

Family reunification regulation in Norway

– A summary

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This report provides a summary of the Norwegian regulation of family reunification of third country nationals. It is a compact version of Norway's contribution to the European Migration Network's (EMN) 2017 Focused Study, labelled "*Family Reunification of TCNs in the EU: National Practises*". The full country report is based on interviews with key informants and document reviews. The report and a comparative synthesis report can be downloaded at: <https://emn.ie/>.

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Family reunification regulation in Norway

Over the last twenty years family reunification regulations in Norway have become stricter. Today a list of requirements has to be fulfilled for third country nationals applying for family residency. Parallel to this development, there has been an increasing tendency to see family migration policies as instrumental in the regulation of other forms of migration, e.g. asylum. As the Norwegian family migration regime becomes more restrictive, global and European minimum norms may become more relevant to Norwegian legislators.

The Norwegian development towards stricter conditions for family immigration started in 2000 with an increase in the subsistence requirement. Later changes included restrictions in 2010 as part of the new Immigration Act. Here the subsistence requirement was increased and the so-called four-year requirement was introduced. This requires that the sponsor (the person living in Norway) must have worked or studied full time in Norway for four years before an application for family formation may be granted.

Over the years, changes to the family migration regulations have been motivated by pointing to the need to limit new arrivals of asylum seekers to Norway, to encourage integration and self-sufficiency among immigrants, and to prevent forced marriages.

In 2015 the number of asylum seekers who came to Norway almost tripled compared to the year before, reaching more than 31000. The influx led to a list of restrictive measures including on family migration. The goal was to ensure that Norway did not appear as disproportionately lenient compared to other destination countries in Europe. Changes to the regulation of family migration were suggested as part of these restrictive measures.

Traditionally, international law has not had been of direct concern in the formulation of Norwegian family migration legislation. This has partly been because legislators have considered the relevant provisions to be in compliance with international human rights regulations. Norwegian provisions on family immigration have generally been considered to give applicants stronger rights than what can be derived from international conventions and treaties.

Despite this, Norway's international obligations are always a part of the considerations when the government develops new legislation or policies on immigration. When it comes to regulations of family immigration such obligations include, among others, the Convention Relating to the Status of Refugees, the Convention on the Rights of the Child, the European Convention of Human Rights (ECHR) and the Convention on the Elimination of All forms of Discrimination Against Women.

Over the last couple of years international obligations have played a more prominent role in assessments of changes in Norwegian immigration legislation. When the government recently suggested restrictions to the right to family immigration, case law from the ECtHR was used to establish the obligations Article 8 of the ECHR imposes on state parties. These changes were related to an increased political wish to restrict family immigration to Norway. Consecutive Norwegian governments have expressed a general wish for harmonization between EU and national immigration law. EU regulations therefore play an important role in the development of policy and legislation despite not being legally binding to Norway. Until now, however, we find few examples of such harmonization in the field of family immigration.

Overview of the national legislation and practice

Current legal framework

The formal party to an application for family immigration is the *applicant*, normally a person living outside Norway. The person, with whom the applicant wishes to be reunited or establish family life with in Norway, is defined as the *sponsor* to the application for family immigration. Norwegian immigration law distinguishes between situations where the family relations existed prior to the sponsor's entry into the realm (family reunification) and situations where the family relations are established after this fact (family formation). While there are not separate provisions for the different forms of family immigration in the legislation, the requirements to be granted family immigration is generally stricter in family formation cases.

To act as a sponsor for an application for family immigration a person must either be a Norwegian or Nordic citizen, a foreign national with a permanent residence permit or a foreign national who either has or will have a temporary residence permit that forms the basis for a permanent residence permit. Persons who have been granted collective protection that has not yet ended may also act as sponsors. Beneficiaries of subsidiary protection are recognised as refugees according to Norwegian immigration law, and may apply for family immigration according to the same rules as Convention refugees. In addition to this, certain groups of foreign nationals may act as sponsors for applications for family immigration despite not having a residence permit that forms the basis for a permanent residence permit. These groups include researchers with their own funds, students and employees of non-profit, religious and humanitarian organisations.

Temporary permits to stay in the realm for a brief period of time, for example permits for seasonal workers, students or employees on foreign registered ships, will generally not form the basis for a permanent residence permit. However, temporary permits based on an assumption of a longer stay in the realm, on the other hand, will usually form the basis for a permanent residence permit.

A right to family immigration is extended to the closest family members of the sponsor, meaning the sponsor's spouse or non-married partner (including same-sex couples), as well as children under the age of 18. Parents and siblings of an unaccompanied minor with a residence permit as a refugee are also entitled to family immigration. Furthermore, family immigration may be granted to other family members if specific requirements are fulfilled. This include the sponsor's single parent, adult children, foster children and siblings under the age of 18. In exceptional cases other categories of family members may also be granted family immigration based on strong humanitarian considerations.

In order for an application for residence permit to be granted the sponsor must, as a main rule, document that they have sufficient means for subsistence. The requirement is meant to promote self-sufficiency and integration in family immigration cases, as well as to contribute to preventing forced marriages and reducing the number of asylum seekers coming to Norway. The subsistence requirement may be divided into three main components: previous income, future income and that the sponsor has not received social security or other funding under the Social Services Act during the year leading up to the application.

The requirement as to future income is fulfilled where the sponsor can document that they are assured funds equivalent of grade 24 in the state salary scale for the period for which the application applies. As of 1 May 2015 this amounts to an income of NOK 307 600 per year. The sponsor must further document that they have also had a registered income equivalent of grade 24 in the state salary scale in the year leading up to the application for family immigration (past income). In cases where the sponsor receives old-age pension or disability pension, these funds are considered to be sufficient where the benefits altogether is at least equivalent to a full minimum pension at the high

rate of chapter 19 of the National Insurance Act. As of September 1 2016, the minimum pension amount to NOK 179 748 per year. If the sponsor is a student a lower income rate of 88 percent of grade 19 in the state salary scale applies.

The subsistence requirement does not apply in family reunification cases where the sponsor has been granted refugee status in Norway. For an exemption to be made it is a condition that the application has been submitted within one year after the sponsor was granted a residence permit. Exceptions to the grace period are made where the applicant was prevented from submitting an application at an earlier time due to factors beyond the applicant's control. Furthermore, where the applicant is the spouse of the refugee, the exemption only applies if the marriage was contracted before the sponsor entered Norway. Exemptions to the subsistence requirement may also be made in certain cases pertaining to human trafficking.

In cases relating to family formation, the sponsor must also document that they have worked and/or studied for four years before the application may be granted. In order for the four-year requirement to be met the work or study must in sum constitute full-time activity. If the fulfilment is based on education, this must correspond to at least 60 ECTS credits per year to be considered as full-time. Further regulations on what types of activities that are considered as work or education is given in the Immigration Regulations and include income-generating work, education from primary school to university level, participation in the Norwegian introduction program as well as taking care of children for up to 46 weeks after birth or adoption. Periods during which the sponsor receives sickness benefit, a disability pension or a retirement pension under the National Insurance Act are also counted as periods of work. Exceptions may be made where required in order to ensure family unity.

As a main rule, non-compliance with the subsistence requirement or the four-year requirement (where it applies) will lead to the application for family immigration being rejected. However, exceptions may be made in individual cases based on particularly strong humanitarian considerations. This provision is, however, intended to be interpreted in a restrictive manner. The reasons to uphold the subsistence requirement; self-sufficiency, integration, preventing forced marriages and limiting the number of manifestly unfounded asylum seekers, shall be weighed against the reasons for making an exception. The threshold for making an exception from the requirement for future income is higher than making an exception from the requirement for previous income. Whether the family may live together in another country and that the income requirement normally only lead to a temporary breach in family life shall also be taken into account. In family formation cases, the fact that the parties cannot live together in the country of origin because one of the parties is protected from being returned to that country, is not in itself sufficient to make an exception from the four-year requirement.

Norwegian immigration law does not require the applicant or sponsor to comply with any specific integration measures in order for an application for family immigration to be granted. However, certain groups of foreign nationals have a right and an obligation to participate in Norwegian language training and social studies free of charge. This right and obligation is extended to foreign nationals with a residence permit that may form the basis for a permanent residence permit. The family members of refugees also have a right and an obligation to participate in an introduction programme that aims to help foreign nationals obtain basic qualifications.

Recent, planned or suggested changes to the family immigration legislation

Following the surge in asylum arrivals during 2015, several changes have been made to family immigration regulation in Norway. Some of these have already been passed by parliament, while others have not yet been voted on or are still under consideration.

In family formation cases, a 24-year age requirement has been introduced. According to the new requirement, both parties must be at least 24 years of age before an application for a residence permit as the sponsor's spouse or cohabitant may be granted. The requirement does not apply if the marriage was contracted or the cohabitation established before the sponsor's entry into the realm, or where the parties have contracted marriage or established a cohabitation in Norway while both has had a resident permit or a Norwegian or Nordic citizenship. Exemption may also be made if it is evident that the marriage or cohabitation is voluntary. The stated purpose of the 24-year age-requirement is to prevent forced marriages. The condition came into effect January 1. 2017.

Parliament has also passed an attachment requirement. According to this requirement an application for family immigration may be rejected where family life can be exercised in a safe third country that the family as a whole has a stronger attachment to than Norway. This requirement will come into effect in 2017. More detailed provisions with regard to when an application may be rejected based on a stronger attachment to another country are currently being formulated.

Finally, Parliament has voted to reduce the subsistence requirement back to the former rate of 88 percent of level 19 in the state salary scale (amounting to NOK 252 472 as per 1 May 2015). This change will come into effect during 2017.

In addition to the above-mentioned requirements, the government is currently considering other changes. These include reducing the grace period in which the family members (applicants) of a sponsor who has been granted status as a refugee may apply for family reunification without the sponsor having to fulfil the subsistence requirement (currently one year), as well as increasing the current four-year requirement for work or study in family formation cases to six years from the date the sponsor turned 18 years of age.

The application procedure

Generally, first-time applications for a residence permit must be submitted prior to entry into Norway. Exceptions may be made in certain cases, for example where the applicant is the parent of a Norwegian child or the sponsor's spouse, cohabitant or child. The application should be submitted through a Norwegian Foreign Service mission in the country where the applicant is a national, or alternatively in the country where the applicant has held a residence permit in the last six months. The applicant must submit the application in person. Where strong grounds of reasonableness warrant it, the Directorate of Immigration may consent to the application being submitted in a different way. The Directorate have given guidelines for when a sponsor may apply on behalf of a child under the age of 18. Where there is not a Foreign Service mission in the country where the applicant is a national, or in the country where the applicant has held a residence permit in the last six months, the application may instead be submitted to the Norwegian Foreign Service mission covering the country in question.

As a main rule the applicant must provide a passport or other identity documents issued by a public authority when applying for family immigration to Norway. Exception from this requirement can only be made where it would be unreasonable to require that such a document be provided. These would include cases where contacting the national authorities would jeopardize the applicant's safety or where the applicant's home country do not issue identification documents. In these cases, other sources of information may be considered, such as the applicant's birth certificate, driver's license, marriage license, or proof of citizenship. The assessment is made on an individual basis based on the immigration authorities' knowledge of the country in question. In cases where the applicant fulfils the conditions to be granted a refugee status as a close family member of a refugee (derived refugee status), a passport must not be presented unless the applicant already has one.

Different types of documentation are required to verify the family relationship between the sponsor and the applicant. Where the applicant is the child of the sponsor, a birth certificate must be presented. If the applicant is the spouse of the sponsor they must present a marriage license. In cases concerning non-married partners the applicant must provide information that shows that he or she and the sponsor have lived in a permanent and established relationship for at least two years or that they have conceived a child before the sponsor entered the realm or while both parties had Norwegian residence permits, e.g. birth certificate or confirmation of the pregnancy. What documentation is necessary is stated in the "checklist" that applicants can access on the web page of the immigration authorities.

Where other information fails to provide a basis for establishing the family relationship between an applicant and a sponsor with reasonable certainty, the parties may be requested to undergo DNA-testing. DNA-testing may be offered to applicants of all nationalities when the Directorate of Immigration is uncertain about the family relationship. In most cases the relevant relationship will be parent-child. It is the Directorate of Immigration that decides if DNA testing should be offered or not, and the costs are covered by the state. Usually such tests will be offered where the other requirements for being granted family immigration is fulfilled, but where there is doubt as to whether or not the information about the family relationship is correct. In addition to this the police or Foreign Service missions may conduct interviews with the parties to establish whether the information that has been given by the applicant and the sponsor correspond. In cases where it is a requirement that the applicant is a child under the age of 18 or 21, and where there is not sufficient information to establish the age, the applicant may be asked to undergo a test to determine the applicant's age. Such tests may also be performed to establish whether the applicant is an adult, in cases where the application for a residence permit is based on marriage.

In cases where the fact that the applicant is or has a child under the age of 18 is decisive for whether a residence permit for family immigration is granted, the application must reach the immigration authorities before the child's eighteenth birthday. Children who have reached the age of seven, as well as younger children who are able to have an opinion, should according to the Immigration Act be informed and given the opportunity to be heard before a decision is made. Where the applicant is a child he or she may be interviewed face to face, or in writing or through his or her parents, representative or others who are qualified to make a statement on the child's behalf. How the interview should be conducted must be assessed in light of the nature of the case and the application situation. The views of the child should be given weight in accordance with his or her age and maturity.

The processing time for family immigration cases varies according to resources and the need for verification of information. Average processing time for each nationality is listed on the Directorate of Immigration's web pages. This estimate is updated regularly and reflects time used to process recent cases. As a consequence the listed average processing time may change after an application is submitted.

Currently family immigration cases may be grouped into four different categories according to the duration of processing: 3, 4, 8 or 15 months. Where it is clear that the core requirements are not fulfilled, the decision will normally be made within 3 months. Cases that require an interview or DNA-testing have the longest processing time (currently 15 months on average). In these cases the processing time is dependent on when the police or the Foreign Service mission is able to conduct the interview or DNA-test. In routine cases where the applicant is the spouse of the sponsor, and where there is no need for further assessment, the average processing time is 4 months. If the child of the sponsor has also applied for family immigration, this application will be processed at the same

time. Finally, some applications do not require further assessment but are also not considered as routine cases. For this category the current average processing time is 8 months.

Rights as a consequence of being granted family immigration

All persons with a valid residence permit lasting for at least 12 months are automatically insured through the Norwegian social insurance scheme. As a main rule, foreign nationals with a valid residence permit are entitled to receive social benefits and services to the same extent as Norwegian nationals. A person who has had a temporary residence permit that forms the basis for a permanent residence permit for three years are entitled to a permanent residence permit if certain conditions are fulfilled. Foreign nationals who fulfil the requirements for a permanent residence permit may also apply for a Norwegian citizenship.

In certain situations a foreign national who has been granted a temporary residence permit as the spouse or cohabitant of the sponsor is entitled, upon application, to be granted a new residence permit on an independent basis. For example, the applicant is entitled to a residence permit on an independent basis in cases where the cohabitation has ceased due to the sponsor's death, unless there are particular reasons for not granting a permit. The same applies where the cohabitation has ceased and there is reason to assume that the applicant or children have been abused. An independent permit may also be granted on account of the breakdown of the marriage or cohabitation, in cases where a return to the country of origin will lead to unreasonable difficulties due to social or cultural conditions.

Foreign nationals with a valid residence permit are entitled to education in accordance with the same regulations and requirements as Norwegian nationals. In addition to this foreign nationals between 16 and 55 years of age who have been granted a residence permit that may form the basis for a permanent residence permit, or who have been granted a residence permit based on collective protection in a mass flight situation, have a right and an obligation to participate in Norwegian language training and social studies free of charge for a total of 600 hours. Foreign nationals between 55 and 67 years of age who is granted a residence permit based on the above-mentioned grounds has a right, but not an obligation, to participate in such training. Recently the Norwegian Parliament has decided to extend the obligation to participate in training to this group as well. As of yet this change has not come into effect. For foreign nationals who have been granted protection and for their family members, language training and social studies is included in an introduction program that also include other measures to help the foreign national obtain basic qualifications.

As a general rule, a residence permit in Norway automatically gives the right to take employment and to engage in business activity anywhere in the realm. Family immigration permits are subjected to the same limitations as those that are set for the sponsor's permit. Certain exceptions from this limitation are given in the Immigration Regulations.

Main findings

A general challenge facing sponsors and/or applicants is finding sufficient information about the conditions, exceptions and exemptions that applies to their case. Relevant requirements are often spread across different legal sources. Often it will be necessary to access information both in the Immigration Act, the Immigration Regulations and in different guidance notes and/or other documents issued by the Norwegian Directorate of Immigration in order to get a comprehensive understanding of what is required. These challenges may increase due to a language barrier for some sponsor and/or applicants, as most information is only available in English or Norwegian. The problems concerning information also relates to the process of submitting an application. For example sponsors and/or applicants may be confused by the fact that they are first required to

register the application for family immigration online, but that the application is not formally submitted until after the applicant has visited a Foreign Service mission and submitted the application personally. The online form may also be difficult to understand for some sponsors and/or applicants. One example is that the sponsor is not always aware that it is their family member who is considered as the applicant and not themselves.

The study showed that the subsistence requirement was a particular challenge to sponsors of the applicants. A high percentage of the rejections of applications for family immigration were caused by sponsors not being able to fulfil this requirement. In cases where the applicant was the sponsor's spouse, the subsistence requirement accounted for 55 percent of the rejections. Where the applicant is the child of the sponsor, a lack of fulfilment of this condition constituted 42 percent of the refusals. The requirement has been criticized for making affecting vulnerable groups especially hard, including people with a little or no education.

In family formation cases, the study also showed that sponsors found the four-year requirement challenging. One example would be cases where sponsors confused this condition with the subsistence requirement. They assumed that it was sufficient to show that they had the necessary income and did not have to document their full time work and study activities. In addition, it could be difficult for applicants with a combination of activities or several short-term activities, to substantiate that the requirement was met in total.

For the family members of refugees and certain other groups, traveling to the relevant Foreign Service mission to submit the application may also present a challenge, particularly in the cases where the family members are required to travel to a different country. Some applicants are forced to travel through conflict areas or to cross borders illegally.

In situations where the immediate family members of a refugee has been prevented from submitting an application within the one-year grace period, the applicant and/or sponsor may experience problems documenting that this was due to factors beyond the applicant's control. In addition to the above-mentioned challenges, advocacy groups for the applicants and sponsors have expressed frustration connected to the processing time of applications for family immigration.

The Immigration authorities face several challenges in their processing of applications for family immigration. A major challenge is the verification of the requirements. Examples include cases where the sponsor works in a family business and it may be difficult to verify the documentation of income and work-contracts. It may also be noted that cases with insufficient documentation often are cases where it is also difficult to use other methods to verify the information that is given (for example due to on-going conflicts etc.). Another illustration of the challenges that the authorities face, are cases where there may be a risk of forced marriage.

Immigration authorities face a dilemma when it comes to deciding what and how to communicate with applicants and/or sponsors. Such information should be short, concise and communicated in a simple language. At the same time simplifications may lead to important nuances, exceptions or special regulations being left out. The groups who are seeking information about family immigration requirements are diverse and may have different needs and interests, making it challenging for the Directorate of Immigration to communicate efficiently.

To overcome some of these challenges the immigration authorities have taken several measures to make the information more accessible, both when it comes to individual decisions and general information through the web page. To make it easier for applicants to understand why an application has been rejected, the Directorate of Immigration has made changes to the structure of the decisions, to simplify the content and make the language easier to understand (using "plain

language”). They have developed a checklist that is accessible to sponsors and applicants on the Directorate’s web page. The checklist is interactive and provides information based on what type of family immigration the applicant is applying for and the nationality of the applicant. Thus, the applicant is only given information that is relevant to her or his individual situation. The Directorate also holds regular network meetings with organisations that assist sponsors and/or applicants, as well as networks for refugee consultants who are working in the municipalities.

The Directorate of Immigration is also continuously working to reduce the processing time of applications for family immigration. To accomplish this, the Directorate divide the cases into different procedural tracks based on the need for verification measures. However, when other institutions (such as the Police) are involved in the assessment of the application, the Directorate is dependent on their processing time.

The study showed that there has been increased focus on the regulation of family immigration as an instrument to regulate the overall immigration to Norway. Family migration and immigration regulation in general is high on the agenda of the current Government. In the suggested changes to the national immigration policy and legislation that were presented to the parliament as a consequence of the high arrival of asylum seekers in 2015 (“Innstramminger II”), there were several restrictive measures regarding family immigration meant to discourage immigrants from submitting applications for asylum in Norway.

The number of first time applications for family reunification in Norway where both applicant and sponsor were third country nationals was stable during the 2011-2015 period. Between 10000 and 11000 applications were processed each year. The numbers were expected to increase somewhat in 2016 (estimated 13 000 applications), following a high number of asylum seekers and refugees arriving in 2015. During the five-year period, the overall approval rate was high, ranging between 70 to 80 per cent. There were however, substantial differences according to the status of the sponsor. Sponsors with work permits had close to 100 per cent approval rate (99 per cent) of first time applications. Meanwhile, first time applicants where the sponsors had refugee background or permanent residency (e.g. subsidiary status) had lower success rates, with 70 and 65 per cent respectively. More than half of the family reunification applications concerned children as applicants (55 per cent). These were also the most successful applications. More than four out of five applications were approved. Reunifications with spouses were the second most common category of applications.