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Case No: 76561
Event No: 733989

EFTA SURVEILLANCE
AUTHORITY

Ministry of Justice and Public Security
Postboks 8005 Dep,
0030 Oslo
Norway

Dear Sir or Madam,

Subject: Restrictions in Norway of the free movement rights of third country national family members of EEA nationals and Norwegian nationals who fall under the protection of EEA law on the grounds connected with identity establishment

On 12 December 2014, the EFTA Surveillance Authority opened an own initiative case against Norway concerning potential restrictions in Norway of the free movement rights of third country national ("TCN") family members of EEA nationals and Norwegian nationals who fall under the protection of EEA law on the grounds connected with identity establishment.

The Norwegian Government has been already informed about a high number of complaints received by the Authority against Norway concerning the derived rights of TCN family members of returning Norwegian nationals. On 18 December 2014, a letter of formal notice was issued regarding those complaints (Case No 73930, Doc. No 721159).

Some of the complaints however raise additional questions, which were not included in the letter of formal notice. In particular, in Cases No 75183, 75794, 75863 and 76284¹ the decisions by the Norwegian immigration authorities rejecting the applications of the TCN family members of the returning Norwegian nationals (for the lifting of entry bans to Norway and/or issue of the residence cards) were based on, *inter alia*, the grounds connected with identity establishment of the TCN.

It seems that if a TCN has given to the Norwegian immigration authorities conflicting information about his identity (for example, when he was applying for asylum and, later, when he applied for a residence in Norway on a different basis) and/or connected information (for example, regarding his education, travel route to Norway, family history *etc.*) which was established to be false, such a TCN is considered by the Norwegian authorities as having a low credibility and his exclusion is considered to be necessary for the reasons of public policy and public security.

¹ Case No 75183: ref. 2005 034964 07; Case No 75794: ref. 2005 052874 07; Case No 75863: ref. 2008 129274 08 and Case No 76284: ref. 2008 186089 08.

It also seems that the same assessment applies to such TCNs despite the fact whether they apply for the lifting of the entry ban to Norway and/or issue of a residence card on the basis of national immigration laws or on the basis of EEA rules as family members of EEA nationals. Furthermore, the facts that the TCN at issue is married to an EEA national and/or has children together with an EEA national or that he was accorded a residence in another EEA State as a family member of EEA national are not considered relevant for the assessment as regards his threat to public policy and public security.

In order for the Authority to examine and assess the issue, the Norwegian Government is invited to provide the following information:

1. Please explain how the practice described above is compatible with the requirements of the Free Movement and Residence Directive 2004/38/EC² (“Directive 2004/38/EC”) according to which EEA States may restrict the freedom of movement and residence of EEA nationals and their family members, irrespective of nationality, on grounds of public policy and public security, where measures taken on such grounds are to be based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society?
2. Please explain how an identity of a TCN who has presented to the national immigration authorities false information could be cleared in the future, for the purposes of lifting an entry ban or issuing him a residence card in Norway? Please provide examples from the cases where an identity of a TCN was eventually cleared, even though the TCN had presented the authorities false information. Please also explain how a national of a third country whose documents have, according to the Norwegian Government, “*a low credibility*” is supposed to establish his identity?
3. It is the Authority’s Internal Market Affairs Directorate’s understanding that Article 32(1) of Directive 2004/38/EC concerns exclusion orders adopted in accordance with EEA law. It provides for the persons excluded on the grounds of public policy and public security with the meaning of Directive 2004/38/EC and with accordance with the procedure provided for in this directive the right to submit an application of lifting of the exclusion order after a reasonable period, and in any event after three years from enforcement of the final exclusion order.

However, it seems that the Norwegian immigration authorities assess the applications for the lifting of the entry bans based on the national immigration laws according to Article 32(1) of Directive 2004/38/EC (Section 124(2) of the Immigration Act) and, in particular, they require the applicants to put forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.

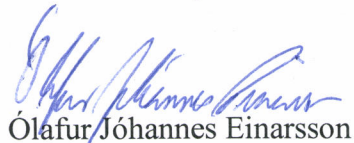
Please explain why the Norwegian Government has chosen to apply Article 32 of the directive to assess the lifting of entry bans adopted on the basis of national immigration rules and procedures? How is this compatible with the directive itself?

² Act referred to at point 3 of Annex VIII to the EEA Agreement (*Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC*), as adapted to the EEA Agreement by Protocol 1 thereto.

4. Article 5(4) of Directive 2004/38/EC provides that where an EEA national or a TCN family member does not have the necessary travel documents or, if required, the necessary visas, the EEA State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence. How this Article is implemented into the Norwegian legal order and applied in practice, in particular, in cases similar to those described in this request for information?

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *13 March 2015*. Please enclose copies of relevant national legislation, including English translations if available.

Yours sincerely,



Ólafur Jóhannes Einarsson

Director

Internal Market Affairs Directorate