

Department of Justice Consultation on the Scheme to Regularise Undocumented Migrants in Ireland

17th May 2021

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Immigrant
Council of
Ireland

Introduction

The Immigrant Council of Ireland Independent Law Centre (ICI) is an independent human rights organisation that promotes access to justice for migrants and their families, including Irish citizens, living in Ireland. Over 5,000 individuals are directly supported through our information, support and legal services each year. With over 20 years' experience as a frontline service provider across the broad spectrum of migration, residence and citizenship related applications, the organisation has significant insight regarding the issues affecting migrants and their families in the immigration system, including undocumented migrants.

This submission is informed by our experience and understanding of the Irish immigration system, including assistance provided to service users in applying for residence permission under administrative regularisation schemes previously introduced by the Department, as well as services provided to undocumented migrants seeking to regularise immigration status by way of individual discretionary applications, including applications for leave to remain or to revoke deportation orders pursuant to section 3 of the Immigration Act 1999. In the period 2019-2021 to date, 5.5% of our service users (696 people) were undocumented. This included undocumented minors, some of whom but not all were in State care. This figure does not include the family members of undocumented service users, who are often also undocumented. This figure also does not include service users who may temporarily be without residence permission arising from delays on the part of the INIS in dealing with residence permission renewal applications. We envisage that there will be significant interest in the Scheme and that the Department should ensure sufficient resources are available to process applications efficiently.

The ICI, along with other civil society organisations working on migration (notably MRCI), has consistently advocated for the introduction of a regularisation programme as part of comprehensive immigration reform and we have supported MRCI's JFU campaign. In this regard, we welcome the recent publication of the Department of Justice Action Plan 2021 and overarching goal to deliver a fair immigration system, including the commitment of the Department to bring forward the Scheme to Regularise Undocumented Migrants in Ireland. The Department's consultation process with civil society organisations regarding the scheme to date is also very welcome. The ICI attended the initial online consultation facilitated by the Department and note that the details of the Scheme as published to date are broadly welcomed by civil society organisations and legal professionals. There is consensus that many aspects of the proposed Scheme are positive, including that it is intended to be open for a period of 6 months and that the intention is to grant successful applicants full access to the labour market with a longer-term pathway to citizenship. There is also evident consensus that the Scheme should be broad and inclusive and that the application process should be user-friendly.

The ICI recommends that all submissions received during the consultation process should be published by the Department. We look forward to continuing to engage with the Department regarding the Scheme as the details are finalised and implemented. Through our services, including community outreach and information sessions, the ICI will endeavour to support wide dissemination regarding the details of the Scheme when available.

Comments on the Proposed Scheme to Regularise Undocumented Migrants in Ireland

The ICI takes the opportunity to note that we have engaged with our colleagues in MRCI who have shared their draft submission to this consultation process, which we have reviewed and broadly endorse. We make the following additional observations:

Questions 1 and 2 Eligibility Criteria

The consultation document outlines that proposed principal applicants will be over age 18 years and that a minimum period of residence without an immigration permission will be required in order to apply (4 years, or 3 years in the case of children living with a principal applicant).

The ICI urges that the Scheme is as broad and inclusive as possible and that it should not exclude applicants who have endeavoured to comply with immigration obligations to apply for residence permission in the State. In this regard, persons who are currently pending decisions in respect of removal applications and section 3 applications (including revocation applications) should be eligible to apply, particularly having regard to the significant length of time that many applicants have been waiting for decisions and average INIS processing times regardless of pandemic. Undocumented migrant children without parental care should be eligible to apply regardless of length of stay. It should be recognised that not all undocumented children are in State care; consequently, they are extremely vulnerable and often at risk of, if not actively experiencing, exploitation. The best interests of the child principle should underpin the operation of the Scheme for all children.

To minimise administrative burden on the part of prospective applicants, as well as on the Department, it should be made clear that undocumented applicants who already have an application pending for residence permission under another administrative scheme, such as spouse/parent of Irish child, that they will receive a decision in respect of that application promptly and that they do not have to lodge an application for consideration under the Scheme at the same time. If deemed ineligible for residence permission under the other existing for some reason, the individual should then be eligible/referred for consideration under the conditions of the Scheme, even if the Scheme has closed for new applications.

In respect of principal applicants with family members eligible to apply under the Scheme, the ICI recommends that in line with existing policy commitments towards children and young people generally under Brighter Outcomes Better Futures, the Scheme should include 'aged-out' children up to age 24, or who are dependent members living in the same household.

Regarding verification requirements, many undocumented migrants often do not have access to the types of proofs of residence that other residents may have, including lease agreements, utility bills, formal employment contracts, registration with GPs, etc. and employers may be reluctant to provide confirmation of employment due to potential sanctions under the Employment Permits legislation. As such, a flexible and pragmatic approach should be taken to any evidential requirements. Applicants should be able to provide relatively informal documentation to include letters from

friends, neighbours, schools, gyms and service providers, including NGOs, that they may have engaged with during the relevant period.

The Department should also take a fair and pragmatic approach to any requirement to provide a valid in-date passport during the application and the subsequent registration process to be issued a residence card. Whilst the importance of any requirement to establish identity is recognised; the Department must recognise that many prospective applicants may hold passports or other identity documents which have expired and they have been unable to engage with consulate services, which may not be available in Ireland and/or closed during pandemic, especially whilst undocumented. Additionally, some applicants may also be stateless persons and are unable to provide evidence of nationality/identity documents. In the absence of a stateless determination procedure, successful applicants should be granted temporary residence permission and afforded the opportunity to demonstrate efforts/inability to obtain identity documents thereafter within a reasonable period.

With respect to 'good character' requirements and possible exclusion from the Scheme, the Department must be mindful of the State's ECHR obligations, in particular Article 8 rights regarding respect for private and family life. The eligibility criteria for the Scheme must be therefore be published and clear, and any exclusion should pursue a legitimate aim that is necessary and proportionate in all of the circumstances. Applicants should not be excluded for reasons related to misdemeanours or minor offences.

The ICI welcomes the intention to include an appeal procedure for unsuccessful applicants. Details regarding the intended appeal procedure should be published at the time of introducing the Scheme. The ICI recommends that the Department engage with applicants if there is any further information or supporting documentation required during the application procedure rather than simply refuse an application on grounds of 'insufficient documentation' necessitating such matters to be dealt with by way of appeal only. The Department must provide detailed reasons in writing for refusals and provide a reasonable period of time (at a minimum 15 working days) to enable unsuccessful applicants seek advice and meaningfully engage with any appeal procedure.

Question 3 – Grant of Residence Permission and Access to the Labour Market

It is proposed that immigration permission to be granted under the Scheme will allow unrestricted access to the labour market. The ICI recommends that access to the labour market should also allow for self-employment. The ICI further recommends that a Stamp 4 residence permission of at least 2 years, renewable, is granted with access to long-term residence permission after five years.

In recognition of backlogs and delays in issuing IRP cards during pandemic arising from closure of registration offices, the ICI recommends that a residence permission letter issued should have a photographic image of the applicant appended to it, so that this may facilitate prospective employers and other service providers accepting proof of entitlements to access the labour market, etc. until an IRP card can be issued. A separate permission letter should issue to the principal applicant and each family member.

The principal applicant and any family members should all be granted the same residence permission with access to the labour market, rather than granting 'dependent' residence status on the principal applicant. This will ensure that undocumented children and young children who are eligible under the Scheme but, under current regulations, may not qualify for further educational supports under SUSI, are not excluded from engaging in meaningful opportunities to gain experience and financial independence, and may also assist school-leavers to access vocational training or to engage in higher education.

In bringing forward this Scheme as one part of overall delivery of a fair immigration system, the Department should engage in review of the wider immigration system and introduce reforms to ensure that access to Stamp 4 residence permission is also provided to 'dependent' family members, in particular children and young adults whose parents are lawfully resident on Stamp 4 conditions, for e.g. siblings of Irish citizen children, many of whom may also have been born in Ireland but did not enjoy access to citizenship at birth. The Department currently publishes no guidance and, in practice, provides access to Stamp 4 residence in an entirely ad hoc and inconsistent manner lacking in transparency. Additionally, 'dependent' family members of employment permit holders, including former critical skills permit holders who have been granted Stamp 4 permission, do not enjoy easy access to the labour market despite recent reforms and have no clear pathway to Stamp 4 residence permission.

Finally, it is noted that not all foreign national children are required to register and to hold residence cards under the Immigration Act 2004. This obligation is imposed only non-EEA children who do not hold dual Irish/EEA nationality and who are aged 16 years and older. Children born in Ireland but who are not citizens are also not required to register. Accordingly, residence permission issued under the State should be provided by way of letter in writing clearly setting out the terms and conditions attached to the residence permission, in particular with respect to labour market and access to social protections and clearly stating that any general requirement to produce identity documents and/or to hold a residence card is waived in the particular case.

Question 5 – Online Scheme

In principle, the ICI supports the introduction of an online system for applications. However, mindful that some applicants may not have access to support organisations or relevant technology, paper based applications should also be facilitated. For online applications, it is also not possible to always scan several documents and merge them into one document, so this should not be a strict requirement of the application procedure either.

The ICI has welcomed the introduction of online application procedures by the Department in recent years. While most of our service users have been able to use online services successfully, a significant number have experienced difficulties using them, in particular the portal to renew residence permits. We strongly recommend that prior to launching the Scheme that the Department engage with civil society service providers in UX / UAT (user experience / user acceptance testing) to ensure that the application procedure is clear and accessible. There should be a clear and concise user guide to accompany the application process.

Questions 4 and 6 – Promoting Awareness of the Scheme

The ICI recommends that the Department publish the details regarding the final Scheme at least 4 weeks in advance of the Scheme being opened for applications, so that details may be disseminated as widely as possible to and by the Citizens Information Service, civil society organisations, legal practitioners and others engaged with and by undocumented migrants. While the Scheme may be designed to be user-friendly and accessible, in reality prospective applicants may wish to seek legal advice prior to applying especially if they have already submitted an immigration application that remains under processing. Having a lead in time, will facilitate prospective applicants accessing advice and in gathering necessary documentary evidence, etc. without being under pressure to meet the application deadline. Details regarding the Scheme should be made published in English, as well as in key languages spoken by non-EEA foreign nationals, which will also facilitate dissemination amongst hard to reach communities.

To ensure the Scheme is truly accessible by undocumented migrants, the ICI recommends that the Department imposes minimal application fees in respect of a principal applicant only and that any application fees are waived in respect of minor applicants as well as other hardship cases, including for example, domestic violence and destitution cases.

As stated previously, through our services, including community outreach and information sessions, the ICI will engage in wide dissemination regarding the details of the Scheme and will endeavour to assist as many service users as possible to apply under the Scheme.

The ICI also has a dedicated Helpline that supports the staff of the national network of Citizen Information Centres, which will be helpful in ensuring undocumented nationals all over Ireland may be able to access information and assistance regarding the Scheme. The ICI will also engage and collaborate with our colleagues in civil society and migrant-led organisations to maximise available resources to support prospective applicants to engage with the Scheme. The Department should recognise the role that civil society plays in supporting migrants, especially those who are undocumented, to understand and engage with immigration services and the role that civil society will play in supporting the roll out of this Scheme. Departmental funding should be provided to assist national and regional NGOs to undertake this vital work.

Recommendations

In summary, the ICI recommends that the Department:

- Introduce a broad and inclusive Scheme that is open to undocumented migrants, including protection applicants and persons who are already engaged in removal and/or section 3, including revocation, applications.
- The Scheme should be open to principal applicant and family members aged up to 24 years old and dependent members of the same household. Undocumented minors without parental care should be eligible to apply and there should be no minimum length of residence required in such cases.
- Adopt a flexible and pragmatic approach should be taken regarding evidential requirements, including requirements to submit in-date passports.

- Publish guidelines regarding 'good character and conduct' requirements and applicants should not be excluded due to minor convictions.
- Refusals should provide reasons in writing with an appeal allowed within 15 working days.
- Grant all applicants Stamp 4 residence permission for a minimum period of 2 years, renewable, with access to long-term residence permission after 5 years. The residence permission letter issued should have a photographic image of the applicant.
- Disseminate information regarding the Scheme in different languages and engage in UX/UAT prior to the online application process going 'live' for applications.
- Adequately resource Immigration Service Delivery to ensure efficient processing of applications and allocate funding to NGOs to support dissemination and applications to be made effectively by undocumented applicants.

ENDS