

No Recourse to Public Funds

The Legal Basis For Restrictions
on A8 and A2 Nationals

8 July 2009

Cardiff



The AIRE Centre

(Advice on Individual Rights in Europe)

What We Do:

- Litigate Before the European Court of Human Rights
- Provide advice to low-income EU citizen migrants on their rights under European Union law
 - Trainings, third-party interventions, reports, conferences

Legal Background to Accession

EU migrants in the UK who are exercising “treaty rights” to reside in the UK are entitled to the same treatment as UK nationals with regard to all matters within the scope of the EC Treaty (including social assistance and social security benefits).

Right to Reside

EU migrants can generally be exercising a right to reside in the UK as:

- Workers or self-employed people (full benefits)
- Jobseekers (limited benefits – JSA, HB, CTB)
 - Students (very restricted benefits)
 - Self-sufficient people (no benefits)
 - Permanent residents (full benefits)
- Family members of permanent resident or economically active people (full benefits)

Workers under EU law generally

- Part-time work counts as work (for someone getting benefits)
- Generally, EU nationals who are temporarily unable to work due to illness or accident keep their worker/self-employed status
- Some workers who have become involuntarily unemployed and seek work or undertake vocational training retain their worker status

EU Nationals and Recourse to Public Funds Generally

It is important to remember that some problems that A8s and A2s experience are problems for all EU migrants in the UK, e.g.:

- Those who have never worked will generally not be able to access benefits
- Those who have worked but who have stopped working (e.g. new mothers) may not be able to access benefits as they are not “workers” (pregnancy is not considered illness or accident)

A8 and A2 Nationals

They have all the same free movement rights as other EU nationals (to move as self-employed people, self-sufficient people, students) **except the UK had the right to limit their access to the labour market** (under the relevant accession treaties).

Text of the Treaties

By way of derogation from Articles 1 to 6 of Regulation (EEC) No 1612/68 and until the end of the two year period following the date of accession, the present Member States will apply national measures, or those resulting from bilateral agreements, regulating access to their labour markets by Czech nationals. The present Member States may continue to apply such measures until the end of the five year period following the date of accession.

A8 Nationals

Legislation: **Accession (Immigration and Worker Registration) Regulations 2004**

Limitations:

- A8 nationals can work, but must register (and pay a fee)
- A8 nationals must inform the Home Office of all changes in employment during the first 12 months
- Workers cannot exercise a right to reside as jobseekers (no benefits when seeking work until they have worked for 12 months)
- Workers who stop work during the 12-month period for any reason (even illness/accident) cannot retain “worker status”

Exceptions to Worker Registration

- After 12 months of registration (in compliance with the scheme), A8s get “ordinary” EU labour market (and benefits) access, including as jobseekers
- Individuals who had the right to work in the UK under the Immigration Rules and have worked for 12 months are not required to register

Problems for Unregistered A8s

- Unregistered workers cannot access benefits and cannot complete the 12 months (so if they later are unable to work due to illness/accident, they cannot get benefits)
- Unregistered A8s who have been here for five years cannot confirm their acquisition of permanent residence (or will have difficulty doing so)

Problems for Registered A8s

- *Zalewska* (House of Lords): failed to inform Home Office of change in employment – had not complied with scheme and when she was unable to work following domestic violence, could not access Income Support
- Those who stop working in the first 12 months cannot access benefits in situations where other EU nationals (or UK nationals) can.

Unlawfulness of Continuing the Scheme

Restrictions on A8 nationals could only continue after 1 May 2009 as a proportionate response to “serious disturbances in the labour market”.

The AIRE Centre and the Immigration Law Practitioners Association believe that the scheme is not proportionate to a disturbance in the labour market and have asked the European Commission to bring infringement proceedings.

A2 Nationals

Legislation: Accession (Immigration and Worker Authorisation) Regulations 2006

Bulgarians and Romanians, unlike A8 nationals, must generally ask for permission to work, with some exceptions, including:

- highly skilled
- those who had permission to work in the UK and who have worked for more than 12 months
 - students can work 20 hours/week

Problems with A2 Nationals

- They will generally have to be self-employed in order to get access to benefits
- Many are former asylum seekers or otherwise vulnerable individuals with special needs

Special Problems

1. Asylum
2. Human Trafficking
3. Domestic Violence

Asylum

Particularly vulnerable A8 and A2 nationals may appear to be eligible for asylum.

However, under a protocol to the Amsterdam Treaty, these applications will be viewed as manifestly ill-founded and it does not appear that they will ever be successful.

Human Trafficking

Definition (in Council of Europe Convention on Action Against Trafficking in Human Beings, which came into force in the UK on 1 April):

"Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Human Trafficking

Because they are able to enter the UK without restrictions, but have labour market restrictions, A8 nationals and especially A2 nationals are vulnerable to human trafficking and exploitation in the UK.

National Referral Mechanism

A8s and A2s can be referred by a “First Responder” to the National Referral Mechanism to be identified as victims of trafficking and given one-year residence permits (with recourse to public funds) if:

- their presence in the UK is necessary for a police investigation; or
- their presence in the UK is necessary owing to their personal circumstances.

However, this mechanism is essentially under the control of the UK Border Agency and since 1 June the UKBA has new powers to detain and deport EU migrants who do not have a right to reside.

Legal Advocacy for A8s and A2s

In light of the response of the UK government and judiciary, A8s and A2s without recourse to public funds would not seem to have many legal remedies in the UK, except in very specific, borderline cases.

Advocacy at EU level instead is necessary.

Domestic Violence

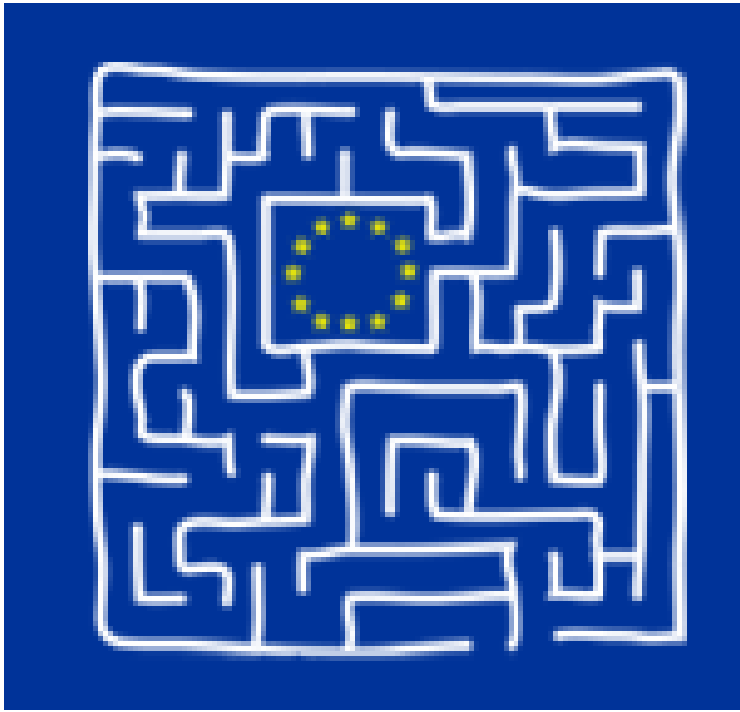
Domestic violence raises numerous problems for A8 and A2 nationals:

- They may be unable to work (like *Zalewksa*) and therefore access benefits.
- They may find themselves dependant on an abusive spouse to access benefits.

Advocating at EU Level

In addition to seeking to get benefits for A8s and A2s, you can:

- draft petitions to the European Parliament (under Art.194 EC) complaining about the violation of EU law rights;
- send letters to the European Commission (DG Employment, Social Affairs and Equal Opportunities, DG Freedom, Security & Justice)
- identify cases that could get “referred” to the European Court of Justice and get suitable solicitors and charities (like AIRE) involved to push for a referral



AIRE Can Help

We can help do any of these things. Do make a request for advice, you can:

- Email: info@airecentre.org (write “request for advice” in the subject)
- Ring our advice line to make a request, Tuesday and Thursday afternoons from 2 to 5pm, on 0207 831 3850

Questions about the presentation? Email: aweiss@airecentre.org