



EUROPEAN COMMISSION
Directorate General Migration and Home Affairs
Directorate C Migration, Protection and Visa
Unit C2 – Legal Pathways and integration
Head of Unit

Brussels,
HOME.C.2/LC

M. M. Soha
19 Garden Street
West Yorkshire
Wakefield
UK

E-mail : ask+request-7267-3eb0ae5d@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2019/5175

Dear Mr. Soha,

We refer to your e-mail dated 23/09/2019 in which you make a request for access to documents, registered on 23/09/2019 under the above mentioned reference number.

You request “any policy documents and/ or guidelines provided to member states on national security issues especially handling Third Country National- TCNs residence permits in Schengen zone”.

Upon our request for clarification dated 19/09/2019, you indicated by mail dated 23/09/2019 that you are looking for “any Guidance/ Policy issued to Schengen Zone member states. For example, DIRECTIVE 2003/109/EC, and in many other Directives, three notions are stated very commonly for refusal reasons. 1. National Security, 2. Public Health and Public Policy.

I am looking for any Guidance/ Policy related documents issued to member states to handle these three notions either to get Temporary or Long Term residence permit”

In the context of your request for access to documents 2019/5175, we identified the following documents as relevant for your request:

- Family reunification Directive 2003/86/EC (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1570007174993&uri=CELEX:32003L0086>)
- Long-term residents Directive 2003/109 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1570010554947&uri=CELEX:32003L0109>)
- Commission Communication COM(2014)210 on guidance for the application of the family reunification Directive 2003/86, in annex

- Fitness Check on EU Legislation on legal migration, SWD(2019)1056), in annex.
- COM(2001)743 - Commission Working Document - The relationship between safeguarding internal security and complying with international protection obligations and instruments

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As you ask specific questions, we give you some information about the requested documents as follows:

In fact all legal migration Directives stipulate that third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted. The family reunification Directive 2003/86/EC includes a further specification as to the type of crime and the level of danger emanating from the person. The long-term residents Directive 2003/109 specifies further when public health can be used as a ground for rejection. These provisions leave a significant level of discretion to Member States.

There is currently only one guidance or policy document focusing on the application of the public order clauses contained in the EUs legal migration Directives, namely the Commission Communication COM(2014)210 on guidance for the application of the family reunification Directive 2003/86, which sets out (on page 10 and 11 of document <https://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-210-EN-F1-1.Pdf>):

Article 6(1) and (2) allow MSs to reject an application, or withdraw or refuse to renew a family member's residence permit, on grounds of public policy, public security or public health. Recital 14 gives some indications of what these notions entail. A person who wishes to be granted family reunification should not constitute a threat to public policy and public security. Public policy may cover a conviction for committing a serious crime. Public policy and security cover cases in which a third-country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations. Besides the above, the definition of these notions is largely left to the discretion of the MSs, subject to relevant case law of the European Court for Human Rights and the CJEU. Although the relevant case law of the CJEU is not related directly with regard to third-country nationals, it may *mutatis mutandis* serve as background when defining the notions in question by analogy. MSs should apply the principle of proportionality when assessing a particular application. Article 6(2) second subparagraph states that MSs, when taking a decision, are obliged to consider the particular circumstances of the individual case (Article 17) and the severity or type of offence against public policy or public security, or the dangers emanating from the applicant. Recital 14 also states that family reunification may only be refused on duly justified grounds.

In case C-544/15, the European Court of Justice expressly clarified that its public order case-law developed in the context of the free movement Directive 2004/38/EC cannot be directly applied when it comes to admission of third country national students. The interpretation of the public order clause in the family reunification Directive 2003/86/EC is also subject of a currently pending case at the European Court of Justice (Case C-381/18) In his opinion of July 2019 in this case, the Advocate General gives an exhaustive overview of already existing case-law in related fields. The text of the opinion

can be found at:
<http://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=:ALL&language=en&num=C-381/18&jur=C>

In its March 2019 “Fitness Check on EU Legislation on legal migration “ (SWD(2019)1056) the Commission also considered the use of public order clauses and reported (on page 89 of document: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/swd_2019-1055-staff-working-part2.pdf): In the context of security incidents or threats involving third-country nationals, the Commission has been asked in the past – and will probably also asked in the future -to propose horizontal legislation making the expulsion of criminals, suspected terrorists or hatred preachers mandatory. The Commissions constant line, valid until today, has been to reject this request with the argument that a scrupulous application of existing public order clauses in migration directives is a more appropriate way of enhancing security in a proportionate manner, than to substantially change the different directives or to adopt horizontal rules. Moreover, expelling a suspected third-country national terrorist may not always be in the interest of a Member State, as it may sometimes be preferable to bring criminal charges against such person or to keep him/her under surveillance in a Member State rather than to expel to a third country. No further initiatives seem to be required in this field.

Best regards,

Laura CORRADO
(*E-signed*)

Annexes :

Commission Communication COM(2014)210 on guidance for the application of the family reunification Directive 2003/86, in annex

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COM(2001)743 - Commission Working Document - The relationship between safeguarding internal security and complying with international protection obligations and instruments