during the period of validity of the residence permit.”
In the case the family cannot live in another country than Estonia there are no such requirements.

The application for family reunification has to be made as soon as possible but at least within 3 months after the person, with whom the applicant wants to rejoin, has got a residence permit.⁴⁵ Applicants are then exempted from all requirements listed in Article 7 and 8 of the Directive. If a family member submits the application for residence permit later than 3 months, after the person, with whom the applicant wants to rejoin, has got a residence permit, the Citizenship and Migration Board may require the fulfilment of following conditions:

1. An alien with whom they are planning to stay is required to have permanent legal income, that ensures the support of the family in Estonia,
2. the family is required to have actual place of residence in Estonia

⁴³ Act on Granting International Protection to Aliens § 7(5)

⁴⁴ Centre for Migration Law, Nijmegen, 2007

⁴⁵ Provision of art 12 section 1 and art 7 of the directive

3. the family member of an alien is required to have a valid health insurance agreement, that ensures the covering of his or her medical costs, with regard to an illness or injury during the period of validity of the residence permit.

In case of not fulfilling the conditions, the Citizenship and Migration Board may refuse the issue of a residence permit to a family member.⁴⁶

Article 13

The validity of a temporary residence permit issued to an alien who has been married for less than three years to a person who legally resides in Estonia shall not exceed one year, and the residence permit may be extended in each of the following three years for not longer than one year at a time. The validity of a residence permit issued to an alien who has been married for at least three years to a person who legally resides in Estonia shall not exceed three years, and the residence permit shall be extended for not longer than three years at a time. A family member is issued a residence permit for no longer than five years, however, not longer than the period of validity of the residence permit of the person legally staying in Estonia.⁴⁷

Article 14

➤ An alien who has been issued a residence permit for settling to a spouse or a close relative and who wishes to work shall apply for a work permit. The application for the work permit shall be submitted to the CMB who shall decide its issue.⁴⁸ An alien who is issued a residence permit on the basis of Section 12³ (1) 2) and 3)⁴⁹ shall not be employed in Estonia and a work permit shall not be issued to him or her.⁵⁰ The above is due to the fact that the mentioned aliens are issued the residence permit due to the reason that they are unable to cope independently due to health reasons or a disability.

The employment of a refugee and a person with subsidiary protection and his family members are regulated by the Aliens Act and AGIPA. Art 61 of AGIPA says that sponsor and his/her family member have a right to work under the conditions laid down in Aliens Act.

⁴⁶ Centre for Migration Law, Nijmegen, 2007

⁴⁷ Aliens Act § 12¹

⁴⁸ Aliens Act § 13¹

⁴⁹ 2. to an adult child in order to settle with a parent who permanently resides in Estonia if the child is unable to cope independently due to health reasons or a disability;

3. to a parent or grandparent in order to settle with his or her adult child or grandchild who permanently resides in Estonia if the parent or grandparent needs care which it is not possible for him or her to receive in the country of his or her location or in another country and if his or her permanent legal income or the permanent legal income of his or her child or grandchild who legally resides in Estonia ensures that the parent or grandparent will be maintained in Estonia;

⁵⁰ Aliens Act §12³ (4¹)

Alien who is residing legally in Estonia can apply for a work permit or engage in self employment activity. Working has to be registered. Refugee and a person with subsidiary protection and his family members have to apply for a working permit in order to work. Short time work can be done without working permit. All persons under age of 17 have an obligation to go to school.

An alien who has a legal basis to stay in Estonia, except for a residence permit, may be permitted to take employment in Estonia as a member of the management body of a legal person registered in Estonia with the duty to perform directing or supervisory functions without being issued a work permit or a residence permit and without registering short-time employment in the Citizenship and Migration Board for a period of up to six months. (14.04.2004 entered into force 01.05.2004 - RT I 2004, 28, 189)

- Pursuant to the Act⁵¹ an alien staying in Estonia is ensured rights and liberties equal to those of a citizen of Estonia.

§75 of AGIPA regulates the social rights of persons enjoying international protection and access to education and labour market and it includes the provision of a family member.

- (1) During his or her stay in Estonia, a person enjoying international protection has the right to receive state pensions, family benefits, employment services and employment subsidies, social benefits and other assistance on the same grounds provided by legislation as permanent residents of Estonia.
- (2) A local government may pay subsistence benefit to a person enjoying international protection whose financial status does not allow him or her to support himself or herself.
- (3) A one-time benefit may be paid from the state budget to a person enjoying international protection who returns to his or her country of origin or resettles to another country, in an amount which partially or totally covers his or her travel expenses, and in the case where he or she is unable to cover these expenses.
- (4) The procedure for payment of the benefit specified in subsection (3) of this section shall be established by a regulation of the Government of the Republic.
- (5) Natural persons or legal persons may participate in referring a person enjoying international protection to the territory of a local government and supporting him or her by providing economic or other assistance. Provision of assistance shall be co-ordinated by local governments and in the cases provided in subsection 73 (3) of this Act, by the Ministry of Social Affairs or an agency within the area of government of the Ministry of Social Affairs.

⁵¹ Aliens Act § 5

(6) During his or her stay in Estonia, a person enjoying international protection has the right to education and the right to take employment in Estonia on the bases and pursuant to the procedure provided by law.

(7) A family member of a person enjoying international protection to whom a residence permit has been issued on the basis of this Act as to a person enjoying international protection has the rights provided for in this section.⁵²

Article 15

➤ According to Aliens Act the third country national can after five years of legal residence apply for long term resident status in the meaning of the EU directive on long term residence. This applies also to refugees, persons under other types of protection and their family members.

If a family member wants to apply for a separate residence permit that is not attached to the family reunification case, he or she has to fulfil the conditions stated in Aliens Act art 14⁴.

The long term residence permit may be given to the alien who satisfies following conditions:

- 1) has lived in Estonia permanently for five years, before submission of the residence permit
- 2) has a valid temporary residence permit
- 3) has sufficient legal income to manage in Estonia
- 4) has health insurance
- 5) has fulfilled the integration requirement
- 6) there is no reason to reject the long term residence application.

Under the Act⁵³ a residence permit to a spouse can be revoked during four years from the issue of the residence permit.⁵⁴ This means that after four years the residence permit is in principle independent.

Article 16

➤ There is reason to refuse to issue or extend a temporary residence permit in all cases provided for in Article 16 of the Directive. The Act⁵⁵ regulates the reasons for refusal.

Issue and extension of a residence permit shall be refused if:

- 1) the basis for issue or extension of the residence permit has ceased to exist;

⁵² Centre for Migration Law, Nijmegen, 2007

⁵³ Aliens Act § 12¹ (8)

⁵⁴ Aliens Act § 12¹ (9)

⁵⁵ Aliens Act § 12 (9), (10)

- 2) the alien does not comply with the requirements established by this Act for the issue or extension of residence permits;
- 3) the application for the issue or extension of a residence permit is not justified;
- 4) a person has committed to leaving the Republic of Estonia, has received a residential space abroad within the framework of an international aid programme or has received support for leaving Estonia.

Furthermore, issue of a residence permit to or extension of a residence permit of an alien may be refused if:

- 1) a circumstance which is the basis for application of a prohibition on entry exists in respect of the alien;
- 2) there is reason to believe that his or her stay in Estonia may endanger public order, public safety, moral standards or the rights or interests of other persons;
- 3) the alien has committed an offence in Estonia or in a foreign state;
- 4) the alien has violated the conditions for aliens regarding entry into Estonia, stay in Estonia, departure from Estonia, employment in Estonia or crossing the state border;
- 5) there is reason to believe that the purpose of entry of the alien into Estonia does not correspond to the alleged purpose;
- 6) there is reason to believe that the alien does not depart from Estonia upon expiry of the basis of stay;
- 7) the alien has failed to pay an amount of pecuniary punishment imposed on him or her for an offence committed in Estonia;
- 8) the alien has failed to pay for the costs of stay of the alien in Estonia or his or her departure from Estonia.

Article 17

➤ There is a certain administrative practice on examination of family reunification cases in Estonia. In case of rejection an application, withdrawal or refusal to renew a residence permit or removal of the sponsor or members of his family, the CMB is obliged to consider the nature and solidity of the person's family relationships and the duration of residence in the country, the fact of the existence of family, the persons' cultural and social ties with his/her country of origin. However, the mentioned above requirements are not listed in the text of the Aliens Act and are the result of law-enforcing practice of the National (Supreme) Court of Estonia.

In the case of unaccompanied minor, the best interests of the child have to be considered and respected. A residence permit shall not be issued if the settling of the child in Estonia would

damage his or her rights and interests and if his or her legal, financial or social status may deteriorate as a result of settling in Estonia.⁵⁶

A residence permit to settle with a spouse shall be revoked or the extension thereof shall be refused if:

- 1) the basis for issue of the residence permit has ceased to exist;
- 2) the marriage has been terminated;
- 3) one or both spouses do not reside in Estonia permanently;
- 4) at least one of the conditions specified in subsection (2) is not complied with.⁵⁷

After the end of the temporary protection the removal of an alien is postponed if:

- 1) there are humane reasons;
- 2) the health status of the alien does not allow him or her to travel and removal would cause serious consequences to his or her health.

After the end of the temporary protection the removal of an alien may be postponed until the end of the school year of the minor child of the alien or his or her spouse.⁵⁸

Article 18

A complaint may be filed against a decision on the issue, refusal to issue, the extension or refusal to extend or revocation of a temporary residence permit or work permit or a decision on the refusal to review an application with an administrative court or such decision may be challenged within ten days after the date of notification of the decision. A decision on the challenge may be appealed in an administrative court within the same term.

If making a decision on the issue of, refusal to issue, the extension of or refusal to extend a temporary residence permit is within the competence of the Government of the Republic, a challenge cannot be filed.⁵⁹ A decision of an administrative court can be appealed to the Tallinn Circuit Court, the decision of the Circuit Court, however, can be appealed by way of cassation procedure to the Supreme Court.

An asylum seeker may challenge the decision to refuse to issue a residence permit and a concurring precept to leave in the administrative court within ten days after the date of

⁵⁶ Aliens Act § 12³ (2)

⁵⁷ Aliens Act § 12¹ (8)

⁵⁸ Act on Granting International Protection to Aliens Act § 72 (1), (2)

⁵⁹ Aliens Act § 13⁶

notification of the decision. This decision and a precept to leave cannot be challenged through the challenge proceedings.⁶⁰

The CMB submits to the applicant an administrative act in writing in which they justify their decision. Pursuant to Section 56 of the Administrative Procedure Act an administrative act⁶¹ shall be reasoned. The reasoning for the issue of an administrative act shall be included in the administrative act or in a document accessible by participants in proceedings and the administrative act shall contain a reference to the document. Pursuant to Subsection (3) of the same Section the reasoning for the issue of an administrative act issued on the basis of the right of discretion shall set out the considerations from which the administrative authority has proceeded upon issue of the administrative act.

d) Implementation for certain groups

Family reunification in Estonia can be divided into three major categories:

1. Reunification of a citizen of the European Union and his or her family member in Estonia
2. Reunification in Estonia of a citizen of Estonia or an alien staying in Estonia on the basis of a residence permit with a family member who is a third country national
3. Reunification of an asylum seeker and his or her family member in Estonia.

Entry into Estonia and stay in Estonia of a citizen of the European Union and his or her family member is regulated by the Citizen of the European Union Act. The new wording of the Act that is in accordance with Directive No 2004/38/EC of the European Parliament and of the Council dated 29.04.2004 entered into force on 01.08.2006. Within the meaning of the Citizen of the European Union Act, a citizen of Estonia is not a citizen of the European Union, thus the provisions of the Aliens Act are applicable for the family members of third countries of a citizen of Estonia instead of the provisions of the Citizen of the European Union Act.

Conditions for entry into the country and stay in the country are much more favourable for the family members of a citizen of the European Union than for the family members of a third country national or alien family members of a citizen of Estonia. The following sets forth the most significant differences.

⁶⁰ Act on Granting International Protection to Aliens § 41(3)

⁶¹ An administrative act is an order, resolution, precept, directive or other legal act which is issued by an administrative authority upon performance of administrative functions in order to regulate individual cases in public law relationships and which is directed at the creation, alteration or extinguishment of the rights and obligation of persons.

* **Waiting period.** The Citizen of the European Union Act does not provide a waiting period for a family member of a citizen of the European Union during which he or she may follow his or her family member who is a citizen of the European Union, for a family member of a third country national there is a waiting period, which is generally two years.

* **State Fee.** The state fee for the application for a residence permit (right of residence for a family member of a EU citizen) is pursuant to the State Fee Act⁶² for the review of an application for a temporary right of residence of a family member of a citizen of the European Union - 150 EEK, for the review of the application for a temporary residence permit of a family member of a citizen of Estonia – 150 EEK and the procedure for the application for a residence permit costs 750 EEK for a family member of a third country national.

* **Time-limits for proceedings.** The time-limit for the proceedings of an application for a temporary right of residence of a family member of a citizen of the European Union is three months, in the case of extension of the right of residence, proceedings for the permanent right of residence take one month at the CMB.⁶³ Proceedings for the application for the residence permit of a family member of a citizen of a third country take three months if the applicant is not subject to the quota and six months if the applicant is subject to the quota. The application for the long-term residence permit must be submitted two months before the expiry of the temporary residence permit and the decision for the residence permit is made 10 days before the expiry of the temporary residence permit.⁶⁴

Reviewing an application of an asylum seeker and his or her family member takes six months. The Citizenship and Migration Board may give priority to reviewing the application of an applicant with special needs or unaccompanied applicant who is a minor, or a well-reasoned application for asylum.⁶⁵

* **Family member.** A family member of a citizen of the EU shall be pursuant to the Act⁶⁶ a dependant or a member of the household of a citizen of the European Union in the country of origin. Thus, even a cohabitee or a friend. A family member of a citizen of Estonia and a family member of an asylum seeker have no such opportunity.

* **Required amount of legal income of a family.** When inviting a family member of a citizen of the European Union to Estonia, the minimum amount of income is not defined. For a third country national the existence of legal income is set as one of the conditions for acquiring

⁶² State Fee Act § 224,225,226,227

⁶³ The procedure for the application and granting, and the extension, of the right of residence of family members of European Union citizens Regulation No 166 §26

⁶⁴ Regulation No 364 “The procedure for the application and granting, and the extension and declaration of invalidity of the temporary residence permit and the procedure for the registration of the absence of aliens from Estonia” § 27

⁶⁵ Act on Granting International Protection to Aliens § 18(9), § 18 (10)

⁶⁶ Citizen of the European Union Act § 3

residence permit when inviting a family member to Estonia. (Table of the amounts of legal income see Annexe 2)

* Inviting a family member to Estonia during studying in Estonia. A citizen of the European Union, when staying in Estonia for the purpose of studying, has the possibility to invite his or her family members who are from third countries: a spouse and a dependent child.⁶⁷ A third country national subject to the Aliens Act does not have the possibility to invite family members to Estonia while studying in Estonia.⁶⁸

* Retention of the right of residence of a family member. The Citizen of the European Union Act has provided for cases in which the right of residence of a family member of the citizen of the European Union is retained:

1. In the case of death of a citizen of the European Union if the citizen of the European Union was working as an entrepreneur or his or her death was caused by an accident at work or a vocational disease.⁶⁹
2. In the case of loss of employment of the citizen of the European Union.⁷⁰
3. In the case of dissolution of marriage or declaration of invalidity of marriage with the citizen of the European Union.⁷¹

An alien within the meaning of the Aliens Act does not have the same rights as a citizen of the European Union in this respect. In case if a third country national becomes ill and becomes incapacitated for work, or dies or divorces, his or her family members have to leave the country or find another reason for staying in the country. In case if the family members are children, their rights and interests will be taken into account.⁷²

* Term of validity of the residence permit of a family member. The condition that the term of validity of a family member is related to the term of validity of the residence permit of an alien who is a sponsor (may not exceed the term of validity of the residence permit family member who is a sponsor) is the same for all the categories of applicants (EU citizen, third country national, person subject to international protection).

3.2. Development of family reunification policy during 2002-2006

The directive 2003/86/EC has been transposed in Estonia. Main changes that are related to the family reunification were legislated on 12 June 2002 in the Aliens Act (RT I 2004, 58, 410 last

⁶⁷ Citizen of the European Union Act § 22 (2)

⁶⁸ Aliens Act § 12¹ (4¹)

⁶⁹ Citizen of the European Union Act § 45(2)

⁷⁰ Citizen of the European Union Act § 21

⁷¹ Citizen of the European Union Act § 38

⁷² Aliens Act § 12³ (7)

amendments RT 2006, 26,191). Last changes were made on 1 June 2006 to the Aliens Act and in the Act on Granting International Protection to Aliens (further AGIPA; RT I 2006, 2, 3 amendments RTI 2006, 21, 159) that became into force on 1 July 2006.⁷³

There was no significant political debate regarding the transposition of the Directive of family reunification. During the years 2002-2006 there have been two political debates concerning the family reunification in Estonia – regarding the immigration quota and bringing foreign labour to Estonia and one debate in the society regarding fictitious marriages.

1) The biggest debate turned out to be the discussion regarding the immigration quota. The aim of establishing the immigration quota is to limit the number of aliens migrating to Estonia in order to protect the rights and interests of Estonian residents. Pursuant to the Aliens Act the annual immigration quota is the quota for aliens immigrating to Estonia which shall not exceed 0.05 per cent of the permanent population of Estonia annually (of citizens and aliens staying in Estonia on the basis of a permanent residence permit). (See table of immigration quota Annexe 3). The immigration quota shall be established by the Government of the Republic. Until the year 1998 the maximum immigration quota was 0.1 % of the permanent population of Estonia. With the amendment of the Act in 1998 the citizens of the European Union were left out of the immigration quota and due to that the minimum immigration quota was established at 0.05 % of the permanent population of Estonia. In addition to the citizens of Estonia, each Estonian has the right to settle in Estonia outside the immigration quota, which arises from the constitutional right of Estonians to settle in Estonia.

As can be see from the Table in Annexe 3, the immigration quota has gradually increased since 1998, increasing mainly due to the persons who acquired Estonian citizenship by naturalisation and persons who acquired permanent residence permits. Since the year 2002 the immigration quota has decreased in terms of citizens of Estonia. Although the spouse of a citizen of Estonia and an alien staying in Estonia on the basis of a residence permit were released from the immigration quota only in 2002 with the new wording of the AA, the CMB has not reasoned the refusals to issue residence permits to the family members of residents of Estonia with the immigration quota already since the year 2002. In their decision the CMB emphasised that the Aliens Act sets a quota for family reunification, however, according to the opinion of the Board the provisions of the Constitution and international obligations of Estonia within the framework of the European Convention on Human Rights (1950) are superior.⁷⁴

⁷⁴ Eesti Päevaleht 27.03.2002 Andrei Arjupin

The immigration quota does also not consider the spouse of a citizen of Estonia and of an alien living in Estonia on the basis of a residence permit for who a residence permit is issued for settling with a spouse living in Estonia; or the minor and adult children, parents and grandparents and persons under guardianship of a citizen of Estonia and an alien living in Estonia on the basis of a residence permit who are issued a residence permit for settling with a close relative living in Estonia. This regulation arises from the respective decisions of the Administrative Law Chamber of the Supreme Court of the year 2000 (e.g. S. Kapõlova versus KMA 3-3-1-15-00⁷⁵), according to which the number of aliens settling in Estonia with the aim of settling with a family member cannot be limited with the immigration quota.⁷⁶

2) The second important immigration-related debate in the society and media has been the labour force immigration and emigration. Due to the fact that a significant number of employees have moved from Estonia to other EU countries, a domestic labour shortage has been created.

The opinions and positions presented at the debates have been very different, reaching from the mass import of labour force to Estonia to its complete negation. The opinions regarding and approach to the problem of the different parties to the social dialogue are first and foremost dependant on the interests and needs of each partner. The parties that were at power in 2006 would welcome the arrival of foreign workers in case if the state would be able to ensure that the foreign workers and their close relatives would not start burdening the social welfare system of Estonia. The opposition parties, however, are strongly opposed to the mass importing of foreign labour from third countries and are in favour of the simplified system of allowing into the country only for highly qualified specialists.

Entrepreneurs would simplify importing any kind of foreign labour. State authorities (Ministry of Social Affairs, Labour Market Board) and the trade unions emphasise the maximum use of the labour in Estonia and realizing the risk groups (disabled persons, unemployed, older people and others that are currently not on the labour market) rather than using foreign labour. Only importing highly qualified and skilled labour is considered justified. According to the opinion of the trade unions, specialists who are not in Estonia and the training of who in Estonia is not reasonable should be recruited and before allowing foreign labour into the country all local inhabitants who want should first be allowed to work. However, where foreign labour is

⁷⁵ RKHKo RT III 2000, 17, 180

⁷⁶ [http://materjalid.tmk.edu.ee/veiko_kopamees/RAHVASTIKUOIGUSE_KONSPEKT_2005_\(06.10.2005\).doc](http://materjalid.tmk.edu.ee/veiko_kopamees/RAHVASTIKUOIGUSE_KONSPEKT_2005_(06.10.2005).doc)

inevitable, it should be controlled who, how much and for how long is allowed. The equal treatment of foreign workers and their social guarantees are not yet a topic of public discussion.⁷⁷

3) The third important topic in the Estonian migration field has been fictitious marriages.

In the summer of 2006 newspaper Eesti Ekspress published a thorough article about fictitious marriages. The article set forth a scheme how it is possible to acquire a residence permit with entering into a fictitious marriage there is an intermediary who introduces an alien who lives in a third country and wishes to settle in Estonia with an unmarried Estonian citizen living in Estonia. The intermediary undertakes the arrangement all documents, organises the marriage and receives a percentage for the transaction. The marriage is entered into with the term of five years. The citizen of a third country obtains first a temporary residence permit and after five years applies for a permanent. The citizen of Estonia who agrees to marry receives in an average of 5,000 dollars for the transaction, after the payment of the contractual fee, the spouse who is the citizen of Estonia may further receive a monthly “allowance” the size of which is between 1,000-3,000 EEK. In the case of a successful transaction the intermediary C increases the circle of new potential “lovers” by the friends of A and B.⁷⁸

This article caused a discussion whether Estonia should alleviate its immigration policy? An Internet poll was organised where 1,608 persons voted. “Yes” was answered by 21%, “Yes, but only for favouring immigration of people with higher education” was answered by 16%, “No” was answered by 59%, and “Do not care” was answered by 3% of the voters.⁷⁹

The CMB has the right to establish if the spouses have close economic ties and a psychological relationship and if the family is stable, however, the CMB cannot establish the fictitiousness of the marriage. Section 33 of the Family Act gives the right to declare a marriage void on the basis of fictitiousness only to the court. Thus in the situation where the court has not made a decision regarding the fictitiousness of a marriage, the CMB has no right to rely on the fictitiousness of a marriage. Thus only a situation where the court has made a decision regarding the fictitiousness of a marriage of persons can be considered as “fictitiousness of marriage” set forth in Section 12¹ (1) of the Aliens Act. However, the CMB has, pursuant to Section 12¹ (1) of the Aliens Act the right of discretion to decide on the closeness of the economic ties and psychological relationship and stability of the family of the spouses.⁸⁰

⁷⁷ 2006 policy report Estonian migration and asylum policy, EMN study, Tallinn 2007

⁷⁸ Eesti Ekspress 25.07.2006

⁷⁹ http://www.ekspress.ee/Eebaasid/EEweb_helper.nsf/0/401E75E022FD120DC22571B80042FAA5

⁸⁰ Decision No 2-3/441/03 of the Tallinn Circuit Court

Due to the fact that in Estonia the interference to private and family life is regulated by Sections 26 and 27 of the Constitution of the Republic of Estonia and the European Convention for the Protection of Human Rights and Fundamental Freedoms within the meaning of Article 8 although the right to live in Estonia arises from the Aliens Act, the subjective right of a person to acquire a residence permit in Estonia does not arise from the Constitution of the Republic of Estonia and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Pursuant to the generally recognized principles of international law, a state has no general obligation to respect the choice of country of residence made by an alien and the immigrants have no general right to join a family on the territory of a country where they have arrived. The fundamental right of an alien is not living in Estonia due to which allowing it is granting an additional right.⁸¹

According to the data of the CMB, approximately twenty fictitious marriages are discovered each year. Strict punishments are in force for persons who enter into fictitious marriage. Both parties can be punished pursuant to the criminal procedure (with imprisonment of up to one year). A residence permit may be taken from an alien, he or she may be sent out of Estonia and prohibition on entry may be established.

When describing persons who agree with the transaction of a fictitious marriage, the CMB notes that they (both immigrants as well as people who receive them) are mostly young people under 30 years of age, they belong to the middle class and are not very wealthy. Most frequently the fictitious marriages involve marriages between citizens of Estonia and Russia. However, it happens that citizens of other countries, for example, Byelorussia go to the vital statistics office.⁸²

3.3. Conclusions arising from family reunification policy and its development

Although the Directive 2003/86/EC was transposed to the Estonian legislation in 2006, the right to family reunification was considered important already in the Constitution of the Republic of Estonia passed on 28 June 1992 pursuant to Sections 26 and 27 of which: “Everyone has the right to the inviolability of private and family life” and ” The family, being fundamental to the preservation and growth of the nation and as the basis of society shall be protected by the state”. Directive 2003/86/EC was transposed to two Estonian Acts:

- Aliens Act, entered into force on 12.07.1993, Directive 2003/86/EC was transposed to the Estonian legislation on 01.06.2006. Generally the Aliens Act was in accordance with the Directive 2003/86/EC. Only some provisions needed correction.

⁸¹ Decision No 3-06-671 of the Tallinn Administrative Court

⁸² Eesti Ekspress 25.07.2006

- Act on Granting International Protection to Aliens entered into force on 01.07.2006, Directive 2003/86/EC was transposed to Estonian legislation on 01.07.2006, previously the status of asylum seekers and refugees was regulated by the Refugees Act.

The most important changes from the point of view of family reunification in the Estonian legislation have been:

- Since 01.10.2002 the following are not considered in the immigration quota:
 - 1) spouse of a citizen of Estonia and an alien living in Estonia on the basis of a residence permit
 - 2) minor or adult children, parents and grandparents, and persons under guardianship of a citizen of Estonia and an alien living in Estonia.
- Since 01.06.2006 the term for the residence permit for settling with a spouse was changed: a temporary residence permit may be issued for an alien for settling with a spouse who is a citizen of Estonia permanently living in Estonia and with a spouse who is an alien who has lived in Estonia for at least two years (before at least five years).

From this small-scale study it can be concluded that Directive 2003/86/EC has been sufficiently transposed to the Estonian legislation, only some points need supplementing.

Transposing of the Directive 2003/86/EC to the Estonian legislation is commented by Andrei Arjupin, lawyer of the Estonian Human Rights Information Centre in the following way: In summary it could be said about the transposing of the EU Council Directive 2003/86/EC that in the case of Act on Granting Aliens International Protection to Aliens (AGIPA) our legislators have done a significant amount of work to transpose the EU asylum standards into the local legal system. Generally, we can say that this act complies with most of the legal standards concerning family reunification. The AGIPA includes some advantages to be applied for refugees. For example, pursuant to Section 46 of the AGIPA, persons under international protection have more favourable conditions for the reunification of their family. As compared to the conditions applicable for other aliens in Estonia (see Aliens Act §§ 12.1 and 12.3) the persons under international protection are most probably in a more advantageous situation if they wish to invite their family members to live here permanently.

As compared to the requirements in force before, an amendment has been entered to the Aliens Act (AA) shortening the time obligatory stay on the basis of the residence permit of a sponsor who is an alien (used to be five, is now only two years, see AA § 12.1(1)) – Requirement of Article 8 of the Directive.

At the same time the AA has not considered the provisions of Article 4 (2b) and (3) of the Directive expanding the definition of family members. Despite of the experiences in the courts of Estonia, where a cohabitee is considered a family member in certain conditions, the applicable AA continues to provide that only registered spouses and minor children are considered among family members. (Definition of family members within the meaning of the AA is set forth in Section 3.1.b of this study - author's comment).

It is also unclear why the AA does not consider the provisions of the second sentence of Article 5(3) due to the fact that until now Estonia has the so called *domestic illegals* who for years are not able to legalise their residence only due to the fact that the CMB prohibits them to submit a residence permit in Estonia and forces them to go out of Estonia and settle in a foreign country, leaving to Estonia their families and property. (as an exception an application for residence permit can be submitted in Estonia only persons mentioned in Annexe 2 - author's comment).

Finally, the deficiency of the AA in settling special cases should be mentioned. E.g. Article 15(3) of the Directive gives some guidelines, however no such equivalent can be found in the AA. In my experience there have been cases when the CMB forced an old lady who lost her husband to go back to her country of origin with which she since long had broken created ties. (The residence permit issued for settling with a spouse can be declared invalid during four years after the issue of the residence permit⁸³ - author's comment).

The most important debates in the society and policy during the period in question were: the topic of immigration quota and the topic of import of foreign labour force as well as the topic of fictitious marriages.

4. FAMILY MIGRATION STATISTICS

The specification of this study foresees a collection of large-scale statistical data. Unfortunately it was impossible for us to obtain statistical data in such large scale and detail. Annexe 4 sets forth the existing statistics.

The statistics involve the years 2002-2006. Due to the fact that on 01.05.2004 Estonia joined the European Union and the Citizen of the European Union Act entered into force for the citizens of the European Union, then from that date on the citizens of the European Union are no longer included in the statistics set forth in this study. The statistics include all citizens of third countries who applied for a residence permit on the basis of Section 12(2) (with a spouse) and Section 12(1) 3) (with a close relative) of the Aliens Act. (Annexe 7)

⁸³ Aliens Act § 12¹(9)

Annexe 7 sets forth five categories of statistical data:

1. The number of applications for a temporary residence permit for settling with a spouse or a close relative. The highest number of applicants was in 2006 and 2002. The lowest in 2004.
2. Positive decisions for issuing temporary residence permits for settling with a spouse or a close relative. The most decisions were again made in 2006 and 2002. The lowest number of decisions was in 2004.
3. Refusing decisions for issuing temporary residence permits for settling with a spouse or close relative. The most refusing decisions were made in 2003.
4. Total positive decisions for issuing temporary residence permit. The most applicants were in 2003, when 4,850 positive decisions for applications for residence permits were made.
5. Applications submitted by family members in foreign representation for settling with a spouse or close relative. The most applications have been submitted in 2006. The number of applications submitted in foreign representations is low due to the fact that a spouse and minor child of a citizen of Estonia as well as an ethnic Estonian and a minor child can submit the application for a residence permit in Estonia.⁸⁴

The only precise statistics has been elaborated by the nationality of the applicants. Here too, it should be taken into account that since 01.05.2004 the citizens of the European Union are no longer considered in this statistics. (Annexe 5, Annexe 6)

The highest number of persons settling with spouses on the basis of residence permit in 2002 was shown by the citizens of Russia, Ukraine and Finland. In 2003 the number of Russian and Ukrainian citizens increased drastically, because on 01.10.2002 entered into force Aliens Acton when the following were excluded from the immigration quota: spouse of a citizen of Estonia and an alien living in Estonia on the basis of a residence permit and minor or adult children, parents and grandparents, and persons under guardianship of a citizen of Estonia and an alien living in Estonia. In 2004 the most applicants for residence permits to settle with a spouse came from Ukraine, followed by citizens of Russia and persons of undefined citizenship. In 2006 the number of residence permits of Russian and Ukrainian citizens who wished to settle with their spouses in Estonia, continued to be high.

Settling with a close relative – in the year 2002 most of the applicants came from Russia. In 2003, the number of applicants of Russian citizenship and persons with undefined citizenship increased drastically. This increase can be explained by the amendment of the Aliens Act which entered into force on 01.10.2002 when the following were excluded from the immigration quota: spouse of a citizen of Estonia and an alien living in Estonia on the basis of a residence permit

⁸⁴ Aliens Act § 11¹

and minor or adult children, parents and grandparents, and persons under guardianship of a citizen of Estonia and an alien living in Estonia. In 2004 the number of applicants from Russia continued to be high although the number of Ukrainian citizens increased as well. In 2005 the number of applicants of Russian citizenship continued to be high and the number of applicants of undefined citizenship increased drastically. In 2006 the number of applicants of Russian and undefined citizenships remained high, however, the applicants of Ukrainian citizenship decreased somewhat.

4.1. Conclusions arising from the migration statistics and its development

When analysing the statistics set forth in the previous chapter, it is important to keep in mind two of the most important amendments to the legislation:

- An important influencing factor in the family reunification statistics is the fact that in 2002 the AA was amended and a spouse and minor child of a citizen of Estonia and a spouse and minor child of an alien living in Estonia on the basis of a residence permit were excluded from the immigration quota.
- On 01.05.2004 Estonia joined the European Union and the immigration of the citizens of the European Union and their family members is not reflected in this statistics from that date on due to the fact that the Citizen of the European Union Act is applicable for them.

The most important country of origin of migration (among third countries) in Estonia is the Russian Federation and other countries of the CIS. This fact can be explained by the historical background of Estonia and geographical vicinity of these countries.

5. OTHER RELEVANT ASPECTS

5.1. Migration of third country employees to Estonia

In addition to the two main categories of family reunification mentioned in this study on the basis of which people are settling in Estonia (settling to a spouse who is a citizen of Estonia or with a spouse who is an alien living in Estonia on the basis of a residence permit and settling with a close relative) the third major group of issued residence permit is formed by employment in Estonia.

From the point of view of aliens the conditions for employment in Estonia are regulated by mainly three acts – Citizen of the European Union Act and Aliens Act, as well as since 01.06.2006 Act on Granting International Protection to Aliens, which regulates the conditions of employment in Estonia of asylum seekers. Accession to the European Union in 2004 has

concluded the most significant changes in the employment migration policy of the last years due to the fact that the accession gave the citizens of the European Union the rights of free movement and labour force migration.

The biggest interest towards working in Estonia among third country nationals has been shown by the citizens of Ukraine (517), Russia (339), the USA (281), India (63) and Canada (40). The numbers set forth in the brackets are statistics from the year 2005 to 2006.⁸⁵ Regarding Ukrainians, since Estonia's accession to the EU a significant increase in interest towards working in Estonia can be observed. From the rest of the third countries 10 or less applications for working in Estonia have been submitted annually.

Unfortunately we do not have the data regarding how many of these employees have brought with them their family members or started creating new family relations here.

5.2. Integration

During the period after regaining independence Estonians have changed from a Soviet Union national minority to a majority nation as compared to other nations living in Estonia. However, while before the II World War Estonia was ethnically a relatively homogenous country – Estonians formed 88% of the population, then in 2006, Estonia had, according to the data of the Statistical Office of Estonia 68.6% of Estonians and 31.4% of representatives of other nationalities. Among the other nationalities the major part was formed by Russians (25.7%), Ukrainians (2.1%), Byelorussians (1.2%) and Finns (0.8%). In total more than 120 different nationalities are represented in Estonia. Estonian is the mother tongue of 67.2% permanent residents. Thus by nationality as well as mother tongue the aliens form one third of the Estonian population.⁸⁶

The Member States of the Council of Europe, including Estonia have ratified the Framework Convention for the Protection of National Minorities, the provisions of which consider the use of the language, recognition of names, education, media, prohibition of forced assimilation, and protection and development of the culture of national minorities.

In order to support the integration of other nationalities a programme “Integration in Estonian Society 2000-2007” has been developed. It is a national plan and the performer of the programme is the national foundation Non-Estonians' Integration Foundation.⁸⁷

⁸⁵ EMN III small-scale study “Conditions for entry into a country and stay in a country of highly qualified employees of third countries in EU”

⁸⁶ Non-Estonians' Integration Foundation www.meis.ee

⁸⁷ Non-Estonians' Integration Foundation www.meis.ee

One of the main integration requirements in Estonia is since 01.06.2007 that an alien who is a part of the permanent population of Estonia would have the proficiency of the Estonian language on the communication level (basic level). Until that moment, the applicant for the long-term residence permit the passing of the language exam was not required. Persons holding permanent residence permit at that moment were legally considered as aliens with long-term resident residence permit and they were not required to perform the integration requirement. The obligation of the language exam, therefore, concerns mostly the so-called new immigrants who are only just arriving to Estonia and wish to stay here for a longer period.

The following persons are released from taking the language exam:

- persons under 15 and over 65 years of age;
- persons who have acquired basic, secondary or higher education in Estonian;
- adult persons with restricted active legal capacity;
- persons who due to their state of health are not constantly able to take the language exam (if a person is able to take the exam in a certain part, then the scope of taking the language exam is decided by the respective expert committee, similarly to the rules of taking the citizenship exam).

According to the level of the language exam, the exams of Estonian language are divided into basic, intermediate and higher level exams. In 2006, the Estonian basic exam was passed by 4,672 persons, the exam of intermediate level by 6,724 and exam of higher level by 1,065 persons.⁸⁸

⁸⁸ National Examination and Qualification Centre www.ekk.edu.ee

6. CONCLUSIONS

The Estonian Migration Foundation is appointed as a national contact point of the European Migration Network in Estonia and this study is compiled by the employees of the Estonian Migration Foundation. No separate working group participated in it, however, cooperation has been shown for the preparation of this study by the Citizenship and Migration Board, Ministry of the Interior, Mrs. Lehte Roots from Jaan Tõnisson Institute and Mr. Andrei Arjupin, lawyer of the Human Rights Information Centre.

This study has been compiled pursuant to the specifications and structure of Small Scale Study IV of the European Migration Network. Very limited availability of statistical data can be considered a shortcoming of this study due to the fact that there are no sufficiently arranged databases in order to obtain precise statistical data as required by the specification of the work.

In 2006, Directive 2003/86/EC was transposed to Estonian legislation – to the Aliens Act concerning third country nationals and to Act on Granting International Protection to Aliens concerning asylum seekers.

On the basis of this small-scale study a conclusion can be made that the Directive 2003/86/EC has been sufficiently transposed to the Estonian legislation. The main principles of family reunification have been set forth in the Constitution of the Republic of Estonia already since 1992. Authorities exercising the law (e.g. CMB within whose capacity is the issue of residence and work permits) have considered the Constitution superior as compared to the Aliens Act and have made the decisions regarding application for residence permits by aliens in a family reunification-favouring way already since 2000 (no refusals if a family wishes to reunite).

Annexe 1 Distribution of residence permits in Estonia in 2006

In 2006 4,370 first temporary residence permits were granted, temporary residence permits were extended in 8,898 cases. Application for the temporary residence permit and extension of the temporary residence permit was distributed as follows by the bases for the application:

Family migration 2,316

Working 745

Business 7

Studies 391

Legal income 65

International agreement 9,744

There were in total 13,268 positive decisions.

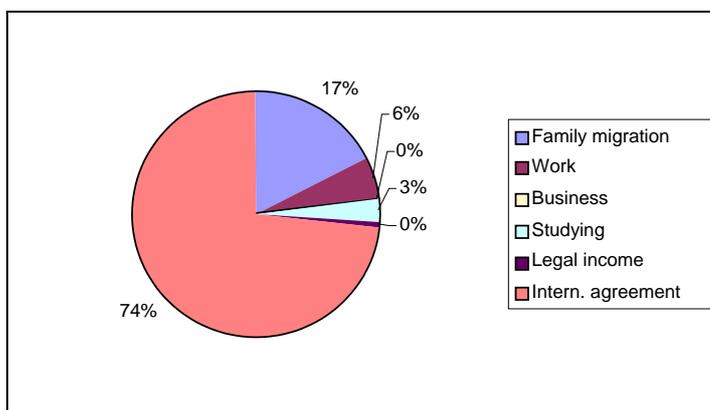


Diagram 1. Temporary residence permits and extensions of residence permits by bases in 2006

Mainly, the applicants for the residence permits were citizens of Russia, followed by citizens with undefined citizenship and citizens of Ukraine.⁸⁹

Annexe 2 Application for the temporary residence permit as an exception in Estonia

§ 11¹. Application for residence permit

(1) An alien may submit an application for a temporary residence permit to a representation of Estonia which, after identification of the applicant, shall forward it to the Citizenship and Migration Board for processing.

⁸⁹ CMB letter to the Estonian Migration Foundation 3-2/2007-15

(2) The following may apply for a temporary residence permit at the Citizenship and Migration Board:

- 1) Estonians and their spouses and minor children;
- 2) the spouses and minor children of Estonian citizens;
- 3) children under one year of age descending from aliens who reside in Estonia on the basis of a residence permit;
- 4) aliens for activities in the framework of an international program of co-operation involving agencies with state or local government participation;
- 5) aliens who stay in Estonia on the basis of a temporary residence permit and apply for a new temporary residence permit;
- 6) aliens to whom the Citizenship and Migration Board has granted such permission as an exception on the condition that they are unable to apply for a residence permit at a representation of Estonia for good reason;
- 7) aliens to whom the Minister of Internal Affairs has, on the basis of a reasoned proposal of a member of the Government of the Republic, granted a permission therefore on the grounds that their entry into Estonia is necessary in the national interests;
- 8) aliens who are citizens of a state with whom Estonia has entered into an agreement for visa-free travel or whose citizens are unilaterally relieved of the visa requirement in Estonia, and the spouses and children of the specified aliens;
- 9) aliens specified in subsections 6 (3) and (4) of this Act and their spouses and minor children;
- 10) aliens who settled in Estonia before 1 July 1990 and have not thereafter left Estonia to reside in another country and to whom issue of a residence permit or extension of a residence permit has not been refused or whose residence permit has not been revoked.

(3) An alien who has a residence permit for study and who is applying for a residence permit for taking employment does not have the right specified in clause (2) 5) of this section.

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 28, 189)⁹⁰

Annexe 3 Immigration quota

During the years 1996–2006 the immigration quota has been the following:

Year	Established quota (persons)
-------------	--

⁹⁰ Aliens Act § 11¹

1996	1,000
1997	1,000
1998	506
1999	593
2000	610
2001	684
2002	665
2003	678
2004	672
2005	677
2006	686

Annexe 4 Amount of legal income 2006-2007

Legal income rates in 2006

In case if the application is submitted for the residence permit of a long-term resident or temporary residence permit for settling with a close relative living in Estonia the incomes of the family of the sponsor and applicant must in total be the following:

Family size	Family income per month
1 member	750
2 members	1,350
3 members	1,950
4 members	2,550
5 members	3,150
6 members	3,750
7 members	4,350
8 members	4,950
9 members	5,550
10 members	6,150

In case if the application is submitted for a temporary residence permit for settling with a spouse living in Estonia the income must be the following:

Family size	Family income per month
1 member	1,500
2 members	2,700
3 members	3,900
4 members	5,100
5 members	6,300

6 members	7,500
7 members	8,700
8 members	9,900
9 members	11,100
10 members	12,300

Legal income rates in 2007

In case if the application is submitted for the residence permit of a long-term resident or temporary residence permit for settling with a close relative living in Estonia the incomes of the family of the sponsor and applicant must in total be the following:

Family size	Family income per month	Family income during the past 6 months
1 member	900	5,400
2 members	1,620	9,720
3 members	2,340	14,040
4 members	3,060	18,360
5 members	3,780	22,680
6 members	4,500	27,000
7 members	5,220	31,320
8 members	5,940	35,640
9 members	6,660	39,960
10 members	7,380	44,280

In case if an application is submitted for temporary residence permit for settling a spouse living in Estonia the income must be the following: ⁹¹:

Family size	Family income per month	Family income during the past 6 months
1 member	1,800	10,800
2 members	3,240	19,440
3 members	4,680	28,080
4 members	6,120	36,720
5 members	7,560	45,360
6 members	9,000	54,000
7 members	10,440	62,640
8 members	11,880	71,280
9 members	13,320	79,920
10 members	14,760	88,560

⁹¹ Citizenship and Migration Board www.mig.ee

Annexe 5 Table 1**Granting residence permit for settling with a spouse by citizenship**

Citizenship	On the basis of AA §12(2) year				
	2002	2003	2004	2005	2006
Afghanistan		2	1	1	1
Albania			2	1	
Armenia	15	40	38	48	37
Azerbaijan			31		
Australia	1	2		2	4
Azerbaijan	2	29		35	31
Belgium		1			
Bangladesh	1	1		1	2
Bulgaria		4	6	6	7
Bosnia-Herzegovina	1				
Byelorussia	12	44	53	47	42
Bolivia			1	1	1
Brazil				2	4
Canada	2	7	11	11	7
Switzerland	1	2	1		
China	2	4	4	6	7
Colombia				1	2
Cuba					1
Czech Republic	1				
Germany	2	12	5		
Denmark	1	13	5		
Algeria				1	2
Ecuador					1
Egypt	1	2		1	1
Spain		1			
Finland	16	88	44		
France	1	2			
Great Britain	1	8	7		
Georgia	6	28	27	23	19
Greece			1		
Croatia	1	1	1	3	5
Hungary		2			
India	2	11	16	22	22
Ireland	1	2			
Iran	1	1	1		
Israel	1	6	14	13	13
Italy		6	3		
Jordan		4	2	3	
Japan		3	3	6	7
Kazakhstan		5	4	7	4
Kyrgyzstan	2	3	4	3	1
Republic of Korea	1				

Lebanon			1	3	2
Lithuania	5	30	15		
Latvia	7	59	24		
Morocco				1	2
Moldova		8	11	15	15
Mexico				2	3
Macedonia		1		1	1
Mozambique			1	1	1
Nigeria	2	5	7	4	3
Holland		4	2		
Norway		5	3		
Nepal		1	1	2	3
New Zealand			3	3	3
Pakistan	3	11	10	6	7
Panama			1		
Peru		2	2	2	1
the Philippines			1		
Poland	1	9	1		
Portugal		1			
Occupied territory of Palestine			1		
Romania	1	2	2	5	4
Russia	194	758	870	824	757
Serbia and Montenegro				1	1
Sudan		1	1	1	
Singapore		2			1
Slovakia			1	1	
Slovenia	1	1	1		
Sweden		11	9		
Thailand	2	1	1	1	2
Tajikistan		1	1	1	2
Turkmenistan					
Tunisia				4	4
Turkey	1	6	5	7	13
Ukraine	30	62	77	173	197
the USA	1	20	26	28	23
Uzbekistan	0	7	8	7	9
Undefined	9	74	62	44	32
Yugoslavia		1	1	1	1
Republic of South Africa		1	1	2	1

Annexe 6 Table 2

Granting residence permit for settling with a close relative living in Estonia, by citizenship

Citizenship	On the basis of AA §12(1) 3) year 2002	2003	2004	2005	2006
Armenia	2	14	8	16	10

Azerbaijan	1	2	3	4	7
Belgium			1		
Bangladesh				1	1
Bulgaria	1		15		11
Bosnia-Herzegovina					
Byelorussia	2	12		16	
Brazil	1				
Canada		2		2	
China	1	1	1	1	2
Germany	2	1	4		
Egypt		4			
Spain		1			
Finland	8	34	19		
France			1		
Great Britain			4		
Georgia	2	10	2	2	4
India	2	5	3	5	1
Israel	2	3	4	4	6
Italy		2	11		
Japan					2
Kazakhstan	2	7	4	5	6
Republic of Korea	1			2	
Lebanon		1	1		
Lithuania	2	5	1	2	
Latvia	3	22	9		
Moldova		2	1	3	1
The Netherlands		2			
Norway		1			
Romania			1	4	1
Russia	22	419	428	494	454
Serbia and Montenegro				68	
Serbia					2
Singapore					2
Sweden		3	2		
Tai		1			
Turkmenistan			2		
Ukraine	17	95	105	87	72
the USA		14	16	23	28
Uzbekistan		3	2	1	3
Undefined	25	148	109	290	380
Yugoslavia			1		

Annexe 7 Table 3

1. Number of applications for temporary residence permits for settling with a spouse or close relative⁹²

Year	2002	2003	2004	2005	2006
Basis family migration	1305	1021	792	880	1327

⁹² Aliens Act § 12(1) 3) and § 12 (2)

2. Positive decisions for granting temporary residence permits for settling with a spouse or close relative⁹³

Year	2002	2003	2004	2005	2006
Basis family migration	1095	976	768	792	1185

3. Refusing decisions for granting temporary residence permits for settling with a spouse or close relative⁹⁴

Year	2002	2003	2 004	2005	2006
Basis family migration	6	40	26	23	28

4. Total positive decisions for granting temporary residence permit⁹⁵

Year	2002	2003	2 004	2005	2006
Number of decisions	4621	4850	3444	4086	4486

5. Applications submitted by family members in foreign for settling with a spouse or close relative⁹⁶

Year	2002	2003	2004	2005	2006
Number of applications	91	166	247	271	329

⁹³ Aliens Act § 12(1) 3) and § 12 (2)

⁹⁴ Aliens Act § 12(1) 3) and § 12 (2)

⁹⁵ Aliens Act § 12 (1) and (2)

⁹⁶ Aliens Act § 12(1) 3) and § 12 (2)

Annexe 8Used literature

Studies:

Veiko Kopamees, Population law, training material

http://materjalid.tmk.edu.ee/veiko_kopamees/RAHVASTIKUOIGUSE_KONSPEKT

2006 policy report Estonian migration and asylum policy, EMN study, Tallinn 2007

www.migfond.ee

<http://pub.stat.ee/px->

web.2001/Database/Rahvaloendus/16Sunnikoht._Vanemate_sunnikoht/r111.htm

The Family Reunification Directive in EU Member States, the First Year of Implementation
Centre for Migration Law, Nijmegen, 2007

EMN III small-scale study “Conditions for entry into a country and stay in a country of highly qualified employees of third countries in EU”, Tallinn 2006

www.migfond.ee

Publications:

Census gives an overview of population recovery, L.Tepp

<http://vana.www.postimees.ee:8080/leht/00/03/31/arvamus.htm>

Eesti Päevaleht 27.03.2002 There will be no flow of foreigners, Andrei Arjupin

<http://www.epl.ee/?artikkel=199863>

Eesti Ekspress 25.07.2006 Children must not be born from this marriage!, Viktoria Ladõnskaja

<http://www.ekspress.ee/viewdoc/D53DC45F5E8E8F33C22571B6005C1754>

Legal Acts:

www.legaltext.ee

Constitution of the Republic of Estonia

Aliens Act

Explanatory memorandum 2-1-1/437 to the draft amendment of the Aliens Act

Citizen of the European Union Act

Explanatory memorandum 2-1-1/10580 to the draft amendment of the Citizen of the European Union Act

Regulation No 166 “The procedure for the application and granting, and the extension, of the right of residence of family members of European Union citizens”

Refugees Act

Act on Granting International Protection to Aliens

Explanatory memorandum 2-1-1/6057 to the draft amendment of the Act on Granting International Protection to Aliens

Citizenship Act

Population and Housing Census Act

Regulation No 364 “The procedure for the application and granting, and the extension and declaration of invalidity of the temporary residence permit and the procedure for the registration of the absence of aliens from Estonia”

State Fee Act

Family Law Act

Homepages:

Non-Estonians' Integration Foundation www.meis.ee

National Examination and Qualification Centre www.ekk.edu.ee

Citizenship and Migration Board www.mig.ee

Miscellaneous:

State Administrative Court Decision RKHKo RT III 2000, 17, 180

Tallinn Circuit Court Decision No 2-3/441/03

Tallinn Administrative Court Decision No 3-06-671

CMB response to the Estonian Migration Foundation

CMB response to the Estonian Migration Foundation 3-2/2007-17

CMB response to the Estonian Migration Foundation 3-2/2007-18

CMB response to the Estonian Migration Foundation 3-2/2007-19