

# MISUSE OF THE RIGHT TO FAMILY REUNIFICATION

Marriages of convenience and false declarations of parenthood

# Misuse of the Right to Family Reunification: marriages of convenience and false declarations of parenthood

Report to the European Migration Network from the  
Norwegian Contact Point, April 2012

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### **About the European Migration Network and its Norwegian Contact Point**

The *European Migration Network (EMN)* provides the main network for information about international migration and the regulation of migration to Europe and the member countries of the *European Union* plus Norway. The Network is supported and coordinated by the *European Commission*. Norway has been an observer member of EMN since 2010, as the only non-EU country.

The Norwegian contact point to the EMN (NO EMN NCP) consists of the *Ministry of Justice and Public Security*, the *Norwegian Directorate of Immigration* and the *Institute for Social Research*. In addition to providing and spreading comparable information on migration and asylum in Europe, it is the ambition of the Norwegian member-group to bring attention to the link between Norway and the EU in these politically sensitive areas.

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## 1. INTRODUCTION AND EXECUTIVE SUMMARY

This study aims to provide an overview of the Norwegian legislation and regulations pertaining to the misuse of the right to family reunification for citizens of countries that are not members of the *European Union* or *EEA/EFTA*, and the experience with attempted and actual misuse. It represents the Norwegian contribution to the focussed study on this subject prepared by the *European Migration Network (EMN)*. Unless otherwise stated the information refers to the situation in March 2012.

The report has been written by staff members of the *Department of Managed Migration (OPA)* in the *Norwegian Directorate of Immigration (UDI)*. Unless otherwise stated the statistics presented have been prepared by UDI's *Statistics and Analysis Division (ESA)*.

The numbering of the sections refers to the template provided by EMN for the national contributions. In this template there is a systematic distinction between *marriages of convenience* and *false declarations of parenthood*.

### *Marriages of Convenience:*

Directive 2003/86/EC has not been implemented in Norwegian domestic law. However, it has been considered important in the development of the current legal framework in Norway, given the objective to harmonize Norwegian law with EU-law.

In the Norwegian immigration regulations marriage of convenience is recognized as one of the possible means of fraudulently obtaining the right to reside in Norway, and eventually also obtaining Norwegian citizenship. Thus this is one concern when examining an application for a residence permit based on marriage or cohabitation with a person who has the right to live in Norway. Available statistics on rejected applications as well as on subsequent divorces suggest that the issue is a real one, but that it involves only a small number of all couples applying for a residence permit on the basis of marriage.

### *False Declarations of Parenthood:*

In the Norwegian immigration regulations a false declaration of parenthood is recognized as one of the possible means of fraudulently obtaining the right to reside in Norway, and eventually also obtaining Norwegian citizenship. Thus this is one concern when examining an application for a residence permit based on parenthood, and DNA testing is offered when available documentation is judged to be inadequate. Following the introduction of this measure, the issue is believed to be of limited importance numerically.

## 2. NATIONAL LEGISLATIVE FRAMEWORK AND DEFINITIONS

### 2.1 How are the Concepts of ‘Marriage’ and the ‘Family’ Understood

#### *Marriages of Convenience:*

The Immigration Act (2008) and the Immigration Regulations (2009), regulate family immigration to Norway. (For complete texts in English, see <http://www.regjeringen.no/nb/dep/jd/tema/innvandringspolitikk/midtspalte/utlendingsloven-og-forskriften-pa-engels.html?id=625415>.)

The Immigration Act, section 40, regulates family immigration for spouses. The term “spouse” in the Immigration Act also includes same-sex marriages.

The marriage must be (have been) validly contracted in Norway or abroad. A marriage contracted outside Norway shall be recognised in Norway if the marriage has been validly contracted in the country of marriage. However, exceptions are made if one of the parties was a Norwegian national or permanent resident in the realm at the time of marriage, and the marriage was contracted without the presence of both parties at the marriage ceremony, or if one of the parties was under 18 years of age, or if one of the parties was already married.

The Immigration Act section 41 regulates family immigration for cohabitants. On certain conditions, cohabitants are entitled to a residence permit, see section 2.2 below.

The other main categories of family members who are entitled to, or may be given, a residence permit, are: children under the age of 18 (on certain conditions), and parents.

#### *False Declarations of Parenthood:*

If a child is born in Norway, Norwegian law determines who is regarded as the father. According to the Norwegian Children Act section 3, the man to whom the child’s mother is married at the time of the child’s birth shall be regarded as the father of the child. (Pater est.). The mother’s husband is also registered as the father of the child in the National Population Register. Even if UDI receives information indicating that another man is the biological father of the child, we have to consider the husband of the child’s mother to be the father. We cannot change the fact that according to Norwegian law the husband of the child’s mother is the regarded as the father. See section 3.6 for further information.

When paternity is not established pursuant to the provisions of the Children Act section 3, the father may acknowledge paternity during the pregnancy or after the child is born. Acknowledgement is only valid if the mother has accepted it in writing, or when the acknowledgement is given by the person whom the mother has named as the father. Paternity may also be acknowledged by endorsing a paternity writ, c.f. section 4 below. If a child is born outside of Norway, DNA-testing is offered if necessary, especially when no other documentation can confirm the family relation.

Family reunification with children, and for children, is regulated in the Immigration Act, see section 2.2.

## 2.2 National Legislation Regulating Family Reunification

### *Marriages of Convenience:*

Directive 2003/86/EC has not been implemented in Norwegian domestic law. However, it has been considered important in the development of the current legal framework in Norway, given the objective to harmonize Norwegian law with EU-law.

#### (i) The Immigration Act section 40, family immigration for spouses:

- The couple (also same-sex marriages) must be married, both parties must be aged 18 or over, and the spouses must live together in Norway.
- A residence permit may be refused if it appears most likely that the main purpose of contracting the marriage has been to establish a basis for residence in the realm for the applicant (marriage of convenience).
- In instances of polygamous relationships, only one of the marriages may constitute grounds for family reunification in Norway.

#### The immigration Act section 41, family immigration for cohabitants:

- The couple (also a couple of same-sex) must have lived in an established relationship of cohabitation for at least two years, and they must intend to continue their cohabitation.
- It is a condition that the couple has had lawful residence in Norway if parts of the cohabitation took place in Norway.
- An applicant is also entitled to a residence permit if the couple has joint children, or if they are expecting a child together.
- It is a condition that both parties are aged 18 or over and that neither of them is married.

#### General requirements:

- The sponsor must show sufficient capacity to support the applicant, c.f. the Immigration Act section 58 and the Immigration Regulations section 10-8 to 10-10. There is a requirement for future income, and a requirement for previous income, corresponding to salary grade 8 in the pay scale for Norwegian government employees, currently NOK 232 400,- (approximately 30 thousand Euro) per year. It is also a requirement that the sponsor has not received any needs based financial support from the social services for the past 12 months. Exceptions can be made, such as in the case of particularly weighty humanitarian considerations, c.f. the Immigration Regulations section 10-11.
- In family formation cases, the sponsor also has to show that he/she has worked and/or studied full time in Norway for a total of four years, c.f. the Immigration Act section 40 a, and the immigration Regulations section 9-1. This requirement does not apply if the sponsor is a Norwegian citizen.

See section 2.1 for further information regarding “marriage”.

#### (ii) The Immigration Act implements Directive 2004/38/EC in Norwegian law.

The provisions and conditions are found in chapter 13 of the Immigration Act, and in chapter 19 of the Immigration Regulations. According to the Immigration Act section 110, family members of an EFTA national are subject to the provisions of the Immigration act as long as they accompany or are reunited with an EFTA national.

The sponsor must document that he/she has grounds for residence in Norway pursuant to the Immigration Act chapter 13.

Family members of a Norwegian national are subject to the provisions of chapter 13 if they accompany or are reunited with a Norwegian national who returns to the realm after having exercised the right to free movement pursuant to the EEA Agreement or the EFTA Convention in another EEA/EFTA country.

Family members include family immigration for spouses, cohabitants, children, grandchildren, parents and more distant family members.

Rights of residence of family members are regulated in section 114.

Further guidelines are given in UDI's circular 2010-025.

Spouses, c.f. the Immigration Act section 110 third paragraph letter a, cf. section 114:

- The term "spouse" also includes same-sex marriages.
- The immigration authorities shall consider whether the marriage is a marriage of convenience. A marriage is considered to be a marriage of convenience if "*the main purpose of the marriage was to obtain legal residence in the realm*", c.f. the Immigration Act section 120 sixth paragraph. The elements mentioned in section 2.3 will be relevant in this consideration.
- According to EU law, it is a requirement that the residence permit was the *sole purpose* of entering into the marriage. There might be a small distinction between the terms "sole purpose" in EU law and "main purpose" in Norwegian law. However, until now, when we have rejected applications, it has been established beyond any reasonable doubt that a marriage is one of convenience; and whether the residence permit was the *main* or the *sole purpose* has not yet been found to be decisive in that assessment. See section 2.1 for further information regarding "marriage".

Cohabitants, c.f. the Immigration section 110 third paragraph letter b, c.f. section 114:

- The Immigration Regulations section 19-6 refers to the Immigration Act and the Regulations on the conditions for being granted residence permits as a cohabitant pursuant to the general regulations.
- Pursuant to the Immigration Regulations section 9-2 first paragraph, it is a condition that applicant has lawful residence in Norway if the cohabitation partly took place in Norway. *This condition is not deemed to apply to a cohabitant of an EFTA national with whom the applicant wished to take up residence in Norway, c.f. the Metock judgement.*
- There is no requirement for two years' cohabitation if the couple has joint children or if the couple is expecting a child together, see UDI's circular 2010-025. This is in compliance with the general provisions, c.f. the Immigration Act section 41 second and third paragraph.

General requirements:

- For a family member who is reunited with an EFT national who has right of residence on grounds of sufficient funds or who is a student, it is a requirement that the family is guaranteed subsistence. This means that the persons shall not be an unreasonable burden on society. Unreasonable burden does not include ordinary use of public welfare services, but an unusual, systematic and frequent use of arrangements such as social security benefits.

(iii) We have not seen applications of a non-mobile EU citizen reunifying with a third-country national on the basis of jurisprudence and reference to the EU Treaty.

(iv) We have not seen applications of a non-mobile EU citizen reunifying with a third-country national.

*False Declarations of Parenthood:*

(i) Family reunification involving parents/children, sponsor is a third-country national:

- A parent of a child living in Norway is entitled to a residence permit when this is necessary in order to continue to have access to the child in the Norway. It is a condition that the applicant has been resident in the realm with a permit for the past year, the child satisfies the conditions pursuant to section 40 first paragraph, and is resident in the realm together with the other parent with whom the child lives permanently, and the applicant has right to access of a certain extent and avails himself or herself thereof, c.f. the Immigration Act section 52.
- Parents of a child under the age of 18 who is resident pursuant to sections 28 (asylum) or 34 (collective protection) are entitled to a residence permit, c.f. the Immigration Act section 43.
- As mentioned above, cohabitants with joint children, and cohabitants who are expecting a child together, are entitled to a residence permit, c.f. the Immigration Act section 41
- Unmarried children (and adopted children) under the age of 18 are entitled to a residence permit when both, or one of the parents holds a valid residence permit in Norway. If only one of the parents holds a valid residence permit, it is a condition that the parent living in Norway has part in the parental responsibility. If the parental responsibility is shared, the other parent must, as a main rule, give his or her consent c.f. the Immigration Act section 42.
- On certain conditions, foster children and children above the age of 18, may be given a residence permit in Norway, c.f. the Immigration Act section 49 c.f. the Immigration Regulations section 9-7.
- We also find it necessary to mention that an applicant who is the mother or father of a Norwegian child under the age of 18 is entitled to a residence permit if: the applicant has parental responsibility for the child, and lives permanently with the child in Norway, c.f. the Immigration Act section 44. Further, an applicant who is the mother or father of a Norwegian child under the age of 18 who lives permanently with the other parent in Norway shall be entitled to a residence permit if the applicant has lived with the child or has exercised right of access of a certain extent in the last year outside Norway, has right of access of a certain extent in the realm, and renders it probable that right of access will be exercised, c.f. the Immigration Act section 45.

**General requirements:**

- There is an exemption from the general requirement of financial support if the sponsor is a child below the age of 18, or if the applicant is a child below the age of 15 without care persons in the country of origin, c.f. the Immigration Regulations section 10-8 fourth paragraph letters d and e.

ii) Family reunification involving parents/children, sponsor is an EU/EFTA national:

Family members are defined in section 110 third paragraph letter a to d of the Immigration Act, and includes family immigration between third-country national children, and an EU/EFTA national parent:

- A relative in direct line of descent from an EU/EFTA national or from a foreign national mentioned in section a or b, who is under the age of 21 or who is dependent upon the EEA national. *Please note that this provision also includes grandchildren.*
- If only one parent will be residing in Norway, the parent in Norway must either submit documentation of consent and a certified copy of a valid ID with a photo from the other parent, or a court order showing that the parent in Norway has sole parental responsibility. This follows from circular 2010-025.
- A relative in direct line of ascent from an EU/EFTA national or of a foreign national mentioned in section 110 a or b who is dependent upon the EU/EFTA national.

Further reference is made to the general conditions.

iii) We have not seen applications of a non-mobile EU citizen reunifying with a third-country national on the basis of jurisprudence and reference to the EU Treaty.

(iv) We have not seen applications of a non-mobile EU citizen reunifying with a third-country national.

## 2.3 Prevention of Misuse as Defined by National Legislation Regulating Family Reunification

### *Marriages of Convenience:*

A definition of marriages of convenience is included in the Immigration Act section 40, paragraph four: *“A residence permit may be refused if it appears most likely that the main purpose of contracting the marriage has been to establish a basis for residence in the realm for the applicant.”*

This rule must be read in connection with the Immigration Act section 40 paragraph three, which requires that the spouses shall live together in Norway. Furthermore it must be read in connection with section 40 paragraph six, third sentence, which states that a residence permit may be denied if it is most likely that the reference person intends to continue the relationship with a former spouse regardless of having married the applicant.

Further regulations are given by instructions from the Ministry of Justice, (GI 2010-001). The list is based on jurisprudence, the preparatory work to the Immigration Act, and on administrative practice:

The main elements to consider are:

- Contact between the spouses, *e.g.* for how long they have known each other, including the character and intensity of the contact
- The respective parties' knowledge of the other spouse

- Whether the information given by the parties with relation to how they met, how they got married and their subsequent contact is congruent
- Whether the spouses may communicate in a common language
- Age difference between the parties
- Whether payment has been provided for the marriage, and whether such payment follows local traditions
- Whether the marriage is clearly atypical compared to marital traditions in the parties' country(ies) of origin
- Whether circumstances indicate that the marriage is based on coercion or exploitation, e.g. where the parties are unequal in their mental development
- Whether the reference person or close family members of the applicant have a marital history which gives rise to suspicions regarding marriages of convenience
- Whether the applicant has applied for a residence permit on other grounds before marrying the reference person, and whether the marriage has been concluded in close proximity to a rejected application for residence permit for the applicant.
- Whether the parties' have a former spouse or partner who is going to live with them

These elements are not listed in any order of priority, and the list is non-exhaustive.

No changes in this legislation are considered at the moment. It might be necessary to take into further consideration whether the Immigration Act in fact opens for DNA testing of spouses without joint children, when we suspect them of actually being siblings.

#### *False Declarations of Parenthood:*

Where it is necessary to establish whether a family relationship exists, the applicant and the sponsor may be requested to undergo DNA testing. This shall only apply if the other information in the case fails to provide a basis for establishing the family relationship with reasonable certainty. If the applicant or the sponsor refuses the request for DNA testing without reasonable grounds, the individual concerned shall be made aware that this may be of significance for assessment of the case. This follows from the Immigration Act section 87.

No changes are considered at the moment.

## **2.4 Impacts of European Court of Justice Case Law**

The case law represented by ECJ decisions has not had any impact on Norwegian legislation or practices, which were already consistent with these decisions

## **3. THE SITUATION IN NORWAY**

### **3.1 An Overview of the Misuse of the Right to Family Reunification**

#### *Marriages of Convenience:*

Marriage of convenience is considered to represent a misuse the right to obtain a residence permit in Norway. An application will be rejected if we are able to establish that a marriage is a marriage of convenience. Further, a granted residence permit and Norwegian citizenship may be revoked in cases where we are able to establish that they were granted on the basis of a marriage of convenience. The foreign national may also be expelled from Norway.

In the years 2006-2011 we have rejected annually between 150 and 200 first time applications because they represented a marriage of convenience. In addition to this, we have revoked a number of permanent and temporary residence permits and/or Norwegian citizenships on this basis (number unknown).

One example is our findings in certain applications from persons from Turkey. We discovered a long term strategy for immigration to Norway by the means of a *pro forma* marriage, that mostly involved Turkish men with Kurdish origin, from the Konya area, who married an older Norwegian woman, often shortly after a rejected application for asylum. A filing for a divorce from the Norwegian woman will then come following the granting of a permanent residence permit or a Norwegian citizenship, and the entry into an official marriage with a Turkish wife, with whom he in Turkey has been regarded as being married while gaining his residence permits in Norway. Very often the Turkish man and his Turkish wife has children together, born before he married the Norwegian woman, and in some cases the children are born during his marriage to the Norwegian citizen. We have seen too many similar cases to consider this to be a coincidence.

Quite often, these marriages appear to be what is considered as a “one-way marriage of convenience”, meaning that the sponsor believes that the relationship with this younger man is genuine, while the applicant uses the marriage as an opportunity to obtain a residence permit in Norway.

In 2010 we commissioned a study of marriages of convenience.<sup>1</sup> The study compared practises regarding marriages of convenience in different countries. The study also considered the volume of such cases in Norway. The opinion expressed in the study was that the number of undiscovered cases in Norway is relatively low.

#### *False Declarations of Parenthood:*

False declaration of parenthood is in Norway regarded as a misuse of a granted residence permit.

For children born abroad, we request that the applicant and the sponsor undergo a DNA test in cases where the child was born in a country that lack credible documents. When we started to offer/request such tests around year 2000 in connection with applications from Somalia, we found false information about parenthood in about 50 percent of the applications. In the most recent years we have had false information in only 2-3 percent of the applications from Somalia. We have a slightly higher percent of false declaration of parenthood from countries with fewer applications.

## **3.2 Other Forms of Misuse Detected**

### **Adoptions:**

”Adoptions of convenience”- Adoptions that are made shortly before the adopting parents emigrated to Norway. Such adoptions are valid in Norway if the adoption was legally conducted in the country where the adoption took place.

### **Foster children**

A child under the age of 18 may be granted a residence permit when it is substantiated that the child is an established member of the household and that the persons exercising parental

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<sup>1</sup> See: [http://www.udi.no/Global/upload/Publikasjoner/FOU/R-2010-053\\_SAA\\_Marriages\\_of\\_convenience.pdf](http://www.udi.no/Global/upload/Publikasjoner/FOU/R-2010-053_SAA_Marriages_of_convenience.pdf)

responsibility for the child are doing so lawfully in accordance with the legislation of the country of origin. Where the child's biological parents are alive, documentary evidence must be submitted confirming that parental responsibility has been transferred, cf. the Immigration Act section 49 c.f. the Immigration Regulation section 9-7 paragraph d.

It is often difficult or impossible to decide whether a child is an "established member of the household". It is possible that in some cases, stating that a child is an established member of household might be an attempt of misuse. If the parental responsibility has not been transferred, the application will be rejected.

#### *Marriages of Convenience:*

We have offered DNA testing in some cases where we suspect the applicant and the sponsor of actually being siblings, rather than spouses. DNA testing has been used when the spouses do not have any joint children. We have successfully detected that several couples in fact are siblings, as suspected. Until now, this has only been done in family immigration cases from Somalia, but we are considering extending this practise to include applications from certain other African countries as well.

*False Declarations of Parenthood:* Nothing to report.

### **3.3 and 3.4 Means of Prevention and Detection of Misuse**

#### *Marriages of Convenience:*

In some categories of cases migration interviews are often conducted. Interviews are mandatory if the sponsor is below the age of 25, and the applicant is a foreign national who requires a visa to enter Norway. Interviews are conducted to assess if the main purpose of contracting the marriage has been to establish a basis for residence in the realm, and to assess if the marriage was entered into as a result of coercion.

Interviews are conducted more often when the applicant is from a country considered to be one with great migration potential, e.g. from Somalia and Turkey.

House calls at the sponsor's/spouses' residence are sometimes carried out prior to interviews, in order to control whether the spouses are actually living together. House calls are usually made when the applicant is applying for a renewal of a residence permit, or when applying for a permanent residence permit. When applying for a renewal, we also require a signed declaration of the relationship. The spouses may be prosecuted if giving incorrect information.

If found necessary, interviews are also conducted when applying for a renewal of a residence permit, or when applying for a permanent residence permit, in order to determine whether the marriage is genuine, and to determine whether the couple are actually living together.

In some cases, information that is given in the application process may also be subject to verification. This often includes both verification of documents, and verification of information. In some cases, verification is made in the applicant's home country, in order to verify whether the applicant is still married (often a religious marriage) in his/her home country. We have experienced that in some cases, the applicant is still married with his/her spouse from a previous marriage. The marriage with the person living in Norway is just a marriage of convenience, in order to obtain a residence permit. See section 3.1.

DNA-testing is used in some cases, if we suspect the ‘spouses’ of being siblings.

We rarely, or never, experience that the persons involved admits the misuse.

*False Declarations of Parenthood:*

DNA-testing is used to determine family relations, especially when no other documentation can confirm the family relation.

If found to be necessary interviews are also conducted in these cases.

We rarely, or never, experience that the persons involved admits the misuse.

### **3.5 Evidence Needed to Prove Misuse**

*Marriages of Convenience:*

In Norway, the burden of proof as to whether a marriage is one of convenience rests on the immigration authorities, which must establish this to be the case beyond a balance of probabilities.

In cases where it is just as likely that the marriage is of convenience as that it is legitimate; it follows from a Norwegian Supreme Court judgement from 2006 that the applicant must be granted the benefit of the doubt.

If many of the elements mentioned in section 2.3 above are evident in a case, the application is as a main rule rejected. However, this must be based on an overall consideration of all facts relevant for the application. Other elements might also be relevant in the consideration.

It is often considered to be easier to identify marriages of convenience after a residence permit has been granted and the applicant has been established in Norway. If it is discovered that the couple no longer live together, which is sometimes the case with marriages of convenience, the residence permit may be revoked on this basis, without having to consider whether the marriage actually is one of convenience.

*False Declarations of Parenthood:*

If a DNA test shows that the applicant and sponsor are not related as parent/child, the application will, as a main rule, be rejected.

### **3.6 The responsibility for Detecting Misuse**

*Marriages of Convenience:*

It is UDI's final responsibility to detect misuse and reject applications, but other authorities are also involved in the process.

In most of the first time applications, the applicant presents his or her application at the Norwegian embassy in his/her home country. The embassy prepares the case and conducts interviews with the applicant if this is considered necessary, before sending the case to UDI. When the application is received in UDI, the case is reviewed and, if necessary, the local police are asked to conduct an interview with the sponsor. UDI can ask both the police and the embassies for further information before making a final decision.

In cases of an application for a renewal of a residence permit, the applicant will in the majority of cases reside in Norway, and the application is received by the local police. The police have positive power of decision, which means that if the case meets the requirements, the police can approve it without sending it to UDI. If the police are in doubt about whether the requirements for a renewal are met, the case will be sent to UDI for consideration. If found necessary, UDI will request the police to make a house call, or to conduct separate interviews of the applicant and the sponsor. By doing this, we try to establish whether the couple is really living together as a couple.

There is no official mandate or action plan in place for detecting misuse of the right to family reunification.

#### *False Declarations of Parenthood:*

Reference is made to our answer above, but house calls are rarely, or never, considered to be necessary.

If a child is born abroad, the Norwegian Population Register may request the alleged father and child to undergo DNA testing. This may be done in cases where a child is born abroad, and the alleged father is a Norwegian citizen, and the Norwegian Population Register finds reasons to doubt whether the stated family relation is correct.

According to the Norwegian Nationality Act, a child who is born of a Norwegian mother or father acquires Norwegian citizenship by birth. This applies no matter whether the child is born in Norway or abroad, and no matter whether the parents were married or not.

If a DNA test shows that the alleged father is not the child's biological father, the child is not considered to be a Norwegian citizen.

As mentioned in section 2.1, it follows from the Norwegian Children Act section 3 that the man to whom the child's mother is married at the time of the child's birth shall be regarded as the father of the child. (*Pater est*). However, this only applies if the child is born in Norway.

### **3.7 Sanctions when Misuse has been Established**

#### *Marriages of Convenience:*

Once it has been determined that the main objective of entering into the marriage was to obtain a residence permit in Norway, the application will be rejected. A residence permit that has already been granted will be revoked if it is discovered that the marriage is one of convenience.

A foreign national can be expelled from Norway and registered in the Schengen Information System (SIS), if he/she violates the Immigration Act by entering into a marriage with the main purpose of obtaining a residence permit in Norway, c.f. the Immigration Act section 66 and the SIS Act section 7.

Prohibition on entry may be permanent or temporary, but as a main rule, the prohibition on entry is permanent. A foreign national will be expelled even when he/she has never been in Norway.

EU/EFTA nationals and their family members with a right of residence will not be expelled from Norway, unless this is in the interests of public order or security, c.f. the Immigration Act section 122. Please note that a third country national is not considered to be a family member if the application is rejected as a result of a marriage of convenience. This means that the third country national will be expelled.

Both the sponsor and the applicant may face criminal prosecution, although this is not the general practice.

#### *False Declarations of Parenthood:*

A foreign national may be expelled from Norway and registered in the Schengen Information System if she/he violates the Immigration Act by giving incorrect information regarding a family relation. However, we have little/or no information indicating that anyone has been expelled from Norway because of such violation of the Immigration Act.

EU/EFTA citizens and their family members with a right of residence will not be expelled from Norway, unless this is in the interests of public order or security, c.f. the Immigration Act section 122.

### **3.8 Right to Appeal**

There is a right to appeal a UDI decision to the *Immigration Appeals Board (UNE)*, and the persons affected may also bring their case to court.

### **3.9 Trans-national Cooperation**

General information about regulations and practices is shared in international forums such as GDISC and EMN. There may also be some trans-national cooperation between different Foreign Service Missions in the same location.

### **3.10 Motivations**

#### *Marriages of Convenience:*

There is one published Norwegian study of the sponsor's motivation for entering into a marriage of convenience: Pål Vegard Hagesæther: *Uekteskap: en studie av proformaekteskap i Norge (Non-marriage: a study of marriage of convenience in Norway)* Unipub, Oslo, 2008. In this study the author distinguishes between three main types of motivations: (i) idealism (idealists), where a political position is dominant; (ii) opportunism (opportunists), where money or other gain is dominant; and (iii) a wish to assist (helpers). As examples of (i) both opposition to the current Norwegian rules and regulations and opposition to the political and human rights situation in the third country is mentioned.

The latter may also be considered as a type (iii) motivation. He underlines that for any single sponsor there may be a combination of these motives.

Not discussed in this book, but mentioned by the Committee which presented the draft for the revised *Immigration Act of 15 May 2008* (see NOU 2004:20, p. 245, first column), is that pressure from the sponsor's family and others which may result in a "forced marriage", which may also be considered as a form of marriage of convenience.

#### *False Declarations of Parenthood:*

We have not found any studies or discussions addressing the issue of a sponsor's motivation for a false declaration of parenthood.

## **4. AVAILABLE STATISTICS: DATA SOURCES AND TRENDS**

### *Marriages of Convenience:*

The statistics available indicate that the pattern of intensity presented on pp. 12 – 19 in a comparative study on marriages of conveniences published in 2010 was still valid in 2011.<sup>2</sup>

In the period 2007 – 2010 the number of applications for a residence permit based on marriage which were rejected on the basis of suspicion that the marriage was of convenience and not real, was between 150 (in 2007) and 200 (in 2008). This represented 5 percent of all rejections in 2007 and slightly less in 2008. (Source: UDI)

Please note that these numbers are likely to represent an underestimation of the number of (attempted) marriages of convenience, as most rejections are based on a failure to meet the subsistence requirements. In these cases a suspicion of marriage of convenience will not be registered. The increase in the level of this requirement in 2011 may be a main reason for fewer rejections on the basis of (suspected) marriage of convenience that year than in the previous years.

The report referred to above also states that the subsequent divorce patterns for couples who received a permit based on marriage during the period 2002 – 2004 suggests that each year 110 of these marriages may have represented a marriage of convenience. This was less than 1 percent of all relevant residence permits granted during those years. However, the real number could be both higher and lower. (Source for the divorce statistics: Statistics Norway)

The UDI statistics cited above shows that the main countries with suspected marriages of convenience are Turkey, Morocco, Vietnam and Somalia. For the former two countries a clear majority of rejected applicants were men. For the latter two they were women.

We have no relevant statistics on whether marriages of convenience are entered into in Norway or abroad.

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<sup>2</sup> The study was commissioned by the Norwegian Directorate of Immigration:  
[http://www.udi.no/Global/upload/Publikasjoner/FOU/R-2010-053\\_SAA\\_Marriages\\_of\\_convenience.pdf](http://www.udi.no/Global/upload/Publikasjoner/FOU/R-2010-053_SAA_Marriages_of_convenience.pdf).

*False Declarations of Parenthood:*

Norway has no statistics related to (suspicion of) false declarations of parenthood. Experts say that they have seen only a small number of such cases. See section 3.1.

## **5. SUMMARY AND CONCLUSIONS**

*Marriages of Convenience:*

Directive 2003/86/EC has not been implemented in Norwegian domestic law. However, it has been considered important in the development of the current legal framework in Norway, given the objective to harmonize Norwegian law with EU-law.

In the Norwegian immigration regulations marriage of convenience is recognized as one of the possible means of fraudulently obtaining the right to reside in Norway, and eventually also obtaining Norwegian citizenship. Thus this is one concern when examining an application for a residence permit based on marriage or cohabitation with a person who has the right to live in Norway. Available statistics on rejected applications as well as on subsequent divorces suggest that the issue is a real one, but that it involves only a small number of all couples applying for a residence permit on the basis of marriage.

*False Declarations of Parenthood:*

In the Norwegian immigration regulations a false declaration of parenthood is recognized as one of the possible means of fraudulently obtaining the right to reside in Norway, and eventually also obtaining Norwegian citizenship. Thus this is one concern when examining an application for a residence permit based on parenthood, and DNA testing is offered when available documentation is judged to be inadequate. Following the introduction of this measure, the issue is believed to be of limited importance numerically.

