L.N. 278 of 2006

IMMIGRATION ACT
(CAP. 217)

Status of Long-term Residents (Third Country Nationals) Regulations, 2006

IN exercise of the powers conferred by articles 4A and 36 of the Immigration Act, the Deputy Prime Minister and Minister for Justice and Home Affairs has made the following regulations:-

Part I

Purpose, Definitions and Scope

Title, purpose and commencement.

1. (1) The title of these regulations is the Status of Long-term Residents (Third Country Nationals) Regulations, 2006.

(2) The purpose of these regulations is to implement the provisions of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents in determining:

(a) the terms for conferring and withdrawing long-term resident status granted in relation to third country nationals legally residing in Malta and the rights pertaining thereto;

(b) the terms of residence in Malta of a third country national who was conferred the status of long-term resident in another Member State.

(3) These regulations shall come into force on the 1 November 2006.

Definitions.

2. In these regulations, unless the context otherwise requires –

"the Act" means the Immigration Act;

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

"the Board" means the Immigration Appeals Board constituted under article 25A of the Act;

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

"employment licence" means the licence referred to in Article 11(3) of the Act;

"family members" of the third country national granted long-term resident status means the following persons who are residing in Malta:

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

(b) the unmarried minor children and of his spouse, including children adopted in a manner recognized by Maltese law;

(c) the unmarried minor children, including adopted children, of the long-term resident or of the spouse, as the case may be, where the long-term resident or the spouse has custody and the children are dependent on him;

(d) the children of the long-term resident or of his spouse, whose custody is shared, provided that the other party sharing custody has given his agreement and who have been authorized by the Director to reside in Malta with him;

"long-term resident" means any third country national who has long-term resident status as provided for under regulations 4 to 7 hereof;

"long-term resident's EC residence permit" means a residence permit issued by any Member State, including Malta, upon the acquisition of long-term resident status;

"Member State" means any State which is a member of the European Union;

"national minimum wage" means the wage published by means of a national minimum wage national standard order under the Employment and Industrial Relations Act; Cap. 452.

"Principal Immigration Officer" means the person appointed to such office by the Prime Minister under Article 3 of the Act and includes, within the limits of any authority granted by the Principal

Immigration Officer under article 3(3), any public officer acting under such authority;

"refugee" means any third country national or stateless person enjoying refugee status as defined in Article 2 of the Refugees Act;

Cap. 420.

"third country national" means a person who is not a citizen of a Member State;

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

Applicability of these regulations.

3. (1) These regulations shall apply to third country nationals who reside legally in Malta.

(2) These regulations shall not apply to third country nationals who reside in Malta:

(a) in order to pursue studies or vocational training;

(b) on the basis of temporary protection in line with the Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005 or have applied for authorization to reside on that basis and are awaiting a decision on their status;

L.N. 131 of 2005.

(c) on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or practice or who have applied for authorization to reside on that basis and are awaiting a decision on their status;

(d) as refugees or who have applied for recognition as refugees and whose application has not yet given rise to a final decision;

(e) solely on temporary grounds such as au pair or seasonal workers, or as workers posted by a service provider for the purposes of cross-border providers of services or in cases where their residence permit has been formally limited; and

(f) who are enjoying legal status governed by international conventions on diplomatic and consular relations.

PART II

Duration of Residence

Grant of long-term resident status.

4. (1) The Director shall grant long-term resident status to third country nationals who have resided legally and continuously in Malta for five years immediately prior to the submission of the application referred to in sub-regulation (1) of regulation 5.

(2) In calculating the period of five years provided for in sub-regulation (1):

(a) periods of residence for the reasons stated in regulation 3(2)(e) and (f) shall not be taken into account;

(b) only half of the periods of residence for study purposes or vocational training purposes as stated in regulation 3(2)(a) may be taken into account.

(3) In calculating the period of five years provided for in sub-regulation (1), a temporary absence from Malta shall not interrupt such period and shall be taken into account in the compilation of the said period when the periods of absence are shorter than six consecutive months and do not exceed the total of ten months within the five year period:

Provided that, for exceptional reasons of a temporary nature, the Director may consider a longer period of absence than that referred to in sub-regulation (3) as not interrupting the said period of five years.

Conditions for acquiring long-term resident status.

5. (1) A third country national wishing to obtain long-term resident status shall submit an application in writing to the Director.

(2) When applying for long-term resident status in accordance with sub-regulation (1), the third country national shall provide evidence that he has:

(a) stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system in Malta and which would be equivalent to, at least, the amount of the national minimum wage in Malta with an addition of another twenty percent income or resources for each member of the family;

(b) accommodation regarded as normal for a comparable family in Malta and which meets the general health and safety standards in force in Malta;

(c) a valid travel document;

(d) sickness insurance in respect of all risks normally covered for Maltese nationals for himself and the members of his family;

(e) met the conditions set out in regulation 4.

Public policy and public security.

6. (1) The Director may refuse to grant an application for long term resident status made by a third country national on grounds of public policy or public security.

(2) A refusal in terms of sub-regulation (1) shall not be founded on economic considerations.

(3) When taking the relevant decision in accordance with sub-regulation (1) of this regulation, the Director shall consider the severity or type of offence against public policy or public security, or the danger that emanates from the person concerned, while also having regard to the duration of residence in Malta and the existence of links therewith.

Determination of the application.

7. (1) The Director shall give the applicant written notification of the decision as soon as possible and, in any event, no later than six months from the date when the application was lodged:

Provided that, in exceptional circumstances which are linked to the complexity of the case, the time limit of six months may be extended by another period of six months.

(2) The Director shall notify the applicant when the period for the examination of the application is extended.

(3) The written notification shall include information about the rights and obligations of the third country national that arise under these regulations.

(4) In the event that the Director fails to give a decision within the period specified in sub-regulation (1), the application shall automatically be passed on for appeal to the Board.

(5) If the conditions provided for by Regulations 4 and 5 are met, and the person does not represent a threat within the meaning of Regulation 6, the Director shall grant the third country national concerned long-term resident status.

Long-term resident's EC residence permit.

8. (1) Without prejudice to the provisions on the withdrawal or loss of the status in accordance with regulation 9, the status of long-term resident shall be permanent.

(2) The long-term resident's EC residence permit shall be valid for five years and shall be automatically renewable upon application.

(3) The Director shall issue a uniform residence permit and shall enter the words "long-term resident – EC" thereon.

Withdrawal or loss of status.

9. (1) A long-term resident shall lose his long-term resident status in the following cases:

(a) if it is proved that the resident had acquired his long-term resident status through fraudulent means;

(b) if the Principal Immigration Officer has issued an order for his removal in accordance with regulation 12;

(c) if the long-term resident has been absent from the territory of the European Union for a period of twelve consecutive months;

(d) if the long-term resident has acquired a long-term resident status in another Member State;

(e) if the long-term resident is absent for six years from Malta and is residing in another Member State;

(f) if he constitutes a threat to public policy, taking into consideration the seriousness of the offence he committed:

Provided that, in the case of specific and exceptional circumstances relating to sub-regulation (1)(c) and specific circumstances relating to sub-regulation (1)(e), as may be determined by the Director, the long-term resident shall not lose his status.

(2) The Director shall facilitate the re-acquisition of long-term resident status in Malta when such person was absent from Malta

in accordance with sub-regulation (1)(c) or (1)(e), and, in particular, in the case of sub-regulation 1(e), when the absence was due to pursuit of studies.

(3) The expiry of the long-term resident's EC residence permit shall not entail the withdrawal or loss of the long-term resident status.

(4) Where the withdrawal or loss of long-term resident status does not result in the removal of the third country national from Malta, and the third country national does not constitute a threat to public policy or public security, he shall be issued with a residence permit provided that he meets the conditions referred to in regulation 5.

Procedural guarantees.

10. (1) When notifying the third country national of his decision, the Director shall give reasons for such decision rejecting an application for long-term resident status or withdrawing that status, and shall inform him about the redress procedures available.

(2) Where an application for long-term resident status is rejected or that status is withdrawn or lost or the residence permit is not renewed, the third country national shall have the right to appeal to the Board.

Equal treatment.

11. (1) A third country national granted long-term residence status in Malta shall enjoy equal treatment as Maltese nationals as regards:

(a) access to employment and self-employed activity, as long as such activities do not entail even occasional involvement in the exercise of public authority or are reserved to Maltese nationals;

(b) conditions of employment and working conditions including conditions regarding dismissal and remuneration;

(c) education and vocational training, including study grants, in accordance with the Education Act and regulations made thereunder;

(d) recognition of professional diplomas, certificates and other qualifications;

(e) social security, social assistance and social protection in accordance with Maltese law;

(f) tax benefits;

(g) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;

(h) freedom of association and affiliation and membership of an organization representing workers or employers or of any organization whose members are engaged in a specific occupation, including the benefits conferred by such organizations, without prejudice to the general principles of public policy and public security;

(i) free access to the entire territory of Malta within the limits provided for by the national legislation for reasons of security.

(2) The equal treatment referred to in sub-regulation (1)(a) as regards access to employment may be restricted if an order has been made in accordance with regulation 5(7) of the Immigration Regulations, 2004 by the Minister responsible for employment. L.N. 205 of 2004.

12. (1) A third country national who has acquired long-term resident status in Malta may be expelled from Malta through a removal order issued by the Principal Immigration Officer when he constitutes an actual and sufficiently serious threat to the public policy or public security of Malta with due regard to the following factors: Protection against expulsion.

(a) the duration of residence in Malta;

(b) the age of the person concerned;

(c) the consequences for the person concerned and family members;

(d) links with Malta as his country of residence or the absence of links with his country of origin.

(2) The expulsion referred to in sub-regulation (1) shall not take place for economic considerations.

PART III

Residence in Malta of Third Country Nationals granted Long-Term Resident Status in another Member State

Principle.

13. (1) A third country national who has been granted long-term resident status by another Member State other than Malta may reside in Malta, for a period exceeding three months, subject to the conditions set out in this Part of these regulations and may do so for the following reasons:

(a) the exercise of an economic activity in an employed or self-employed capacity:

Provided that, without prejudice to any rights acquired in accordance with the provisions of regulation 19, in order to undertake such an activity the person concerned should be in possession of an employment licence that has been issued after the situation of the labour market in Malta has been examined by the competent authorities;

(b) the pursuit of studies or vocational training;

(c) other purposes.

(2) In applying the provisions of sub-regulation (1)(a) preference may be given to EU citizens, to third country nationals when provided for by Community law, and to third country nationals residing legally and receiving unemployment benefits in Malta.

(3) This Part does not concern the residence of persons who have been granted long-term resident status in other Member States and are in Malta as:

(a) employed workers posted by a service provider for the purposes of cross-border provision of services; or

(b) providers of cross-border services.

Conditions for residence in Malta as a second Member State.

14. (1) A third country national who has been granted long-term resident status in another Member State and who wishes to reside in Malta shall apply to the Director for a residence permit as soon as possible and, in any case, no later than three months after entering Malta.

(2) (a) The provisions of regulation 5(2)(b) to (e) shall also apply in this case.

(b) The third country national shall provide evidence that he has stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system in Malta and which would be equivalent to the average gross wage.

(3) The person mentioned in sub-regulation (1) may be required to attend and successfully complete a Maltese language course.

(4) The long-term resident shall also submit his long-term resident permit that had been issued to him in the other Member State or a certified copy thereof.

(5) In addition to the provisions of sub-regulation (2), the said person shall also provide the following:

(a) if he has entered Malta for the purpose of carrying out an economic activity, he shall be required to furnish the employment licence which has been issued for the purpose;

(b) if he has entered Malta for the purpose of study or vocational training, he shall be required to furnish documentary evidence of enrolment in an accredited establishment in order to pursue studies or vocational training; and

(c) if he has entered Malta for any other purpose except for those referred to in paragraphs (a) and (b) hereof, he shall be required to provide documentary evidence, which shall be determined by the Director, related to the purpose of his residence.

Family members.

15. (1) When the long-term resident applies for a permit to reside in Malta referred to in regulation 14(1), only the family members referred to in Regulation 2 paragraphs (a) to (d) residing with him in the first Member State, shall be authorized to accompany or join the long-term resident in Malta

(2) With respect to the application to be made for a residence permit, the provisions of regulation 14(1) shall apply.

(3) A family member referred to in sub-regulation (1) shall, when applying for a residence permit in Malta, present:

(a) his long-term resident's EC residence permit or residence permit or a certified copy thereof;

(b) a valid travel document;

(c) evidence that he has resided as a member of the family of the long-term resident in the first Member State;

(d) evidence that the long-term resident referred to in sub-regulation (1) shall have stable and regular resources as required in Regulation 14(2)(b) as well as sickness insurance in respect of all risks normally covered for Maltese nationals in respect of the said family member..

Public policy and security.

16. (1) The Director may refuse an application for residence made by a long-term resident or his family members where the person concerned constitutes a threat to public policy or public security.

(2) When taking the relevant decision in accordance with sub-regulation (1), the Director shall consider the severity or type of offence against public policy or public security committed by the long-term resident or his family member, or the dangers that are emanating from such person.

(3) Refusal to grant a residence permit shall not be based on economic considerations.

Public health.

17. (1) The Director may refuse an application for residence from a long-term resident or members of his family where the person concerned constitutes a threat to public health.

(2) The only diseases that may justify a refusal to allow entry or the right of residence in Malta under this Part shall be the diseases as defined by the relevant applicable instruments of the World Health Organisation and such other infectious or contagious parasite-based diseases as are the subject of protective provisions in relation to Maltese nationals in accordance with the provisions of the Public Health Act.

(3) Diseases contracted after the first residence permit was issued under this Part shall not justify a refusal to renew the permit or expulsion from Malta.

(4) The Director may require a medical examination for persons to whom this Directive applies in order to certify that they do not suffer from any of the diseases referred to in sub-regulation (2) hereof.

Examination of applications and issue of a residence permit.

18. (1) The Director shall give the applicant for a residence permit under this Part written notification of his decision as soon as

possible and, in any event, no later than four months from the date when the application was lodged:

Provided that, if the applicant does not submit documentary evidence as required by regulations 13 and 14 or, in exceptional circumstances which are linked to the complexity of the examination of the application, the time limit of four months may be extended by another period of not more than three months.

(2) The Director shall notify the applicant when the period for the examination of the application is extended.

(3) If the conditions of regulations 13, 14 and 15 are met and subject to the provisions relating to public policy, public security and public health in regulations 16 and 17, the Director shall issue a residence permit to the long-term resident.

(4) The residence permit shall be valid for a period of one year and shall, upon application, be renewable.

(5) The Director shall keep the responsible authorities of the Member State which had issued the long-term resident permit informed about his decision to grant or renew a residence permit under this Part.

(6) The Director shall issue residence permits to the family members of the long-term resident, which permits shall, upon application, be renewable, and which shall be valid for the same period as the residence permit issued to the long-term resident.

(7) In the case of a decision rejecting an application for a residence permit, the written notification referred to in sub-regulation (1) shall include the reasons therefor and details about the possibility of lodging an appeal with the Board.

(8) In the event that the Director fails to give a decision within the period specified in sub-regulation (1) of this regulation, the application shall automatically be passed on for appeal to the Board.

Treatment in the second Member State.

19. (1) As soon as the third country national who has applied for a residence permit in Malta under this Part receives such permit in accordance with the provisions of regulation 18, the provisions of regulation 11 shall apply.

(2) Long-term residents shall have access to the labour market in accordance with the provisions of sub-regulation (1):

Provided that:

(i) such persons who are exercising their right of residence in Malta for the reasons stated in regulation 13(1)(a) shall not have, for the first twelve months after having been issued with a residence permit, access to an employed activity other than that for which they have been granted an employment licence;

(ii) such persons who are exercising the right of residence in Malta for the reasons stated in regulation 13(1)(b) shall not have any, or only restricted, access to an employed activity, after the situation of the labour market in Malta has been examined by the competent authorities;

(iii) such persons who are exercising the right of residence in Malta for the reasons stated in regulation 13(1)(c) shall only have access to an employed activity after the situation of the labour market in Malta has been examined by the competent authorities.

Withdrawal of residence permit and obligation to readmit.

20. (1) Until the third country national obtains long-term resident status in Malta under this Part, the Director may refuse to renew or may decide to withdraw the residence permit and oblige the third-country national concerned and his family members, in accordance with the provisions of the Immigration Act, to leave Malta in the following cases:

(a) on the grounds of public policy or public security in line with the provisions of regulation 16;

(b) where the conditions provided for in regulations 13, 14 and 15 are no longer met;

(c) where the third-country national is not lawfully residing in Malta.

(2) The Director shall notify the first Member State of his decision.

(3) In taking a decision on the grounds stated in sub-regulation (1)(a), the Director may decide to include a permanent ban on residence.

(4) Until the third-country national has obtained long-term resident status in Malta, the Principal Immigration Officer may adopt a decision to remove the third-country national from the territory of the Union, in accordance with the provisions of the Act and in accordance

with and under the guarantees provided for in regulation 12, on serious grounds of public policy or public security.

(5) In such cases referred to in sub-regulation (4), the Director shall consult with the competent authorities of the Member State which had issued the long-term residence permit.

(6) When a decision is taken in accordance with sub-regulation (1), the Director shall provide the competent authorities in the Member State that had issued the long-term residence permit with appropriate information with respect to the implementation of the decision.

Admission to Malta as a first Member State of residence.

21. In the case of a third country national who has been granted long-term resident status in Malta and, after having moved to another Member State, has been removed from that State on the grounds stated in regulation 20(1), the Principal Immigration Officer shall immediately readmit, without formalities, the person concerned and his family.

Acquisition of long-term resident status in the second Member State.

22. (1) Upon application, the Director shall grant long-term residents referred to in this Part, the status provided for by regulation 7(4), subject to the provisions of regulations 3, 4, 5 and 6 hereof.

(2) The Director shall notify the competent authorities of the first Member State of his decision.

(3) The procedures laid down in regulations 5 and 7 shall apply to the presentation and examination of applications for long-term resident status in Malta under this Part.

(4) The provisions of regulation 8 shall apply to the issuing of the residence permit.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 60ċ – *Price 60c*