

Temporary residence permit for partners of EU citizens

Abstract

This thesis is focused on the administrative proceedings on the application for the granting of the temporary residence permit for the partners of EU citizens being considered as their family members. This paper analyses two statutory substantive conditions (permanent partner relationship (common-law marriage) that is not a marriage and cohabitation in a common household) and one procedural condition (the burden of proof lays primarily upon the applicant), which need to be fulfilled cumulatively in order to be able to consider a partner of an EU citizen as a family member of an EU citizen and so more favourable treatment stated in the Directive 2004/38/ES can be applied. I have found that a common-law marriage shall be an analogy of the marriage in terms of its nature and intensity; its permanency is especially a question of quantity, i.e. length of its duration, however it shall not be the only aspect, it is also needed to take into consideration the quality of the relationship, which can rest for example in a common obligation. Not only common past is therefore decisive, but also the planned common future. Cohabitation in a common household can be defined as an in advance not time limited cohabitation of a common-law wife and husband who together cover the costs of their needs. The proof of burden of an applicant is also not absolute, because the law and case law assume some active cooperation of the administrative body consisting of e.g. letters demanding submission of additional documents, interrogations or residence check-ups. The thesis discusses also means of proof that should be submitted along with an application form in accordance with the case-law. I have also dealt with other aspects of this proceedings, such as problematics of purposeful common-law marriage, its recognition and solution, institute of so called national adjustment in the Czech, German, British and Slovak law or legal status of an EU citizen as a party to the proceedings (he/she should be considered at least as a an indirect party). The conclusion is dedicated to the process after the denial and approval of the application, including the possibility of termination of the temporary

residence. The merit of this work vests especially in the analysis of the national case law and also case law of the Court of Justice of the EU and in practical approach to the legal questions.

Key words: partner of an EU citizen, temporary residence permit, Directive 2004/38/ES