

MISUSE OF THE RIGHT TO FAMILY REUNIFICATION: IRELAND

EMN Focussed Study

Corona Joyce

July 2012

EMN

European Migration Network



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The European Migration Network

The aim of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum at Member State and EU-level with a view to supporting policymaking and informing the general public.

The Irish National Contact Point of the European Migration Network, EMN Ireland, is located at the Economic and Social Research Institute (ESRI).

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The Author

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About this Report

This report is the first in a series of EMN focussed studies. Acknowledging that family reunification is a legitimate form of entry into and means of settling in the EU and Norway, the EMN study looks at misuse of this route by focussing on two specific types of misuse: marriages of convenience and false declaration of parenthood. It also aims to identify the intensity and scale of the issue, including legal context and practice with regard to prevention, detection and investigation. Available statistics are also presented.

The report consists of information provided primarily for the purpose of completing an overview Synthesis Report for the above-titled EMN Focussed Study. For this Synthesis Report, 24 contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. All reports are available at www.emn.europa.eu.

The opinions presented in this report are those of the Irish National Contact Point of the European Migration Network and do not represent the position of the Irish Department of Justice and Equality, the European Commission Directorate-General Home Affairs or the Economic and Social Research Institute.

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Abbreviations and Irish Terms

ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EUTR	EU Treaty Rights
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
GRO	General Register Office
ICI	Immigrant Council of Ireland
I/NGO	Intergovernmental Non- Governmental Organisation
INIS	Irish Naturalisation and Immigration Service
ORAC	Office of the Refugee Applications Commissioner

Section 1

Top-line 'Factsheet'

Marriages of Convenience

The term 'marriage of convenience' is not explicitly defined as an offence in Irish legislation and accurate statistics on the issue are thus not available. Article 41.3.1 of the *Constitution of Ireland 1937* provides for a privileged position for marriage. A 2011 case before the Irish courts, *Izmailovic & Anor v. The Commissioner of An Garda Síochána*, found that 'marriages of convenience' are not unlawful in Irish law and the Gardaí are not empowered to prevent their solemnisation. Civil registrars are legally unable to refuse to conduct a proposed wedding in the case of a suspected marriage of convenience unless there is an impediment to the marriage (as provided for in the *Civil Registration Act 2004*). In the case of both parenthood and marriage registration in Ireland, a presumption of validity prevails unless questioned. Reasons for suspected marriages of convenience are primarily related to imprisonment and/or a human trafficking situation involving female applicants and debt bondage involving male applicants. Anecdotal evidence has indicated financial gain also.

The misuse of the right to family reunification via marriages of convenience is viewed as a significant current problem by policymakers working in the area, though concentrated around applications for EU Treaty Rights under *S.I. the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006)* which provides for the national transposition of *Directive 2004/38/EC*. Head 138 of the *Immigration, Residence and Protection Bill 2010*¹ had proposed a number of measures regarding marriages of convenience and defined such a marriage for the first time in proposed legislation as well as allowing the Minister for Justice and Equality to disregard any marriage deemed one of convenience on any immigration matter.

Ireland does not partake in *Directive 2003/86/EC* on the right to family reunification.

Limited legislative measures are in place regarding the prevention of, and prosecution of parties involved in, contracting marriages of convenience and false declarations of parenthood. *S.I. No. 656 of 2006* does include a clause regarding cessation, where it is established that any rights or entitlements that have been

¹ The Minister for Justice and Equality recently announced his intention to republish the Bill later this year. The republished Bill will include several amendments reflecting initiatives approved in the *Programme for Government*, such as an independent appeals process.

acquired through *'fraudulent means'* shall result in the immediate cessation of such entitlements.

The impact of European Court of Justice (ECJ) case law can be seen primarily under EU Treaty Rights. Ireland initially required prior legal EU residence of a Third Country National family member of a mobile EU national and marriage prior to their arrival in Ireland. These requirements were subsequently struck down in the *Metock*² case which resulted in a subsequent policy change in Ireland, with the relevant Regulations amended by the *European Communities (Free Movement of Persons) Regulations 2008 (S.I. 310 of 2008)*. In the case of *Zambrano*,³ the Irish Government adopted a policy change in light of the finding in 2011 and announced that it would examine all cases where a link to the judgment had been identified to see whether they met with the criteria, and would, in most circumstances, grant permission to remain in the State, for a specified time, to enable parents to seek work, without requirement for an employment permit on a Stamp 4 basis. Permission for the establishment of a business without recourse to the Minister would also be provided for. Verifiable DNA evidence of a link to an Irish citizen child may be required.⁴ Full impacts regarding the McCarthy and Dereci cases have not yet been observed, with cases ongoing in the courts at present.

The prevention, detection and investigation of misuse of family reunification has led to the introduction of interviews (EU Treaty Rights cases) and development of indicators (by the General Register Office), as well as general verification of documentation in cases of suspected misuse. In general, all forms of family reunification refer to attestable marriages, with civil marriage certificates required for applications. The Irish Naturalisation and Immigration Service (INIS) has introduced interviews in EU Treaty Rights cases where there are suspicions of a marriage of convenience, and trial interview cases in the past have resulted in one case declared a suspected marriage of convenience and refused on that basis.⁵ All information in relation to the applicant and their spouse available to INIS is routinely assessed during an EU Treaty Rights application. While evaluated by staff, documentation which is submitted is not routinely sent for verification; however further analysis will be requested from the Garda Technical Bureau in cases of grave concern regarding the validity of submitted documents. Applications have been refused in the past on the basis of fraudulent documentation.

In the case of applications for family reunification under the *Refugee Act 1996 (as amended)*, the plausibility of all applications and documents which are submitted are taken into account when considering a case.⁶ The examination of facts declared in an initial asylum claim (such as listed family members) is looked at for

² Case C-127/08.

³ Case C-34/09.

⁴ Irish Naturalisation and Immigration Service (2011). *European Court of Justice Judgment in the Zambrano case*. Available at <http://www.inis.gov.ie/en/INIS/Pages/WP11000037>.

⁵ Data supplied by Irish Naturalisation and Immigration Service (2012).

⁶ *Ibid.*

consistency.⁷ Cases have been reported of applications being withdrawn when additional information has been requested, or when suspicions of fraudulent applications or documentation have been raised.⁸ While DNA testing of family members does occur as relevant, no specific policy is in practice. In some cases, documentation may be referred to the Garda Technical Bureau and some staff within the Office of the Refugee Applications Commissioner (ORAC), which is responsible for investigating and making recommendations, are also trained in this matter. Other measures cited as contributing towards the prevention of both marriages of convenience, and the misuse of family reunification by such, include legislative provisions for the request for documentary evidence and attestable, durable marriages. Data sharing, particularly with regard to visa applicants and with the United Kingdom, is also undertaken (see Quinn and Kingston, 2012).

Regarding marriages contracted in Ireland, there is no requirement for an individual to be resident in Ireland when submitting an application, nor to possess a legal immigration status in the State. The *Civil Registration Act 2004* requires that applicants for marriage satisfy the registrar regarding their identity, and that there be no impediment to the marriage. In the case of both parenthood and marriage registration in Ireland, a presumption of validity prevails unless questioned. For that presumption to be questioned, officials would need to be satisfied that documents produced are not genuine and/or that material facts (such as identities, marital status etc.) were concealed or given incorrectly related to fraud and impersonation. During 2010, the General Register Office (GRO) revised their policy with regard to the requirement for authentication by national authority or embassy for all persons presenting birth certificates issued by foreign authorities. In September 2010, *Updated Guidelines for Registrars for Marriage Notification* were issued which contained new identification requirements, restrictions on the use of interpreters and the number of persons who may be admitted to a registrar's office. These *Updated Guidelines* were later rescinded based on legal advice. The GRO has indicated that causes for concern include cases with suspicions of human trafficking, where a threat of violence and/or an intimidating atmosphere is present and where false documentation is produced. Issues of concern may include a lack of knowledge regarding personal details between the couple, unusual meeting circumstances, involvement of a third party, lack of a common language and a female applicant acting in an uncomfortable manner. In addition, there are reports of divorce papers from other countries relating to marriages previously taking place in Ireland and submitted in the course of contracting a subsequent marriage, stating reason for dissolution as due to a marriage of convenience.⁹ There is some evidence of cooperation with other relevant governmental departments (for example regarding social welfare data), but this is limited. Cooperation between the Irish Naturalisation and Immigration Service (INIS), An Garda Síochána and the

⁷ Interview with Irish Naturalisation and Immigration Service (INIS) officials for the purpose of this study (March 2012).

⁸ *Ibid.*

⁹ Interview with the General Register Office for the purpose of this study (April 2012).

Registrar of Marriages in relation to tackling the abuse of marriages of convenience does take place. In all cases, suspected criminal matters are referred to the GNIB for investigation according to standard practice.

The issue of marriages of convenience attracted significant media and parliamentary debate in Ireland during 2010 and 2011. A March 2011 article noted that the General Register Office confirmed it had registered 28 of the 150 marriages which were the subject of objections and had upheld three of the objections due to identity-fraud concerns.¹⁰ Quinn and Kingston (2012)¹¹ report that 80 suspected marriages of convenience were prevented since the launch of the Garda National Immigration Bureau (GNIB) 'Operation Charity' in November 2009. The GNIB has made 16¹² arrests in the period since the launch of Operation Charity for offences such as bigamy, the use of false documentation, and illegal residence. In early 2011, the Minister for Justice and Law Reform stated that the largest non-EU nationality group submitting an application for residence based on marriage to an EU national in Ireland were nationals from Pakistan, constituting almost 20 per cent of all applications.¹³ In March 2011, the new Minister for Justice and Equality further commented on '*highly unusual patterns of marriage involving EU citizens and Third Country Nationals*' at a Justice and Home Affairs Council meeting, relating predominantly to nationals of Pakistan, the Ukraine and India, as well as Latvia.¹⁴ The majority of cases under this scenario relate to family formation within Ireland and to failed non-EEA seekers of international protection.¹⁵ Civil Registrars have stated that it would be reasonable to state that the issue of explicit and/or suspected marriages of convenience contracted in Ireland is a current and wide-ranging issue, particularly with regard to EU Treaty Rights but also related to marriages of Third Country Nationals, and Irish citizens and Third Country Nationals. This growth has been attributed to the Metock case ruling.¹⁶

Statistics on the topic of marriages of convenience in the context of family reunification are limited. A decrease in the number of first permits issued for family reasons to non-EU nationals can be seen from 2008 when 3,409 such permits were issued, to 2009 when 2,608 permits were issued, and to 2010 when 2,030 first permits were issued. Persons joining an EU citizen fell from 2,953 in 2008 to 1,730 in 2010. Persons joining a non-EU citizen fell from 456 in 2008 to 300 in 2010. Information reported from the General Register Office (GRO) suggests high incidences of marriage notifications relating to females from Latvia,

¹⁰ The Irish Times (21 March 2011). '*Just three of 150 objections to marriages upheld*'. Available at www.irishtimes.com.

¹¹ Quinn, E. and Kingston, G. (2012). *Practical Measures for Reducing Irregular Migration: Ireland*. Available at www.emn.ie/www.esri.ie.

¹² Cited as 20 arrests in The Irish Times (21 March 2011). '*Just three of 150 objections to marriages upheld*'. Available at www.irishtimes.com. Figure of 16 arrests noted in Dáil parliamentary debate as of 20 October 2010.

¹³ Irish Naturalisation and Immigration Service (7 January 2011). 'Minister Dermot Ahern announces end of year asylum statistics'. *Press Release*. Available at www.inis.gov.ie.

¹⁴ Irish Naturalisation and Immigration Service (9 March 2011). 'Sham marriages leading to abuses of EU freedom of movement rights'. *Press Release*. Available at www.inis.gov.ie.

¹⁵ Interview with INIS officials for the purpose of this study (March 2012).

¹⁶ General Register Office (2011). *Annual Report of an t-Ard Chláraitheoir to the Minister for Social Protection under Section 11 of the Civil Registration Act 2004 for the year 2010*. Available at www.groireland.ie.

Lithuania, Poland, Estonia and Portugal and males from Africa and the Indian sub-continent.¹⁷ One indicator of the scale of the issue is the number of notifications of intention to marry, and subsequent level of registration of marriages, relating to notifications involving EU and non-EU nationals.¹⁸ In 2008 the percentage of notifications resulting in marriage was 86 per cent; in 2009 it was at 82 per cent; in 2010 and 2011 it stood at 74 per cent.¹⁹ INIS has noted that one application under EU Treaty Rights case was declared a suspected marriage of convenience and refused on that basis.²⁰ It also noted an '*unusual breakdown of nationalities involved in marriages...since the Metock decision*'. The top five Third Country Nationals applying for EU Treaty Rights in 2011 were Pakistani (18.1 per cent), Nigerian (9.3 per cent), Brazilian (7.9 per cent), Indian (6.0 per cent), and Bangladeshi (4.6 per cent). Of the 2011 applications made by Pakistani nationals, 82.3 per cent related to a spouse from a former 'Eastern Bloc' country with 39.8 per cent of those applications being to a Latvian spouse. NGOs working in the area have not reported high incidences of casework regarding marriages of convenience, however they have suggested that there are many cases of refusals of applications (including visas for entry) for spouses based on 'nebulous' grounds. No specific guidelines for applications are in evidence, and there is a perceived 'lack of consistency' across cases and decision making.

There is limited transnational cooperation in evidence, although information is exchanged with the UK. Political cooperation on the issue has been seen, in particular on the topic of misuse of family reunification of EU Treaty Rights and as supported by Denmark and the Netherlands.

False Declarations of Parenthood

The misuse of family reunification via a false declaration of parenthood is not seen as a significant or pressing issue in Ireland. In the case of both parenthood and marriage registration in Ireland, a presumption of validity prevails unless questioned. No national legislative definition of a 'false declaration of parenthood' exists in Ireland. An offence and penalties related to false registration of births or stillbirths is provided for under the *Civil Registration Act 2004*.

Family reunification on the grounds of parenthood is provided for with regard to persons with refugee status, subsidiary protection status, under various employment permit and 'Researcher' schemes, religious ministers and, in certain cases, for students.

The impact of European Court of Justice (ECJ) case law relates primarily to applications considered post-Zambrano judgment, whereby verifiable DNA evidence of a link to an Irish citizen child '*will be required*' in cases where there is

¹⁷ Comments supplied by the General Register Office for the purpose of this study (April 2012).

¹⁸ It is, however noted, as a three month notice is required, notifications received in the latter quarter of any year may be reflected in the subsequent year's figures.

¹⁹ Data supplied by the General Register Office for the purpose of this study (2012). Statistics regarding non-EEA nationals only are not readily available.

²⁰ Data supplied by INIS (2012).

a doubt as to whether an applicant is actually the father of an Irish born citizen child, including, but not limited to, cases where the father is not named on the child's birth certificate, or where the birth certificate has been re-registered to include the father's name a significant period after the birth of the child. In addition, 'documentary evidence' of the role of the parent in the referenced child's life is also required.²¹

There are no statistics available on false declarations of parenthood.

²¹ Irish Naturalisation and Immigration Service (2011). *Frequently Asked Questions about the Zambrano Judgment*. Available at <http://www.inis.gov.ie/en/INIS/Pages/WP11000038>.

Section 2

National Legislative Framework and Definitions

2.1 How are concepts of 'marriage' and the 'family' defined and understood in your Member States in the laws and regulations relating to family reunification?

Marriages of Convenience:

Article 41.3.1 of the *Constitution of Ireland 1937* provides for a privileged position for marriage and declares that the State

pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

Articles 41.1.1 and 41.1.2 of the Constitution recognise the family as the

natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law. (Art.41.1.1)

and asserts that the State

guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State. (Art.41.1.2).

The *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No.24 of 2010)* entered into force on 13 January 2011. The Department of Justice and Equality have defined a civil partnership as being treated in the same way as marriage in all immigration matters, with civil partners treated as

equivalent in immigration matters to a person who is married to another person of the opposite sex where the marital relationship has not been dissolved or is the subject of a decree of nullity.²²

A civil partner for immigration purposes is defined as either of two persons of the same sex:

- (a) *who are parties to a civil partnership registration carried out in Ireland in accordance with the Act where the partnership has not been dissolved or is the subject of a decree of nullity,*

²² Irish Naturalisation and Immigration Service (January 2011). *Civil Partnership Notice: Immigration Arrangements for Civil Partners*. Available at <http://www.inis.gov.ie/en/INIS/Pages/Civil%20Partnership>.

(b) *who are parties to a legal relationship of a class specified in an order made under Section 5 of the Act.*^{23 24}

Registration of marriages contracted in Ireland takes place under the Civil Registration Act 2004; civil partnership registration provisions as contained in Part 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 amend the Civil Registration Act, 2004.

Family reunification is provided for with regard to persons with refugee status, subsidiary protection status, under various employment permit and ‘Researcher’ schemes, religious ministers and, in certain cases, for students. The concept of family reunification in Ireland is enshrined in legislation only in the case of persons with recognised refugee or subsidiary protection status. Family reunification for declared refugees takes place under Section 18 of the Refugee Act 1996. Provisions for spouses, parents and children are contained within the Act, as are discretionary grounds for dependent family members. Section 18(3)(b) defines a ‘*member of the family*’ as a spouse (in the case of a refugee in a subsisting marriage at the time of application whereby the marriage is recognised under Irish law),²⁵ parents (in the case of a refugee who is under the age of 18 years and unmarried at the time of application), and a child (in the case of a refugee who has a child under the age of 18 years and unmarried at the time of application). Exclusions and revocations on the grounds of public policy or national security are provided for under Section 18(5). *The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* amends Section 18(3)(a) of the 1996 Act to include civil partners for persons with refugee status. With regard to relevant case law, a 2010 case (*Mohammed Hussein Ahmed Hamza & Anor v. Minister for Justice, Equality and Law Reform*²⁶) found that a marriage in the context of family reunification for persons with refugee status need not be recognisable under Irish law. In the case, the Minister, when refusing an application for family reunification from a Somali refugee, questioned the validity of the applicant’s marriage under Irish law and stated that the applicant could apply to the Circuit Court for a declaration of his marital status. The Court held that the entitlement of a refugee to seek family reunification with a spouse under the 1996 Act was not circumscribed by conditions of domicile or minimum ordinary residence and that issues that arise in relation to the recognition of family relationships in the case of refugees will be materially different, both as regards formalities of proof and conflict of laws. The provisions in the *Refugee Act 1996* equip the Minister, with the assistance of the report from the Refugee Applications Commissioner, to obtain and furnish such information as to local laws, customs and social conditions as may be required to assess the validity of

²³ *Ibid.*

²⁴ To date two Orders have been made: *S.I. No. 649 of 2010 Civil Partnership (Recognition of Registered Foreign Relationships) Order 2010* and *S.I. No. 642 of 2011 Civil Partnership (Recognition of Registered Foreign Relationships) Order 2011*.

²⁵ Irish Naturalisation and Immigration Service (Accessed April 2012). *Family Reunification Information Leaflet*. Available at http://www.inis.gov.ie/en/INIS/Pages/Family_Reunification_Information_Leaflet.

²⁶ *Mohammed Hussein Ahmed Hamza & Anor v. Minister for Justice, Equality and Law Reform [2010] IEHC 427*, High Court, 25 November 2010.

the claim made and the authenticity of documents produced to substantiate it; or to confirm that conditions are such in the country in question that the explanation given for the absence of formal proofs is credible or not. Cooke J. said that it was inevitable that the circumstances which gave rise to applications under Section 18 of the *Refugee Act 1996* would frequently involve situations in which formal proof of a marriage ceremony is either non-existent or impossible to obtain. The Court concluded that Section 18(3)(b)(i) of the *Refugee Act 1996* does not require that the Minister be satisfied that the refugee and spouse be parties to a marriage which is recognisable as valid in Irish law, or that any particular documentary proof of the foreign ceremony be produced. It requires, merely, that the refugee and spouse are married and that the marriage is subsisting at the date of the application. It does not define the term 'marriage.' A refugee who is able to demonstrate the existence of a subsisting and real marital relationship with the person who is the subject of the application is entitled to have the marital relationship recognised for the purposes of reunification under Section 18 unless some reason of public policy intervenes to prevent its recognition.

Family reunification for persons with subsidiary protection status is dealt with under Regulation 16 of the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006)*. Article 16 (1) of the Regulation states that such a person may apply to the Minister for permission to be granted for a member of their family to enter and reside in Ireland. Article 16 (3)(b) defines a family member as a spouse if married (provided that the relationship is in existence at the time of application), parents (if status holder is under 18 years), or a child (if under 18 years and unmarried at the time of application). Ministerial discretion for the granting of family reunification for dependent family members of persons eligible for subsidiary protection is contained within Section 16 (4)(b) and refers to

any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the applicant who is either dependent upon them or unable to maintain themselves fully due to a physical or mental incapacity.

Exclusions and revocations on the grounds of public policy or national security are provided for under Section 16 (5) and in cases where the individual '*would be or is excluded from refugee or subsidiary protection status in accordance with Regulation 12 or 13.*' Provisions are made for the Minister to

investigate, or cause to be investigated' such an application 'to determine the relationship between the applicant and the person who is the subject of the application and that person's domestic circumstances.

Nearly identical provisions are contained at Section 18(2) of the 1996 Act regarding family reunion for refugees.

Administrative schemes and/or procedures are in operation regarding family reunification for holders of 'Green Cards', work permits, permission to remain in

Ireland under the ‘Researcher Directive’,²⁷ and non-EEA spouses of EU nationals. In respect of these categories, applications are made in the visa process.²⁸

The *Employment Permits Acts 2003* and *2006* allow for the introduction of a new Intra-Company Transfer Scheme for a defined period²⁹ in cases where persons are earning more than €40,000 per year and have been working for the company for 12 months prior to transfer. Spouses and dependents of intra-company permit holders under the Scheme are not generally eligible for immediate family reunification.³⁰ In the case of a first application for a work permit before 1 June 2009, family members are entitled to seek employment and apply for a permit under the *Spousal/Dependant Scheme* once they are legally resident in Ireland; for work permit applicants after that date, spouses and dependants can apply for a work permit in their own right and with regard to standard eligibility criteria.

As of June 2011, arrangements for holders of ‘Green Cards’ generally allow for immediate family reunification. Applications for Green Cards are for all general occupations when an annual salary (excluding bonuses) is €60,000 or more, or for a restricted number of strategically important occupations in the €30,000 to €59,999 (excluding bonuses) category. Spouses and dependants are entitled to seek employment and apply for a permit under the *Spousal/Dependant Scheme* once they are legally resident in Ireland.³¹ In the case of a ‘renewal’ of permission to remain in Ireland for Green Card holders after two years, persons in the same position will be issued with a renewable Stamp 4 residence permission of two years duration and their spouses and dependants will be provided with a registration stamp for two years.³²

In the case of holders of work permits, the *Employment Permits Acts 2003* and *2006* allow for the issuing of a work permit for occupations with a salary of €30,000 or more (excluding bonuses) where Green Card permits are not available and, in exceptional cases, in the salary range below €30,000. It is issued to the employee for a specific employer and for a period of two years; it can be renewed for a further three years and indefinitely after five years. Spouses and dependants of work permit holders are not generally eligible for immediate family reunification.³³ In the case of a first application for a work permit before 1 June 2009 they are entitled to seek employment and apply for a permit under the *Spousal/Dependant Scheme* once they are legally resident in Ireland; for work

²⁷ Council Directive 2005/71/EC (OJ L 289, 3.11.2005) of 12 October 2005 on a specific procedure for admitting Third Country Nationals for the purposes of scientific research.

²⁸ See Section 2.2 for additional discussion.

²⁹ Usually for a maximum of two years at first instance and up to a five year period.

³⁰ For non-visa required nationals, permission is granted immediately; in the case of visa-required nationals, permission is not granted within 12 months.

³¹ Department of Jobs, Enterprise and Innovation (June 2011). *Employment Permits Arrangements Guide To Green Card Permits June 2011*. Available at <http://www.djei.ie/publications/labour/2011/Guidelines-GreenCards-June11.pdf>.

³² Irish Naturalisation and Immigration Service (August 2010). *Green Card Permit Holders, whose permits are due for renewal*. Available at http://www.inis.gov.ie/en/INIS/Pages/Green_Card_FAQs#Q10.

³³ For non-visa required nationals, permission is granted immediately; in the case of visa-required nationals, permission is not granted within 12 months.

permit applicants after that date, spouses and dependants may apply for a work permit in their own right and with regard to standard eligibility criteria.³⁴

In the case of researchers admitted to Ireland under *Directive 2005/71/EC* and specifically the *Scheme for admission of Third Country Researchers to Ireland*, family members (defined as ‘spouse and dependants’³⁵) may accompany the researcher either upon entry or at a later date. They are subject to the same admission conditions as applied to the researcher, for the same duration of validity and are eligible to apply for a Spousal/Dependant employment permit to work in Ireland.³⁶ This Spousal/Dependant employment permit allows for greater access to employment including the ability to apply for an employment permission in respect of most occupations and without the need for a labour market needs test requirement, permission to work part-time and exemption from application fees.³⁷

Family reunification for religious ministers arriving after 1 January 2011 is provided for the spouse/partner and child under 18 years of age. Each application is assessed ‘on its merits’ and the person will have to demonstrate that they will not be an ‘undue burden’ on the State, that they have private medical insurance and that there are no public order concerns.³⁸ In the case of students, in general no entitlement to family reunification exists however some exceptions are in place such as students undertaking a PhD, on an agreed academic programme or with sufficient means to support their family or when a child is on a short visit.³⁹

Regarding family reunification for and non-EEA spouses of EU nationals, this is provided for under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006) as amended by the European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008). S.I. 656 contains a clear reference that a “‘spouse” does not include a party to a marriage of convenience’, however a definition of such a marriage is not contained in the legislation.

False Declarations of Parenthood

No national legislative definition of a ‘false declaration of parenthood’ exists in Ireland.

³⁴ Department of Jobs, Enterprise and Innovation (December 2011). *Employment Permits Arrangements Guide To Work Permits December 2011*. Available at <http://www.djei.ie/publications/labour/2011/guidelines-workpermits-december11.pdf>.

³⁵ Irish Naturalisation and Immigration Service (January 2011). *Researchers (on a Hosting Agreement)*. Available at <http://www.inis.gov.ie/en/INIS/Pages/Researchers>.

³⁶ Department of Jobs, Enterprise and Innovation (June 2011). *Scheme for admission of Third Country Researchers to Ireland*. Available at <http://www.djei.ie/science/technology/accreditation.htm>.

³⁷ Department of Jobs, Enterprise and Innovation (November 2009). *Policy in relation to Spouses and Dependants of Hosting Agreement Holders*. Available at <http://www.djei.ie/labour/workpermits/researchers.htm>.

³⁸ Irish Naturalisation and Immigration Service (December 2010). *Immigration Arrangements for Ministers of Religion with effect from 1 January 2011*. Available at www.inis.gov.ie.

³⁹ Irish Naturalisation and Immigration Service (January 2011). *New Immigration Regime for Full Time Non-EEA Students, Guidelines for Degree Programme Students*. Available at <http://www.inis.gov.ie/en/INIS/Guidelines%20for%20Degree%20Programme%20Students.pdf/Files/Guidelines%20for%20Degree%20Programme%20Students.pdf>.

Registration of births or stillbirths in Ireland (in general within three months of the birth) takes place under the *Civil Registration Act 2004*. In the case of married persons, both are generally registered as parents unless a petition or statutory declaration is submitted; in the cases of unmarried persons, the father of the child need not be registered, with notice in writing required from both parties required if they do seek to register (Section 22). The provision of false information is provided for under the 2004 Act, with Section 69 (3) stating that:

A person who gives to a registrar particulars or information which he or she knows to be false or misleading is guilty of an offence.

Section 70 of the 2004 Act provides that penalties in the case of offences under Section 69(3) are:

(a) *on summary conviction, to a fine not exceeding €2,000 or imprisonment for a term not exceeding 6 months or both,*

or

(b) *on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.*

2.2 What national legislation regulates family reunification between:

- (i) A Third Country National Residing Lawfully In The EU / Norway Reunifying With A Third Country National Applying To Enter / Reside There In Order To Preserve The Family Unit**
- (ii) A Mobile EU National Reunifying With A Third Country National**
- (iii) A Non-Mobile EU Citizen Reunifying With A Third Country National On The Basis Of Jurisprudence (And Reference To The EU Treaty)**
- (iv) A Non-Mobile EU Citizen Reunifying With A Third Country National.**

As discussed in Section 2.1, the Department of Justice and Equality has defined a civil partnership (as contained in the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*) as being of equal status to marriage in all immigration matters, with civil partners treated as

equivalent in immigration matters to a person who is married to another person of the opposite sex where the marital relationship has not been dissolved or is the subject of a decree of nullity.

Several NGOs working in the area have criticised limited legislative provisions in place for family reunification that only apply under EU Treaty Rights and for persons with refugee status and subsidiary protection status, with administrative procedures in place for all other categories. Limited information regarding applications, criteria and refusals is available in the public domain.⁴⁰

⁴⁰ Interview with Immigrant Council of Ireland for the purpose of this study (February 2012).

Regarding access to Ireland, as in the case for all immigration permissions, external applications for visa-required nationals are made via the visa system (contained in Section 17 of the *Immigration Act 2003*) prior to arrival where persons then apply for a 'long-stay/join family member' 'D' class visa, after which the applicant is required to apply for permission to be in the State under Section 4 of the *Immigration Act 2004*. Section 4 of the 2004 Act states that requests for permission to land or be in the State should be made internally via presentation to an immigration officer. In the case of non-visa required nationals, they may apply for residency permission under this Section by citing 'family relationships' under Section 4 (1) of the *Immigration Act 2004* post-arrival. In the case of family reunification of holders of refugee status or subsidiary protection status, a visa entitlement (if required) and residency permission is provided for within relevant legislation (Section 19 of the *Refugee Act 1996* and Regulation 16 of the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006)* respectively). In the case of family reunification of mobile EU nationals, the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006)* provides for the granting of a visa (if required) in cases where criteria are met. Discretion on behalf of the immigration officer is not relevant in this instance. In the case of subsequent residency applications after three months in the State, again no discretion is provided for and the family member must be provided with residency if he or she satisfies the specified conditions.

Marriages of Convenience

(i) A Third Country National Residing Lawfully In The EU / Norway Reunifying With A Third Country National Applying To Enter / Reside There In Order To Preserve The Family Unit

Ireland does not participate in *Directive 2003/86/EC* ('Family Reunification'). Accordingly, Ireland has not transposed its measures in domestic law.

There is no Irish primary or secondary legislation, as such, on family reunification for Third Country Nationals lawfully resident in the State reunifying with Third Country Nationals applying to enter or reside in the State. Such scenarios are dealt with in the context of Irish visa and residency law, particularly in the *Immigration Acts 1999, 2004* and the *Refugee Act, 1996 (as amended)*.

The *Immigration Act 2003* sets forth the statutory basis for visas; in the case of persons coming to Ireland for the purpose of family reunification and from a visa-required State, they continue to require a valid entry visa.

Section 4 (1) of the *Immigration Act 2004* sets forth the statutory basis for permission to reside in Ireland and thus may be used to seek residency in the context of family reunification. Immigration Officers have power to grant or deny entry, to decide on the duration of the stay, and any conditions under Section 4 of the 2004 Act:

Subject to the provisions of this Act, an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his

or her passport or other equivalent document an inscription, authorising the non-national to land or be in the State (referred to in this Act as “a permission”).

The concept of family reunification in Ireland is enshrined in legislation only in the case of persons with recognised refugee status under Section 18 of the *Refugee Act 1996* and for holders of subsidiary protection status under the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)*. Provisions for spouses, parents and children are contained within the 1996 Act, as are discretionary grounds for dependent family members. Persons granted reunification with family members under this statutory basis must still avail of a visa (if required) and granted residency. Section 18 (3)(b) defines a ‘*member of the family*’ as related to a refugee as incorporating a spouse (in the case of a refugee in a subsisting marriage at the time of application and that the marriage is recognised under Irish law⁴¹), parents (in the case of a refugee who is under the age of 18 years and unmarried at the time of application) and a child (in the case of a refugee who has a child under the age of 18 years and unmarried at the time of application). Article 18 (4)(b) provides for ministerial discretion for the granting of family reunification for dependent family members and refers to

any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who is dependent on the refugee or is suffering from a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself or herself fully.

A statutory civil partnership registration scheme for same-sex couples was introduced in January 2011 under the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* and a person with refugee status may apply under Section 18 of the 1996 Act (as amended) for reunification of a civil partner.

Family reunification for persons with subsidiary protection status is dealt with on a statutory basis by way of Regulation 16 of the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006)*. Article 16 (1) of the Regulation states that such a person may apply to the Minister for permission to be granted for a member of their family to enter and reside in Ireland. Article 16 (3)(b) defines a family member as a spouse if married (provided that the relationship is existing at the time of application), parents (if under 18 years) or a child (if under 18 years and unmarried at the time of application). Ministerial discretion for the granting of family reunification for holders of subsidiary protection status for dependent family members is contained within Section 16 (4)(b) and refers to

any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the applicant who is either dependent upon them or unable to maintain themselves fully due to a physical or mental incapacity.

⁴¹ Irish Naturalisation and Immigration Service (Accessed April 2012). *Family Reunification Information Leaflet*. Available at http://www.inis.gov.ie/en/INIS/Pages/Family_Reunification_Information_Leaflet.

Exclusions and revocations on the grounds of public policy or national security is provided for under Regulation 16 (5) and in cases where the individual *'would be or is excluded from refugee or subsidiary protection status in accordance with Regulation 12 or 13'*. Provisions are made for the Minister to *'investigate, or cause to be investigated'* such an application

'to determine the relationship between the applicant and the person who is the subject of the application and that person's domestic circumstances.'

Under the *Immigration Act 1999*, unlawfully residing Third Country Nationals in Ireland (including persons who seek to reside by way of family reunification with Third Country Nationals [or Irish nationals] lawfully resident in the State) may make representations against deportation from the State under Section 3(6) of the *Immigration Act 1999*. As such, a de facto family reunification application may be made in this circumstance. Sections 3(1) and (6) allow the Minister to determine whether to make a deportation order against a person, and require the Minister, when doing so, to take into account considerations such as *'the family and domestic circumstances of the person'*. The State also possesses an obligation to have due regard to the protection of the 'family' as outlined in the *Constitution of Ireland 1937* (see Section 2.1) and under Article 8 of the *European Convention on Human Rights* (ECHR) with regard to the right to *'respect for private and family life'* when determining such an application.

(ii) A mobile EU national reunifying with a Third Country National

This instance refers to a mobile EU national as an EU citizen who has exercised his/her right to free movement and reunification with a Third Country National through *Directive 2004/38/EC* which regulates the rights of entry and residence of Third Country National family members who are joining or accompanying EU citizens who have exercised their right to free movement. Under EU law, EU citizens exercising their right to free movement have a right to family unity which means they are entitled to be accompanied by their spouse/partner, children and dependent relatives. Non-EEA family members of EU citizens resident in Ireland may submit an application for residency on the basis of EU Treaty Rights to the Irish Naturalisation and Immigration Service (INIS). If successful they will be given an 'EUFAM' immigration permission. Applications for family reunification in this context in Ireland are made in respect of family members seeking both entry and residence, or those already in the State and seeking residence. *Directive 2004/38* has been transposed into domestic Irish law by the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* (S.I. No. 656 of 2006) as amended by the *European Communities (Free Movement of Persons) (Amendment) Regulations 2008* (S.I. No. 310 of 2008). Regulation 2 defines both a 'permitted' and 'qualifying' family member. A qualifying family member of a Union citizen is defined as being a spouse, a direct descendant (if under 21 years and a dependant of the Union citizen or the spouse of the Union citizen) and a dependant who is an 'ascending direct descendant' (in the case of a Union citizen or the spouse of the Union citizen). A permitted family member of a Union citizen

refers to *'any family member, irrespective of his or her nationality'* who is not a qualifying family member of a Union citizen and is a dependant member of the household of the Union citizen, requiring the *'personal care of the Union citizen on the basis of serious health grounds'* and is the partner of a Union citizen within a durable relationship *'duly attested'*. Under Regulation 5, a permitted family member may be requested to produce *'documentary evidence'* from the relevant authority in the country of origin or country from which he or she is arriving certifying that he or she is a dependant, or a member of the household, of the Union citizen, or of the serious health grounds or of the existence of a durable relationship with the Union citizen. The Minister will then instruct an *'extensive examination of the personal circumstances of the person concerned'* to establish whether they are a permitted family member. Exclusion clauses for both Union citizens and permitted and qualifying family members are provided for. Regulation 4 of the 2006 Regulations states that a Union citizen in possession of a valid national identity document or passport may not be refused entry to Ireland unless they are suffering from a specified disease or on a public policy or security ground. A qualifying family member in possession of a valid passport may be refused permission to enter Ireland on the same grounds. Regulation 5 states that a permitted family member may be refused permission to enter the State if the Minister is not satisfied that they are such a person or if they are suffering from a specified disease or on a public policy or security ground.

(iii) A non-mobile EU citizen reunifying with a Third Country National on the basis of jurisprudence (and reference to the EU Treaty)

Unlike scenario (ii), there is no dedicated legislation for this category. As a result, although there is an EU protection on the basis of the Treaty, applications for family reunification (regarding entry and residence, or residence only) are dealt with as per the legislation set out under scenario (i) above. With regard to family reunification/residence applications relying on EU rights (also referring to applications arising from the Chen⁴² case), such applications for residence by Irish parents are processed via the Repatriation Unit of the Department of Justice and Equality rather than the EU Treaty Rights Section of the same department. Ministerial decisions with regard to applications made under this category refer to such residence being granted at the discretion of the Minister, and do not expressly acknowledge an EU based entitlement to residence and/or family reunification.

(iv) A non-mobile EU citizen reunifying with a Third Country National.

As with scenario (iii), applications for family reunification (regarding entry and residence, or residence only) are dealt with as per the legislation set out under scenario (i) above.

⁴² Opinion of the Advocate General Tizzano (18 May 2004). C200/02.

False Declarations of Parenthood

Family reunification on the grounds of parenthood is contained in clauses referred to in Section 2.2.1. As referred to earlier, no policy or legislative definition of a false declaration of parenthood exists in Ireland

As noted earlier, Sections 69(3) and 70 of the *Civil Registration Act 2004* provides for penalties in the case of provision of false information in the case of registration of births, deaths and marriages.

2.3 *Is the prevention of misuse of residents' permits for family reunification as defined in the context of this study specifically covered in national legislation? If so, what are the provisions?*

Marriages of Convenience

The term 'marriage of convenience' is not explicitly defined as an offence in Irish legislation.

The *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* (S.I. No. 656 of 2006) which provides for the national transposition of *Directive 2004/38/EC* does include a clause regarding cessation. Regulation 24 states that in cases where it established that that any rights or entitlements have been acquired through 'fraudulent means' (defined in Regulation 24(1)(2) as including a marriage of convenience which is not defined), that person shall immediately cease to enjoy such entitlements.

Section 25 of *S.I. No. 656 of 2006* provides that:

A person who-

- (a) being a person to whom these Regulations apply, fails to comply with any requirement of these Regulations or under these Regulations, or*
- (b) asserts an entitlement to any rights under these Regulations on the basis of information which he or she knows to be false or misleading in a material particular, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 12 months, or both.*

A 2011 case before the Irish courts, *Izmailovic & Anor v. The Commissioner of An Garda Síochána*, found that 'marriages of convenience' are not unlawful in Irish law and that Gardaí are not empowered to prevent their solemnisation. The case related to a marriage solemnisation about to take place in the State between a Lithuanian national and an Egyptian national, before which two Garda National Immigration Bureau (GNIB) officers arrived at the registry office and objected to the proposed marriage on the ground that it was a marriage of convenience under investigation by the GNIB. The Egyptian national was arrested and detained

and the proposed marriage did not take place. The Irish High Court dealt with the matter under Article 40.4.2 of the *Constitution of Ireland* (i.e. in the context of an application for Habeas Corpus). The Court held that the arrest of a person at a registry office immediately prior to his or her marriage calls for a high degree of justification. The Court held that as the institution of marriage is protected by Article 41.3.1 of the *Constitution of Ireland*, the courts have to be especially astute to ensure that agents of the State do not seek to prevent what would otherwise be a lawful marriage without compelling justification. The Court held that no matter how well intentioned, An Garda Síochána are not empowered to prevent the solemnisation of a marriage on the grounds that they suspect - even with very good reason - that the marriage is one of convenience.

As there is no national legislation prohibiting marriage for the purpose of circumventing immigration law, civil registrars are legally unable to refuse to conduct a proposed wedding in the case of a suspected marriage of convenience unless there is an impediment to the marriage (as provided for in the *Civil Registration Act 2004*).

In the case of both parenthood and marriage registration in Ireland, a presumption of validity prevails unless questioned.

Regarding changes in legislation and/or practice, Head 138 of the published *Immigration, Residence and Protection Bill 2010*⁴³ had proposed a number of measures regarding marriages of convenience. Article 138(7) defined a marriage of convenience for the first time in (proposed) national legislation as referring to:

a marriage contracted, whether inside or outside the State, where at least one of the parties is a foreign national and where, for at least one of the parties, expediency, in the form of the obtaining—

(a) from the Minister, a determination of an immigration matter,

or

(b) from the immigration authority of another state,

a determination of an equivalent matter, favourable to either of the parties to the marriage or to another foreign national, was the predominant motivation in contracting the marriage

Article 138(1) proposed to allow the Minister for Justice and Equality to disregard any marriage deemed one of convenience in the determination of any immigration matter. Article 138(2) allowed for the Minister to send a notice to parties when making an immigration determination, upon having ‘reasonable grounds’ for considering it a marriage of convenience, requesting that he/she is provided with information within a specified time limit with which to satisfy them that it is not such a marriage. Article 138(3) stated that the onus on establishing that it is not such a marriage of convenience is upon the applicants and that the

⁴³ The Minister for Justice and Equality recently announced his intention to republish the Bill later this year. The republished Bill will include several amendments reflecting initiatives approved in the *Programme for Government*, such as an independent appeals process.

Minister may consider it as such if such information as requested in Article 138(2) is not provided in time. Article 138(4) allowed for the Minister to exercise such power regarding a suspected marriage of convenience in respect of marriages already taken into account in an immigration determination. Article 138(5) elaborated that such indicators regarding a suspected marriage of convenience will include:

- (i) the nature of the ceremony on the basis of which the parties assert that they are married;*
- (ii) whether the parties have been residing together as husband and wife, and, if so, the length of time during which they have so resided;*
- (iii) the extent to which the parties have been sharing income and outgoings;*
- (iv) the extent to which the parties have been dealing with other organs of the State or the organs of any other state as a married couple;*
- (v) the nature of the relationship between the parties prior to the marriage;*
- (vi) whether the parties are each familiar with the other's personal details;*
- (vii) whether the parties speak a language which is understood by both of them;*
- (viii) whether a sum of money or other inducement was exchanged in order for the marriage to be contracted (and, if so, whether this represented a dowry given in the case of persons from a country or society where the provision of a dowry is a common practice);*
- (ix) whether the parties have a continuing commitment to mutual emotional and financial support;*
- (x) the marital history of each of the parties including any evidence that either of them has previously entered into a marriage of convenience;*
- (xi) whether any previous conduct of either of the parties or the foreign national to whom the immigration matter under consideration relates (if different) indicates that any of them has previously arranged a marriage of convenience or otherwise attempted to circumvent the immigration laws of the State or any other state;*
- (xii) the immigration status of the parties in the State or in any other state;*
- (xiii) any information provided by an tArd-Chláraitheoir or a registrar;*

(xiv) any other matters which appear to the Minister to raise reasonable grounds for considering the marriage to be a marriage of convenience.

INIS officials interviewed for this study have noted that the purpose of Section 138 of the *Immigration, Residence and Protection Bill 2010*⁴⁴ was to provide for the Minister for Justice and Equality to disregard a ‘marriage of convenience’ in his or her determination of an immigration matter.

False Declarations of Parenthood

No reference to, or specific prevention of, the misuse of residence permits for family reunification via false declaration of parenthood is either planned or contained within national legislation.

2.4 *Where relevant and where information is available, give a brief description of the impacts (if any) of European Court of Justice case law which has focused on family reunification (e.g. Zambrano, McCarthy, Dereci) in your Member State?*

Marriages of Convenience

As discussed in Section 2.3, the area of primary stated concern to officials of the Department of Justice and Equality relates to patterns and trends emerging under EU Treaty Rights provision (scenario ii). Ireland transposed the ‘Free Movement Directive’ by way of the *European Communities (Free Movement of Persons) (No.2) Regulations 2006 (S.I. No. 656 of 2006)* and initially required prior legal EU residence of a Third Country National family member of a mobile EU national and marriage prior to their arrival in Ireland. These requirements were subsequently struck down in the *Metock*⁴⁵ case in which the European Court of Justice (ECJ) found that free movement rights of entry and residence applied to non-EEA national spouses and family members of mobile EU nationals irrespective of when a marriage took place or how the Third Country National joined their spouse. This ECJ finding resulted in a subsequent policy change in Ireland and the aforementioned Regulations were amended by the *European Communities (Free Movement of Persons) Regulations 2008 (S.I. 310 of 2008)*.

In the case of *Zambrano*⁴⁶, in which the ECJ found that Article 20 of the TFEU could, under certain circumstances, preclude a Member State from refusing a residence permit and access to the labour market to a Third Country National with a Union citizen child, the Irish Government adopted a policy change in light of the finding. The Department of Justice and Equality announced that it would examine all cases where a link to the judgment had been identified to see

⁴⁴ The Minister for Justice and Equality recently announced his intention to republish the Bill later this year. The republished Bill will include several amendments reflecting initiatives approved in the *Programme for Government*, such as an independent appeals process.

⁴⁵ Case C-127/08.

⁴⁶ Case C-34/09.

whether they met with the Zambrano criteria, and would, in most circumstances, grant permission to remain in the State, for a specified time, to enable parents to seek work without requirement for an employment permit on a Stamp 4 basis. Permission for the establishment of a business without recourse to the Minister would also be provided for. The Department highlighted the judgment as being of particular relevance to three categories of Third Country Nationals: parents of an Irish born citizen child awaiting a decision under Section 3 of the *Immigration Act 1999 (as amended)*; parents of an Irish-born citizen child who are already in possession of permission to remain in Ireland on the basis of Stamps 1, 2 or 3; and parents of an Irish-born citizen child who have either been deported from Ireland or left 'on foot' of a Deportation Order. The Departmental notice advised parents in the final category to apply to the relevant Irish embassy/consulate for a visa to return to Ireland upon which they would be required to produce documentation regarding a link to the Zambrano judgment. Verifiable DNA evidence of a link to an Irish citizen child may also be required. Exclusion terms apply in cases of public policy including serious and/or persistent criminal offences.⁴⁷

Full impacts of the McCarthy and Dereci cases have not yet been observed, with relevant cases before the Courts awaiting hearing dates and/or decisions.

False Declarations of Parenthood

In the case of applications considered after the Zambrano judgment, verifiable DNA evidence will be required in cases where there is a doubt as to whether an applicant is actually the father of an Irish born citizen child, including, but not limited to, cases where the father is not named on the child's birth certificate or where the birth certificate has been re-registered to include the father's name a significant period after the birth of the child.

In addition, 'documentary evidence' of the role of the parent in the referenced child's life is also required.⁴⁸

⁴⁷ Irish Naturalisation and Immigration Service (2011). *European Court of Justice Judgment in the Zambrano case*. Available at <http://www.inis.gov.ie/en/INIS/Pages/WP11000037>.

⁴⁸ Irish Naturalisation and Immigration Service (2011). *Frequently Asked Questions about the Zambrano Judgment*. Available at <http://www.inis.gov.ie/en/INIS/Pages/WP11000038>.

Section 3

The Situation in Ireland

SCOPE OF THE ISSUE

3.1 Are a) marriage of convenience and b) false declaration of parenthood recognised as examples of misuse of residents' permits for family reunification in your (Member) State?

Marriages of Convenience

The issue of marriages of convenience attracted significant media and parliamentary debate in Ireland during 2010 and 2011 in particular, however it has been noted by NGOs that the level of media coverage was disproportionate to the reality at the time. Reference to high numbers of 'sham marriages' took place in several media articles during this time, with one report of October 2010 stating that some 75 objections to scheduled civil ceremonies had been lodged by the Garda National Immigration Bureau (GNIB) with State registrars since November 2009.⁴⁹ A March 2011 article noted that marriage registrars had upheld three of the 150 objections made by the Gardaí against marriages of convenience.⁵⁰ Some 112 objections were lodged by the GNIB during 2010.⁵¹ In the March 2011 article, the General Register Office confirmed it had registered 28 of the 150 marriages which were the subject of objections and had upheld three of the objections due to identity-fraud concerns. It also noted that it had, at that time, requested legal advice on whether draft legislation to block such marriages for immigration purposes is constitutional. As discussed in Section 2.3 and below, it was later confirmed that a marriage contracted as a marriage of convenience in Ireland is not prohibited by law.

In 2010 it was noted that the GNIB had begun an operation targeting suspected 'sham marriages' which 'typically involve male non-EU nationals and women from eastern Europe'.⁵²

Quinn and Kingston (2012)⁵³ reported that 80 suspected marriages of convenience were prevented since the launch of the Garda National Immigration

⁴⁹ The Irish Times (27 October 2010). 'Gardaí to meet Latvians over 'sham marriages''. Available at www.irishtimes.com.

⁵⁰ The Irish Times (21 March 2011). 'Just three of 150 objections to marriages upheld'. Available at www.irishtimes.com.

⁵¹ General Register Office (2011). *Annual Report of an t-Ard Chláraitheoir to the Minister for Social Protection under Section 11 of the Civil Registration Act 2004 for the year 2010*. Available at www.groireland.ie.

⁵² *Ibid.*

Bureau (GNIB) 'Operation Charity' in November 2009. The GNIB had made 16⁵⁴ arrests in the period since the launch of for offences such as bigamy, the production of false documentation and illegal residence.

Both media reports and data cited by the Irish Naturalisation and Immigration Service (INIS) suggest that the majority of marriages of convenience taking place for the purpose of an immigration residence permission under EU Treaty Rights take place between Eastern European women from Latvia and Lithuania, and men from Pakistan, Bangladesh and India.⁵⁵ In early 2011, the then Minister for Justice and Law Reform stated that the largest non-EU nationality group submitting an application for residence based on marriage to an EU national in Ireland were nationals from Pakistan, constituting almost 20 per cent of all applications. Of this number,

'...almost two-thirds of these Pakistani applications involved an EU partner from the Baltic States. The high incidence of such marriages, several involving asylum seekers, is an ongoing concern that my officials in cooperation with their colleagues in other interested EU states continue to monitor'.⁵⁶

The Minister also indicated the *'possibility of deploying biometric technology in the context of visa applications from Pakistan'* as a *'matter of urgency'*.⁵⁷ In March 2011, the new Minister for Justice and Equality further commented on *'highly unusual patterns of marriage involving EU citizens and Third Country Nationals'* at a Justice and Home Affairs Council meeting, indicating that these patterns predominantly comprised of nationals of Pakistan, together with the Ukraine and India, and with Latvian nationals.⁵⁸ The majority of cases under this scenario relate to family formation within Ireland and to failed non-EEA seekers of international protection.⁵⁹ Regarding suspected marriages of convenience under EU Treaty Rights (scenario ii), INIS have introduced interviews in EU Treaty Rights cases where there are suspicions of marriage of convenience. These interviews are based on EU guidelines contained within *Commission Document COM (2009) 313 Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive*

⁵³ Quinn, E. and Kingston, G. (2012) *Practical Measures for Reducing Irregular Migration: Ireland*. Available at www.emn.ie/www.esri.ie.

⁵⁴ Cited as 20 arrests in The Irish Times (21 March 2011). *'Just three of 150 objections to marriages upheld'*. Available at www.irishtimes.com. Figure of 16 arrests noted in Dáil parliamentary debate as of 20 October 2010.

⁵⁵ The Irish Times (21 March 2011). *'Just three of 150 objections to marriages upheld'*. Available www.irishtimes.com; Irish Naturalisation and Immigration Service (June 2011). *'Sham marriages leading to abuses of EU freedom of movement rights'*. Available at <http://www.inis.gov.ie/en/INIS/Pages/PR11000007>. See also Quinn and Kingston (2012) which states that data supplied by INIS indicates some *'75 per cent of applications for residence based on EU Treaty Rights in 2010 were based on marriage to an EU national. INIS point to "unusual" marriage patterns as evidence of abuse of EU free movement rights. Over 40 per cent of EU Treaty Rights applications based on marriage in 2010 were based on marriages to EU nationals from Latvia, Lithuania and Poland.'*

⁵⁶ Irish Naturalisation and Immigration Service (7 January 2011). *'Minister Dermot Ahern announces end of year asylum statistics'*. *Press Release*. Available at www.inis.gov.ie.

⁵⁷ *Ibid.*

⁵⁸ Irish Naturalisation and Immigration Service (9 March 2011). *'Sham marriages leading to abuses of EU freedom of movement rights'*. *Press Release*. Available at www.inis.gov.ie.

⁵⁹ Interview with INIS officials for the purpose of this study (March 2012).

2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. These interviews can take place prior to the statutory deadline of six months for issuing of a decision in a case, or they can take place after a decision to grant has issued where further suspicions arise. Trial interview cases have taken place in the past with one case declared a suspected marriage of convenience and refused on that basis.⁶⁰ Applications have also been refused in cases where confirmed false documents have been submitted. However, there is also provision under Section 25 of *S.I. No. 656 of 2006* for the residence permission obtained by fraudulent means to be immediately ceased. Revocations post-issuance of residence under EU Treaty Rights are provided for in light of changed circumstances or new information. In the case of applications for family reunification under the *Refugee Act 1996 (as amended)*, the plausibility of all submitted applications and documents are taken into account when considering a case. Cases of applications being withdrawn when additional information and/or suspicions of fraudulent applications and/or documentation is raised, have been reported.⁶¹

In the Annual Report of an t-Ard Chláraitheoir to the Minister for Social Protection under Section 11 of the Civil Registration Act 2004 for the year 2010, it was noted that ‘anecdotal evidence from registrars suggests that the problem [marriages of convenience] has grown significantly in recent years’, which it attributes to the Metock case ruling. The General Register Office (GRO) has cited marriages of convenience as a ‘significant problem’ based on trends,

*experience of individual registrars, representations from foreign embassies, the mounting of Operation Charity by the GNIB, as well as media comment over recent years.*⁶²

Registrars have stated that it would be reasonable to state that the issue of explicit and/or suspected marriages of convenience contracted in Ireland is a current and wide-ranging issue, particularly with regard to EU Treaty Rights (scenario ii) but also related to marriages of Third Country Nationals (scenario i) and Irish citizens and Third Country Nationals (scenario iv). In terms of data, the GRO highlighted anecdotal evidence as suggesting that an increase in marriages of convenience, particularly post-Metock ECJ ruling, contributed greatly to the overall increased numbers of civil marriages taking place since 2008. One example of the scope of the issue may be determined by the numbers of notifications of intention to marry, and subsequent level of registration of marriages, relating to notifications involving EU and non-EU nationals.⁶³ In 2008

⁶⁰ Data supplied by INIS (2012).

⁶¹ Interview with INIS officials for the purpose of this study (March 2012).

⁶² General Register Office (2011). *Annual Report of an t-Ard Chláraitheoir to the Minister for Social Protection under Section 11 of the Civil Registration Act 2004 for the year 2010*. Available at www.groireland.ie.

⁶³ It is, however noted, as a three month notice is required, notifications received in the latter quarter of any year may be reflected in the subsequent year’s figures.

the percentage of notifications resulting in marriage was 86 per cent; in 2009 it was at 82 per cent; in 2010 and 2011 it stood at 74 per cent.⁶⁴

Table 1 Notifications of Intention to Marry and Subsequent Registrations 2008-2010

	2008	2009	2010	2011
Notifications of intention to marry	2,179	2,976	2,228	1,974
Marriages registered in respect of these notifications	1,866	2,443	1,644	1,467
Percentage of notifications resulting in marriage	86%	82%	74%	74%

Source: General Register Office

In September 2010, *Updated Guidelines for Registrars for Marriage Notification* were issued to all Superintendent Registrars of Marriage, and contained new identification requirements, restrictions on the use of interpreters and the number of persons who may be admitted to a registrar's office. The guidelines were allegedly introduced following 'intense lobbying' by other Member States who had raised concerns about the abuse of their citizens in Ireland following 'sham marriages' conducted to circumvent Irish immigration laws.⁶⁵ These Updated Guidelines were later rescinded based on legal advice. Quinn and Kingston (2012) also note that the GRO had examined the *Civil Registration Act 2004* with a view to possible legislative action, with INIS working with the office on a coordinated approach ahead of the resumption of the *Immigration, Residence and Protection Bill 2010*.⁶⁶ While the Updated Guidelines referenced above are no longer in operational use, cases have been noted by the General Register Office involving suspicions of human trafficking, where a threat of violence and/or an intimidating atmosphere is present and false documentation is produced. Suspicious circumstances may include a lack of knowledge regarding personal details between the couple, unusual meeting circumstances, involvement of a third party, lack of a common language and a female applicant acting in an uncomfortable manner. In addition, there are reports of divorce papers from other countries relating to marriages previously taking place in Ireland and submitted in the course of contracting a subsequent marriage, stating reason for dissolution as due to a marriage of convenience.⁶⁷

In response to media and governmental discussion of this issue, NGOs such as the Immigrant Council of Ireland (ICI) highlighted the potential for such reporting to stigmatise migrants in genuine relationships. The ICI called for the Government to deal with the issue in 'a way that is fair and proportionate and subject to procedural safeguards'.⁶⁸ NGOs working in the area have not reported high levels of casework regarding marriages of convenience, however they have cited many cases of refusals of applications (including visas for entry) for spouses based on

⁶⁴ Data supplied by the General Register Office for the purpose of this study (2012). Statistics regarding non-EEA nationals only are not readily available.

⁶⁵ See Joyce (2011). *Annual Policy Report 2010: Ireland (December 2011)* for further discussion.

⁶⁶ The Minister for Justice and Equality recently announced his intention to republish the Bill later this year. The republished Bill will include several amendments reflecting initiatives approved in the *Programme for Government*, such as an independent appeals process.

⁶⁷ Interview with the General Register Office for the purpose of this study (April 2012).

⁶⁸ Immigrant Council of Ireland (26 August 2010). *ICI News Bulletin – Issue 72*. Available at www.immigrantcouncil.ie. See Joyce (2011). *Annual Policy Report 2010: Ireland (December 2011)* for further discussion. Available at www.emn.ie.

'nebulous' grounds. No specific guidelines for applications are in evidence, and there is a perceived '*lack of consistency*' across cases and decision making. Anecdotal evidence points to cases where a refusal of visas for spouses for family reunification has taken place on '*relationship reasons*', such as history and arranged marriage scenarios, and as such, presumption of a marriage of convenience has been indicated. Commentary has suggested that visa offices apply 'Western' standards of relationship development and history when addressing applications. It is noted however that no cases have presented with a refusal specifically stating an allegation of a marriage of convenience.

False Declarations of Parenthood

False declarations of parenthood have not been cited as an emerging or present issue in Ireland. Verifiable DNA testing is reported to be in use for a variety of family reunification processes and, in some cases of subsequent addition of fathers to birth certificates in Ireland.

NGOs have recently noticed certain queries from service users regarding a definition of parenthood, in particular with reference to the concept of 'kafala' (Islamic guardianship) in family reunification and visa applications.

3.2 *Optionally, please describe any other forms of misuses detected in your (Member) State (e.g. adoptions of convenience)*

Marriages of Convenience

None to report.

False Declarations of Parenthood

None to report.

NATIONAL MEANS OF PREVENTING MISUSE

3.3 *How are misuses of residence permits by a) marriages of convenience and b) false declarations of parenthood prevented?*

Marriages of Convenience

The potential misuse of residence permits by marriages of convenience is mentioned solely in the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006)* which provides for the national transposition of *Directive 2004/38/EC* which regulates the rights of entry and residence of Third Country National family members joining or accompanying EU citizens who have exercised their right to free movement, and contains a clause regarding cessation. As discussed in Section 2.1, this S.I. expressly states that a definition of a "*spouse*" *does not include a party to a marriage of convenience*'. Regulation 24 states that in cases where it is established that that any rights or

entitlements have been acquired through *'fraudulent means'* (defined in Regulation 24 (1)(2) as including marriages of convenience, but which is not elaborated upon), that person shall immediately cease to enjoy such entitlements. As referenced earlier, the practice of interviewing of applicants for residency based on EU Treaty Rights by non-EEA spouses of mobile EU nationals was trialled by INIS for selected applicants.⁶⁹

Other measures cited as contributing towards the prevention of both marriages of convenience (and the misuse of family reunification by such) include legislative provisions for the request for documentary evidence and evidence of attestable, durable marriages.

In the case of applications for family reunification under the *Refugee Act 1996 (as amended)*, while DNA testing of family members as relevant does take place, no specific policy is in practice. Some training of staff members of the Refugee Applications Commissioner, who is responsible for issuing the Minister with a report on the relationship between the refugee concerned and the person the subject of the application and the domestic circumstances of the person, has taken place.⁷⁰

Data sharing, particularly with regard to visa applicants and with the United Kingdom (see Quinn and Kingston, 2012) is also undertaken.

Regarding marriages contracted in Ireland, there is no requirement for an individual to be resident in Ireland when submitting an application, nor to possess a legal immigration status in the State. Section 46 of the *Civil Registration Act 2004* provides for the notice of intention to marry to a registrar within a specified timeframe. Applicants for marriage must satisfy the registrar regarding their identity (Article 46 (7)) and that there is no impediment to the marriage:

The registrar concerned may require each party to an intended marriage to provide him or her with such evidence relating to that party's forename, surname, address, marital status, age and nationality as may be specified by an tArd-Chláraitheoir.

During 2010, the General Register Office (GRO) policy relating to evidence as to the *'identity, age and marital status when giving notice of intention to marry'* was revised, particularly with regard to the requirement for authentication by national authority or embassy for all persons presenting birth certificates issued by foreign authorities. While Ireland partakes in the 1961 *Hague Convention*, in cases, verification of identity and/or documentation by way of an 'apostille' can be requested via an intending applicant's embassy. This action would require a person at risk of entering a marriage of convenience to contact their embassy and liaise with staff who

⁶⁹ Interview with Irish Naturalisation and Immigration Service (INIS) officials for the purpose of this study (March 2012).
⁷⁰ *Ibid.*

*can advise the person as to the potential impact of their actions, and put them in touch with counselling or support agencies if necessary.*⁷¹

However, an apostille does not verify the quality of the document or the identity of the person but rather the signatory, the signature and the stamp. In cases where other concerns are presenting to the registrar and/or no apostille is provided for, the registrar may request the applicant to attend their embassy.

As discussed in Section 2.1, Section 69 (3) of the *Civil Registration Act 2004* states that:

A person who gives to a registrar particulars or information which he or she knows to be false or misleading is guilty of an offence.

Section 70 of the same Act providing for penalties of:

(a) on summary conviction, to a fine not exceeding €2,000 or imprisonment for a term not exceeding 6 months or both,

or

(b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

It is important to note, however, that this Act provides for an offence regarding false provision of information only, and not the actual contracting of a marriage of convenience.

False Declarations of Parenthood

Any declaration of parenthood of births registered in Ireland can be investigated under Section 65 of the *Civil Registration Act 2004*. This provides for the conducting of enquiries to ascertain the appropriateness and particulars in relation to a registration of birth, stillbirth, death or marriage.

NGOs have reported increasing queries from service users regarding parentage in family reunification cases, including perceived inconsistency regarding requests for DNA testing.⁷²

⁷¹ General Register Office (2011). *Annual Report of an t-Ard Chláraitheoir to the Minister for Social Protection under Section 11 of the Civil Registration Act 2004 for the year 2010*. Available at www.groireland.ie.

⁷² Interview with Immigrant Council of Ireland (ICI) for the purpose of this study (February 2012).

NATIONAL MEANS OF DETECTING MISUSE

3.4 *What factors trigger an investigation of individual cases? How are a) marriages of convenience and b) false declarations of parenthood detected and investigated? Are there any factors that have prevented investigations into suspected misuses from progressing?*

Marriages of Convenience

As discussed in Section 3.3, in the cases of marriages taking place in Ireland, a registrar must be satisfied of an individual's identity and lack of impediment to the marriage under Section 46 of the *Civil Registration Act 2004*. In the case of both parenthood and marriage registration in Ireland, a presumption of validity prevails unless questioned. In practice, the policy in relation to identity, age and marital status of an individual was revised in 2010 with a requirement for authentication of all birth certificates by national embassies or authorities for all persons presenting birth certificates issued by foreign authorities. The General Register Office (GRO) retains the right to query identity in suspicious or questionable cases. There is some evidence of cooperation with other relevant governmental departments (for example regarding social welfare data), but this is limited. In cases where there are suspicions regarding false identity and/or documentation, the GRO will refer to the Garda National Immigration Bureau (GNIB) for investigation. This includes suspected cases of fraud and impersonation.

Overall, all forms of family reunification refer to attestable marriages with civil marriage certificates requested for applications. In the case of marriages of EU citizens to Third Country Nationals (scenario ii), investigations have taken place in accordance with EU guidelines,⁷³ however this has been limited and is not standard practice. In the case of EU Treaty Rights, all information in relation to the applicant and his spouse available to INIS is routinely assessed during an EU Treaty Rights application. Documentation submitted, while evaluated by staff, is not routinely sent for verification. However, in cases of grave concerns regarding the validity of the submitted documentation, the EU Treaty Rights Section will request further analysis from the Garda Technical Bureau. Applications have previously been refused on the basis of fraudulent documentation.

Regarding applications for family reunification under the *Refugee Act 1996 (as amended)*, examination of facts declared in an initial asylum claim (such as listed family members) is looked at for consistency.⁷⁴ Both the plausibility of applications and documents submitted are taken into account when considering

⁷³ Commission Document COM (2009) 313. *Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.*

⁷⁴ Interview with Irish Naturalisation and Immigration Service (INIS) officials for the purpose of this study (March 2012).

the case.⁷⁵ In some cases, documentation may be referred to the Garda Technical Bureau and to certain staff within the Office of the Refugee Applications Commissioner (ORAC) who are responsible for investigating and making recommendations and are trained in this matter.

In all cases, suspected criminal matters are referred to the GNIB for investigation according to standard practice.

False Declarations of Parenthood

In the case both of parenthood and of marriage registration in Ireland, a presumption of validity prevails unless questioned. If a false declaration of parenthood is suspected by registrars, a verified marriage certificate and proof of identity may be asked for in the case of married parents. In the case of unmarried parents, a statutory declaration can be requested if the father is outside the country. However, in practice these investigations have mainly related to Irish citizen couples. In the case of amending a registration, DNA evidence of verifiable standard can be asked for.

3.5 *What evidence is needed to prove that the marriage/declaration is false (e.g. DNA-testing, etc.)? Who has the ‘burden of proof’ (the Third Country National concerned to prove that the relationship is real or the authorities to prove that it is false)?*

Marriages of Convenience

In the case of both parenthood and marriage registration in Ireland, a presumption of validity prevails unless questioned.⁷⁶

In the case of registration of both marriages contracted in the State and registration of births, officials need to be satisfied that documents produced are not genuine and/or that material facts (such as identities, marital status etc.) were concealed or given incorrectly, before that presumption were considered invalid.

False Declarations of Parenthood

In the case of both parenthood and marriage registration in Ireland, a presumption of validity is in evidence unless questioned. DNA evidence may be required and in the case of domiciliary births documentary evidence is always requested.⁷⁷ With regard to the registration of both marriages contracted in the State and registration of births, officials would need to be satisfied that documents produced are not genuine and/or that material facts (such as identities, marital status etc.) were concealed or given incorrectly.

⁷⁵ *Ibid.*

⁷⁶ Interview with the General Register Office for the purpose of this study (April 2012).

⁷⁷ *Ibid.*

However, in cases where a false parental declaration is dealt with under Section 69 of the *Civil Registration Act 2004*, this constitutes a criminal matter and therefore would need to be proved beyond a reasonable doubt.

3.6 *Who (e.g. which national authorities) are responsible for detecting such misuses? If multiple authorities are involved, how are they coordinated? Is there an official mandate – e.g. an Action Plan - governing the involvement of these authorities?*

Marriages of Convenience

There is cooperation between the Irish Naturalisation and Immigration Service (INIS), An Garda Síochána and the Registrar of Marriages in relation to tackling marriages of convenience. While marriages of convenience are not defined in legislation and therefore not illegal in Ireland, any criminal activities connected with them can be investigated by An Garda Síochána.

In the longer term it is hoped to further address the issue through legislation. The *Immigration, Residence and Protection Bill 2010* proposed to allow the Minister for Justice and Equality to disregard a particular marriage as a factor bearing on decision making where it is deemed that the marriage is a marriage of convenience.⁷⁸

False Declarations of Parenthood

There is no evidence of an official mandate regarding detection of such abuses. Additional information on responsibility in this area has not been made available.

NATIONAL ACTION AGAINST THOSE MISUSING. PLEASE DESCRIBE THE LIKELY PENALTIES IMPOSED, AND ANY IMPACTS ON: EU CITIZENS / THIRD COUNTRY NATIONALS

3.7 *Once detected, how does your Member State treat people found to be misusing family reunification through a) marriages of convenience and b) false declarations of parenthood?*

Marriages of Convenience

NGOs working in the area have stated that State measures to tackle perceived abuse have been disproportionate, particularly with regard to cases under EU Treaty Rights (scenario ii). A high level of Departmental and Ministerial discretion is viewed as being in practice, with a lack of public knowledge and information regarding requirements.

⁷⁸ The Minister for Justice and Equality recently announced his intention to republish the Bill later this year. The republished Bill will include several amendments reflecting initiatives approved in the *Programme for Government*, such as an independent appeals process.

In Ireland the institution of marriage enjoys an additional constitutional protection that makes it more difficult for the State to intervene in the area. There is no provision in Irish marriage law concerning the motive for getting married, and consequently no offence exists regarding the entering of a marriage for the purpose of gaining an immigration advantage. However, criminal prosecutions or investigations may take place under GNIB or An Garda Síochána related to false documentation etc. as outlined earlier.

Overall, in the case of detected misuse of family reunification via marriages of convenience, the non-EEA national will generally have their permission to reside in Ireland revoked.

Removal and exclusion of Third Country National spouses of EU citizens exercising free movement takes place under Regulation 20 of *S.I. 656 of 2006*.

False Declarations of Parenthood

No information is available.

3.8 Do persons accused of abusing/misusing family reunification have a right to appeal?

Marriages of Convenience

Under Section 21 of *European Union (Free Movement of Persons) Regulations 2006 (S.I. No. 656 of 2006)*, a person to whom the Regulations apply may seek a review of any decision concerning a person/s entitlement to be allowed to enter and reside in the State.

Persons within all scenarios are entitled to apply for leave to seek a judicial review of the decision, although it is not necessarily suspensive in effect.

False Declarations of Parenthood

No information is available.

Regarding overall registration of births, as indicated previously, there is no specific provision to deal with this issue excluding the prohibition against knowingly providing false information to a registrar of births under Section 69(3) of the *Civil Registration Act 2004*. However, in order to prosecute a false declaration under this Section, it is necessary to prove that the father and/or the mother (or other qualified informant) was fully aware of the actual paternity involved, which in practice is quite difficult.⁷⁹

As referenced earlier, the *Immigration, Residence and Protection Bill 2010* contained a sole definition of a 'marriage of convenience'.⁸⁰ While not yet

⁷⁹ Comments supplied by the General Register Office for the purpose of this study (April 2012).

⁸⁰ The Minister for Justice and Equality recently announced his intention to republish the Bill later this year. The republished Bill will include several amendments reflecting initiatives approved in the *Programme for Government*, such as an independent appeals process.

enacted, the Bill does not include any right of appeal or review mechanism for cases considered within this category.

3.9 *Are there any examples of trans-national cooperation (e.g. between Member States or between Member States and third countries in combating misuse of family reunification?*

Marriages of Convenience

Overall, limited transnational cooperation is in evidence. However evidence of cooperation with authorities and police within other jurisdictions have been reported in the case of Latvia in the context of a high incidence of suspected marriages of convenience under EU Treaty Rights (scenario ii). See Section 3.1 in which cooperation of Gardaí and governmental officials with European counterparts is discussed.

There is evidence of information exchange with the UK.

Political cooperation on the issue has taken place, in particular on the topic of misuse of family reunification of EU Treaty Rights and entailing support from Denmark and the Netherlands.

False Declarations of Parenthood

As this is not considered to be a pressing issue in the Irish context, limited transnational cooperation is in evidence.

REASONS AND MOTIVATIONS

3.10 *Where possible (i.e. based on previous research undertaken, media interviews, etc.) describe the motivations for the sponsor engaging in a marriage of convenience / false declaration of parenthood. These may be economic, humanitarian or emotional considerations.*

Marriages of Convenience

Registrars interviewed for this study have cited cases whereby female applicants have been imprisoned by captors and/or been involved in a human trafficking situation. Other cases involving male applicants have shown them to be in 'bonded' situations, particularly in an irregular migration situation. In addition, anecdotal evidence has indicated financial gain as a primary motivation.

False Declarations of Parenthood

Incentives for false declarations of parenthood may relate to policy and/or legislative immigration changes such as cases applicable under the ECJ Zambrano judgment and previously cases under the Irish-born Child (IBC/05) Scheme.

Section 4

Available Statistics, Data Sources and Trends

STATISTICS: GENERAL CONTEXT

4.1 *Please provide the main / (readily) available national statistics (and the data sources with their status, i.e. published / not published) related to and in order to give a general context for the Study. What are the gaps? What are the available years?*

Eurostat data⁸¹ related to first permits issued for family reasons by reason, length of validity and citizenship is available for Ireland for 2008, 2009 and 2010. Disaggregation according to type of reunification and category of family member is available for all years, with data by length of permit available for 2009 and 2010 only.

A decrease in the number of first permits issued for family reasons to non-EU nationals can be seen from 2008 when 3,409 such permits were issued, to 2009 when 2,608 permits were issued, and to 2010 when 2,030 first permits were issued. Persons joining an EU citizen fell from 2,953 in 2008 to 1,730 in 2010. Persons joining a non-EU citizen fell from 456 in 2008 to 300 in 2010.

⁸¹ Eurostat has statistics available on first permissions granted for the purpose of family reunification in accordance with Article 6 of Regulation 862/2007/EC ('Statistics on residence permits and residence of Third Country Nationals').

Table 2 Ireland: First Permits Issued for Family reasons by Reason, Length of Validity and Citizenship 2008 - 2010

TIME	2008	2008	2008	2008	2009	2009	2009	2009	2010	2010	2010	2010
REASON	Total	From 3 to 5 mths	From 6 to 11 mths	12 mths or over	Total	From 3 to 5 mths	From 6 to 11 mths	12 mths or over	Total	From 3 to 5 mths	From 6 to 11 mths	12 mths or over
Family Reasons	3,409	:	:	3,409	2,608	77	593	1,938	2,030	82	489	1,459
Person joining an EU citizen	2,953	:	:	2,953	2,040	49	435	1,556	1,730	61	409	1,260
Spouse/partner joining an EU citizen	2,824	:	:	2,824	1,855	45	425	1,385	1,550	51	378	1,121
Child joining an EU citizen	100	:	:	100	148	4	10	134	156	8	31	117
Other family member joining an EU citizen	29	:	:	29	37	0	0	37	24	2	0	22
Person joining a non-EU citizen	456	:	:	456	568	28	158	382	300	21	80	199
Spouse/partner joining a non-EU citizen	134	:	:	134	162	17	85	60	112	13	45	54
Child joining a non-EU citizen	236	:	:	236	285	4	42	239	117	1	18	98
Other family member joining a non-EU citizen	86	:	:	86	121	7	31	83	71	7	17	47

Source: Eurostat

Marriages of Convenience

As outlined above, there is strong constitutional protection for marriage in the Irish legal system and as a result, a marriage contracted as one of convenience in Ireland is not prohibited by law.

Regarding EU Treaty Rights, INIS has noted that there has been an 'unusual breakdown of nationalities involved in marriages, since the Metock decision' involving patterns 'consistent since that judgement in a statistically highly improbable fashion'.⁸² The top five Third Country Nationals applying for EUTR on the basis of marriage to EU citizens in 2011 were Pakistani (284 or 18.1 per cent), Nigerian (147 or 9.3 per cent), Brazilian (125 or 7.9 per cent), Indian (94 or 6.0 per cent), and Bangladeshi (73 or 4.6 per cent). Regarding trends, nationals from the Indian sub-continent (Pakistan, India and Bangladesh) show a trend of marrying nationals from the Eastern European Member States, most notably Latvia, Lithuania, Poland, Estonia, Slovak Republic, Hungary, Czech Republic and Romania. Of the 284 applications made by Pakistani nationals in 2011, 82.3 per cent related to a spouse from a 'former Eastern Bloc country' with 39.8 per cent of those applications being to a Latvian spouse.

False Declarations of Parenthood

No statistics are available.

⁸² Irish Naturalisation and Immigration Service.

STATISTICS: SPECIFIC INDICATORS OF THE INTENSITY OF THE ISSUE:

4.2.a *What is the intensity of the issue in your (Member) State?*

Marriages of Convenience

Statistics not readily available in the requested format.

False Declarations of Parenthood

Statistics not readily available in the requested format.

CHARACTERISTICS OF THOSE INVOLVED

4.2.b *For: a) Marriages of Convenience and b) False Declarations of Parenthood, please describe where possible, a) the EU status (e.g. EU citizen, legally resident Third Country National), the nationality and sex of those involved.*

Marriages of Convenience

In general, statistics are not readily available in the requested format.

Information as reported from the General Register Office (GRO) states that high incidences of such marriage notifications relating to females from Latvia, Lithuania, Poland, Estonia and Portugal and males from Africa and the Indian sub-continent have been in evidence.⁸³

False Declarations of Parenthood

Statistics are not readily available in the requested format.

4.2.c *Please also provide information about the location of the misuse (i.e. whether the marriage took place in your (Member) State or on the territory of another (Member) State.*

Marriages of Convenience

Statistics are not readily available in the requested format.

False Declarations of Parenthood

Statistics are not readily available in the requested format.

⁸³ Comments supplied by the General Register Office for the purpose of this study (April 2012).

Section 5

Summary and Conclusions

NATIONAL CONTRIBUTION

1. The misuse of the right to family reunification via marriages of convenience is viewed as a significant current problem by policymakers and civil servants working in the area, concentrated around applications for EU Treaty Rights under *S.I the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006)*. The misuse of family reunification via false declaration of parenthood is not viewed as a current significant issue.
2. Statistics on the topic are limited and evidence is often anecdotal. A decrease in the number of first permits issued for family reasons to non-EU nationals can be seen from 2008 when 3,409 such permits were issued, to 2009 when 2,608 permits were issued, and to 2010 when 2,030 first permits were issued. Persons joining an EU citizen fell from 2,953 in 2008, to 1,730 in 2010. Persons joining a non-EU citizen fell from 456 in 2008 to 300 in 2010. Information as reported from the General Register Office (GRO) states there have been high incidences of marriage notifications relating to females from Latvia, Lithuania, Poland, Estonia and Portugal and males from Africa and the Indian sub-continent.⁸⁴

INIS has noted an ‘unusual breakdown of nationalities involved in marriages... since the Metock decision’ as related to EU Treaty Rights. There is an unusual pattern of nationals from the Indian sub-continent (Pakistan, India and Bangladesh) marrying nationals from the Eastern European Member States, most notably Latvia, Lithuania, Poland, Estonia, Slovak Republic, Hungary, Czech Republic and Romania.⁸⁵

3. The term ‘marriage of convenience’ is not explicitly defined as an offence in Irish legislation, and statistics on the issue are not available. Article 41.3.1 of the *Constitution of Ireland 1937* provides for a privileged position for marriage. Civil registrars are legally unable to refuse to conduct a proposed wedding in the case of a suspected marriage of convenience, unless there is an impediment to the marriage (as provided for in the *Civil Registration Act 2004*). In the case of both parenthood and marriage registration in Ireland, a presumption of validity prevails unless questioned. Head 138 of the

⁸⁴ Comments supplied by the General Register Office for the purpose of this study (April 2012).

⁸⁵ Irish Naturalisation and Immigration Service.

*Immigration, Residence and Protection Bill 2010*⁸⁶ had included a definition of a marriage of convenience, and allowed the Minister for Justice and Equality to disregard certain matters related to immigration issues in cases where such a suspected marriage was in evidence. In all cases of suspected marriages of convenience and false provision of information as related to parenthood, any criminal activities connected with them (such as are suspicions regarding false identity and/or documentation) can be investigated by An Garda Síochána.

4. The concept of family reunification in Ireland is enshrined in legislation only in the case of persons with recognised refugee or subsidiary protection status. The *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No.24 of 2010)* entered into force on 13 January 2011 and the Department of Justice and Equality has defined a civil partnership as equivalent to marriage in all immigration matters. Administrative schemes and/or procedures are in operation regarding family reunification for holders of 'Green Cards', work permits, permission to remain in Ireland under the 'Researcher Directive',⁸⁷ non-EEA spouses of EU nationals and in certain cases, for students. In respect of these categories, applications are made in the visa process.⁸⁸ Ireland does not partake in *Directive 2003/86/EC on the right to family reunification*.
5. Limited legislative measures are in place regarding the prevention and prosecution of contracted marriages of convenience and false declarations of parenthood. *S.I the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006)* does include a clause regarding cessation, which stipulates that any rights or entitlements that have been acquired through 'fraudulent means' (defined in Regulation 24 (1) (2) as including a marriage of convenience which is not defined), will result in that person immediately ceasing to enjoy such entitlements.
6. The impact of ECJ case law can be seen primarily under the heading of EU Treaty Rights, particularly with regard to the strike-down of a requirement for prior legal EU residence of a Third Country National family member of a mobile EU national and marriage prior to their arrival in Ireland post-Metock. The Department of Justice and Equality announced that they would examine all cases where a link to the judgment had been identified to see whether they met with the Zambrano criteria, and would, in most circumstances, grant permission to remain in the State, for a specified time, to enable parents to seek work without requirement for an employment permit on a Stamp 4 basis post-Zambrano.⁸⁹

⁸⁶ The Minister for Justice and Equality recently announced his intention to republish the Bill later this year. The republished Bill will include several amendments reflecting initiatives approved in the *Programme for Government*, such as an independent appeals process.

⁸⁷ *Council Directive 2005/71/EC (OJ L 289, 3.11.2005) of 12 October 2005 on a specific procedure for admitting Third Country Nationals for the purposes of scientific research.*

⁸⁸ See Section 2.2 for additional discussion.

⁸⁹ Case C-34/09.

7. The scope of the issue of marriages of convenience attracted significant media and parliamentary debate in Ireland during 2010 and 2011. However it has been noted by NGOs that the level of media coverage was disproportionate to the reality at the time. A March 2011 article noted that the General Register Office confirmed it had registered 28 of the 150 marriages which were the subject of objections, and had upheld three of the objections due to identity-fraud concerns. Quinn and Kingston (2012)⁹⁰ report that 80 suspected marriages of convenience were prevented since the launch of the Garda National Immigration Bureau (GNIB) 'Operation Charity' in November 2009. As of March 2011, the GNIB had made 16⁹¹ arrests under the operation for offences such as bigamy, the production of false documentation and illegal residence. In 2011, successive Ministers for Justice brought attention to the high incidence of patterns with regard to applications under EU Treaty Rights.
8. In order to help prevent potential abuses, interviews have been introduced as well as general verification of documentation. Overall, all forms of family reunification refer to attestable marriages with civil marriage certificates. In the case of applications for family reunification under the *Refugee Act 1996 (as amended)*, the plausibility of all applications and documents which are submitted are taken into account when considering a case.⁹² The examination of facts declared in an initial asylum claim (such as listed family members) is looked at for consistency.⁹³ Cases of applications being withdrawn when additional information is requested or suspicions of fraudulent applications and/or documentation is raised, has been reported.⁹⁴ While DNA testing of family members as relevant is in evidence, no specific policy is in practice. All documentation may be referred to the Garda Technical Bureau. Other policy and practice measures cited as contributing towards the prevention of both marriages of convenience and the misuse of family reunification by such include legislative provisions for the request for documentary evidence and attestable, durable marriages. Data sharing, particularly with regard to visa applicants and with the United Kingdom is also undertaken.
9. Indicators of marriages of convenience as reported by the General Register Office include cases involving suspicions of human trafficking, where a threat of violence and/or an intimidating atmosphere is present and false documentation is produced. Suspicious issues may include a lack of knowledge regarding personal details between the couple, unusual meeting circumstances, involvement of a third party, lack of a common language and

⁹⁰ Quinn, E. and Kingston, G. (2012) *Practical Measures for Reducing Irregular Migration: Ireland*. Available at www.emn.ie/www.esri.ie.

⁹¹ Cited as 20 arrests in The Irish Times (21 March 2011). 'Just three of 150 objections to marriages upheld'. Available at www.irishtimes.com. Figure of 16 arrests noted in Dáil parliamentary debate as of 20 October 2010.

⁹² *Ibid.*

⁹³ Interview with INIS officials for the purpose of this study (March 2012).

⁹⁴ *Ibid.*

a female applicant acting in an uncomfortable manner. In addition, there are reports of divorce papers from other countries relating to marriages previously taking place in Ireland and submitted in the course of contracting a subsequent marriage, stating reason for dissolution as due to a marriage of convenience.⁹⁵

10. There is limited transnational cooperation in evidence with regard to the misuse of family reunification via marriages of convenience or false declarations of parenthood. Cooperation with authorities and police within other jurisdictions has been reported in the case of Latvia, where there appears to be a high incidence of suspected marriages of convenience under EU Treaty Rights. There is evidence of information exchange with the UK. Political cooperation on the issue has taken place, in particular on the topic of misuse of family reunification of EU Treaty Rights, entailing support from Denmark and the Netherlands.
11. There is a lack of detailed information regarding reasons for suspected marriages of convenience, or indeed false declaration of parenthood. Reasons for suspected marriages of convenience are believed to primarily relate to imprisonment and/or a human trafficking situation involving female applicants and debt bondage involved male applicants. Anecdotal evidence has indicated financial gain also.

⁹⁵ Interview with the General Register Office for the purpose of this study (April 2012).

Appendix 1 Definitions

All definitions for this study were taken from either the EMN Glossary⁹⁶ or central EMN specifications for the study.

For the purpose of this study, "*family reunification*" as defined in the EMN Glossary is used, namely:

The establishment of a family relationship which is either:

(a) the entry into and residence in a Member State, in accordance with Council Directive 2003/86/EC, by family members of a Third Country National residing lawfully in that Member State ("sponsor") in order to preserve the family unit, whether the family relationship arose before or after the entry of the sponsor;

or

(b) between an EU national and Third Country National established outside the EU who then subsequently enters the EU.

Source: Council Directive 2003/86/EC for part (a), part (b) EMN derived definition.⁹⁷

In accordance with the EMN Glossary, a "Third Country National" is "Any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the Union right to freedom of movement, as defined in Article 2(5) of the Schengen Borders Code." This definition means that nationals of Norway, Iceland, Liechtenstein and Switzerland are not considered to be Third Country Nationals.

For the purpose of this Study, a "*marriage of convenience*" is defined as:

A marriage contracted for the sole purpose of enabling the person concerned to enter or reside in a (Member) State.

Source: Council Directive 2003/86/EC (Article 16(2b))

For the purpose of this Study a "*False declaration of parenthood*" is defined as:

A situation where:

⁹⁶ Available at www.emn.europa.eu.

⁹⁷ In cases where other cases apply, this has been noted in text.

(a) a third country national declares him/herself to be the parent (father or mother) of an EU citizen or a settled Third Country National knowing that this is not the case and in order to obtain or legalise his/her residence in the respective EU member state,

or

(b) an EU national or a settled Third Country National declares him/herself parent of a child born to a third country national in order to obtain or legalize the child (and possibly the other parent's) residence in the EU / Norway.

Source: EMN Specifications for this study.



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