

OVERCOMING BARRIERS TO EQUALITY FOR THE CHILDREN OF NON-EU MIGRANTS



SUMMARY

The Irish immigration system has yet to establish fair, consistent and clear procedures to deal with thousands of children of non-EU migrants born outside of Ireland who have since settled with their families here. The *ad hoc* nature of the current system presents significant barriers to these children even if they have lived in Ireland for many years and their parents have become Irish citizens or permanent Irish residents. Many children of non-EU migrants are denied reduced fees and financial assistance in attending third level education. Most are barred from entering the labour market without an employment permit. Many are being forced to leave Ireland when they reach 18 or face becoming undocumented. This situation is having a detrimental impact on the lives and well-being of migrant children and on families and communities. The inequality of the system undermines Ireland's commitment to integration and the rights of children and families. Urgent government action is required to remove these unnecessary barriers and to provide a system that is fair and just.

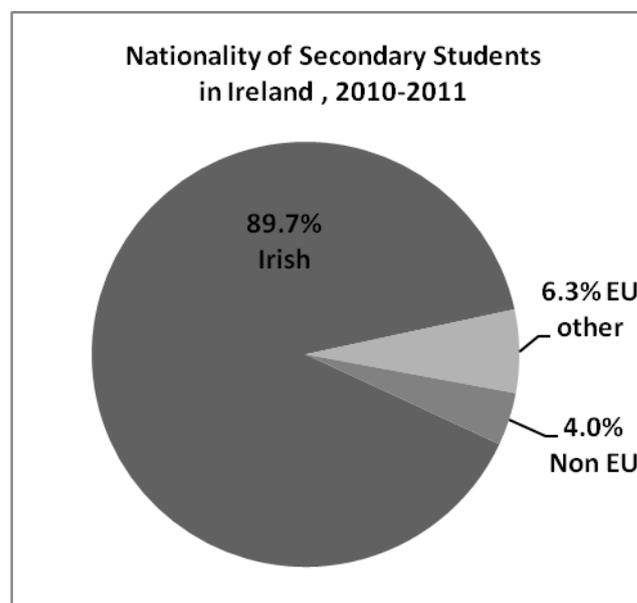
YOUNG MIGRANTS, THE NEXT GENERATION

Ireland has experienced a sustained period of inwards migration over the past decade which has resulted in an increasingly diverse and multi-ethnic population. 12.6% of the population in the 2006 Census identified as foreign born. Since then and as a result of the economic crisis fewer people are migrating to Ireland. However, thousands of migrant families have settled in Ireland over the past decade some making Ireland their permanent home.

Young people make up a growing number of this diverse population. Between 2006 and 2009 approximately 93,000 PPS numbers were allocated to non-Irish children between the ages of 0-14.¹ Of these

20,450 (22%) were granted to nationalities from outside the EU. PPS allocations also indicate that between 2006 and 2009 whilst the total number of PPS numbers allocated to all foreign nationals has dropped almost 64% (226,863 to 79,543), allocations to children aged 0-14 has dropped by only 28% (22,863 to 16,271). Therefore the number of PPS numbers allocated to children (0-14) as a proportion of all PPS numbers granted doubled from 10.1% in 2006 to 20.5% in 2009.

Department of Education statistics for 2010-2011 estimate 357,461 students registered in Irish secondary schools.² 22,681 (6.3%) of the total number of students are non-Irish from the EU and 14,340 (4.0%) are non-Irish from outside the EU (see figure below).



¹ Foreign Nationals: PPSN allocations, Employment and Social Welfare Activity, 2009. (CSO, may 2011)

² Department of Education data as of February 2011.

IMMIGRATION POLICY & NON-EU CHILDREN

In the absence of clear and appropriate immigration guidelines for children, a patch-work of existing temporary immigration visas is administered often in an inconsistent and confusing fashion. Children of non-EU migrant workers who join their parent/s living in Ireland are not required to register with the Garda National Immigration Bureau until they reach the age of 16 even if they have been in Ireland for many years. At that time children are given the immigration status of an international student (Stamp 2A) which is technically meant for those coming to Ireland to undertake secondary education (*see figure below*). Some may also be given the status of an international student (*Stamp 2*) reserved for those in third-level education. These immigration stamps do not appropriately reflect the situation of the children who have settled in Ireland with their parents who are living and working here.

An international student stamp 2/2A cannot be renewed if a person no longer remains in formal education. Therefore, there is no guarantee that children of non-EU migrants will have the right to continue to reside in Ireland after they finish secondary school. At that point they usually must either enter third-level education or obtain an employment permit to remain in Ireland.

Immigration Status and non-EU children

Stamp	Qualifying criteria	Key elements
Stamp 2/2a (student)	To be enrolled in a course recognized by the DES and of a minimum duration of 12 months. Stamp 2A is granted to those enrolled in a course of shorter duration.	Allowed to work 20h/week without an employment permit and 40h/week during holidays. No access to public funds or social welfare entitlements. Those on Stamp 2A are not permitted to work. Both stamps do not count towards citizenship or long term residency
Stamp 3 (dependent)	To be the spouse or child of a employment permit holder or long-term resident in the State	Can only enter employment after obtaining a Dependant work permit. Limited access to public funds. This stamp counts towards naturalization but not towards long-term residency.
Stamp 4 (long term residency)	Permission granted for 5 years after having 60 months residence under Stamp 1 or Stamp 4 conditions.	Full access to the labor market. Access to public funds. Counts towards citizenship.
Citizenship (naturalization)	Granted after 60 months in the State under Stamp 1, Stamp 3 or Stamp 4.	Full access to the labor market. Access to public funds.

Some children may also be given the status of a dependant (*Stamp 3*) which is more common in situations where children are not in education. Stamp 3 holders cannot work without an employment permit and have limited access to public funds. There is also no guarantee that when they reach 18 years of age that their Stamp 3 will be renewed. Some are told they must enroll in third-level education or else they will have to leave Ireland. Even if they obtain an employment permit, their continued legal status is not independent of their parent/s.

Citizenship or Residency of Parents

Although it has not been easy, thousands of non-EU migrant workers have managed to acquire Irish citizenship or permanent residency, no longer needing an employment permit to live and work in Ireland. The citizenship or permanent residency granted to a parent is not, however, automatically passed on to their minor children. Children must fulfill certain criteria before they are entitled to obtain citizenship or residency.

Children whose parents are granted citizenship must have at least three years 'reckonable'³ residency in Ireland prior to reaching the age of 18 before they qualify for citizenship. Otherwise, they can apply for citizenship on their own according to existing criteria after five-years of reckonable residence. They are not, however, entitled to apply for citizenship at the same time as their parent/s even if they qualify.

To obtain permanent residency status (Stamp 4), children must qualify on their own merit according to existing criteria of completing "a minimum of five years legal residence in the State on work permit conditions."⁴ Some children may be given a permanent residency status if their parents have become citizens, but this is not clear and not always the practice.

³ Time spent lawfully resident in Ireland not including time spend as n asylum seeker or student.

⁴ http://www.inis.gov.ie/en/INIS/Pages/Long_Term_Residency

BARRIERS

The way in which the current immigration system operates leads to a tremendous amount of confusion and creates significant problems for non-EU migrants and their families. Many of these problems begin when children reach 18 years of age. Without a number of clear and accessible avenues for non-EU children to independently qualify and benefit from citizenship or permanent residency thousands of children have an uncertain and less favourable status and future. The most significant problems are created in access to third level education, access to the labour market and access to a secure legal status in Ireland. This puts children and families at a greater disadvantage and under unnecessary and unjustified stress.

Barriers to third level

Third-level tuition fees vary greatly depending on institution, course of study and most critically on the status of the student. In respect to the latter there are two fee categories, EU and non-EU (foreign student). EU student tuition fees are considerably less than non-EU fees. The difference can be tens of thousands of euros over the period of a course of study. Third level institutions ordinarily apply a 'residency test' to determine if the applicant qualifies for EU fees. Qualification for EU fees generally means a prospective student must have had his or her principle residence within the EU for three of the last five years prior to application. If the applicant is under 23 years old, the parents' principle residence is often taken into consideration.

Although each of the institutions applies a 'residency test' in its decision making there is no universal agreement on the content of the test, no standard code of practice and no national policy outlining the conditions to qualify for EU fees. It basically is left to the discretion of each institution. This leaves the children of non-EU migrants living in Ireland in a highly uncertain position. Many are unable to attend third level if they are required to pay non-EU fees.

There are also two main categories of financial assistance offered to students attending third level institutions, the Free Fees Initiative and Student Grants. Under the terms of the Free Fees Initiative, the Department of Education and Skills covers the university fees for a student's third level course if they; a) are a first-time undergraduate, b) hold EU Nationality or Official Refugee Status and c) have been ordinarily resident in an EU Member State for at least three of the

five years preceding their entry to an approved course.⁵ Most children of non-EU migrants would not qualify for this initiative unless they have obtained Irish citizenship.

Access to Student Grants⁶ provided by the local authorities are also dependent on the nationality and immigration status of the student. Persons that are not EU, EEA or Swiss nationals, refugees, persons on humanitarian leave, or family members of EU citizens are not permitted to access grants as specified in Section 14 of the Student Support Act 2011.

In short, if the children of non-migrants have not obtained citizenship prior to entering a third-level institution they do not qualify to receive financial assistance from the state. They may, however, have the possibility of qualifying for EU tuition fees, but this is based on the discretion of an institution. Even in situations where parents are permanent residents and have lived, worked and continue to pay taxes in Ireland and their children have attended Irish primary and secondary schools, they are excluded from the Free Fees and Student Grants Schemes. This makes third level education a very expensive prospect for young students and their families. This prohibits many from attending third-level.

Barriers in accessing third level - Case Study

Vitaliy came to Ireland in 2001 from the Ukraine when he was ten to join his mother who was working under a work permit for a company in Finglas. Vitaliy did well in school and was offered a place in Financial and Actuarial Math's at Dublin City University when he completed his leaving cert. Vitaliy's course fees are €6,000 a year. Even though his mother has lived, worked and paid taxes in Ireland for 10 years and he has attended Irish schools, they do not qualify for financial assistance from Student Grants. His mother is struggling to pay the fees and meet daily living expenses and he has found part-time to pay his fees while studying. She will struggle to cover the cost of Vitaliy's younger brother entering university next year.

⁵ <http://www.education.ie/home/home.jsp?maincat=&pcategory=10900&ecategory=19277§ionpage=12251&language=EN&link=link001&page=2&doc=16888>

⁶ Formerly Higher Education Grants but also including Vocational Education Committees' Scholarship Scheme, Third Level Maintenance Grants Scheme for Trainees, and Maintenance Grants Scheme for Students Attending Post-Leaving Certificate Courses.

Barriers to the labour market

The children of non-EU migrants who have not yet been granted citizenship or long-term residency status must apply for an employment permit to work. The employment permit system, implemented to regulate access to the labour market for migrant workers who have come to Ireland for the purposes of seeking employment, is not an appropriate pathway for young immigrants who have settled in Ireland with their family and have spent years going through the Irish education system.

Securing a permit with an employer is extremely difficult even in ideal economic circumstances. The application procedure is long and arduous which discourages many prospective employers from taking on people who require a permit. Permit regulations also require that a job be full-time. This excludes people from taking up part-time positions. This acts as a barrier to employment for many recent secondary and third level graduates whose only option may be to take up part-time employment to get a foot into the job market.

INTEGRATION

The barriers created by the immigration regime undermine the integration process and the ability for the children and families of non-EU migrants to participate fully in Irish society. Many are excluded from educational opportunities and future jobs and career prospects open to their Irish and EU counterparts. They are at greater risk of poverty and social exclusion.

Young migrants, working with MRCI's mPower Programme, speak openly of the isolation, fear and stress that accompany the difficulties in securing residency and citizenship. Many, having spent most of their lives in Ireland, have developed deep and lasting connections here. Their parents have lived, worked and paid taxes in Ireland for many years. They have become part of their local communities, schools and organisations. However, they feel that the current system treats them as if they are not a part of Ireland, as outsiders and as 'second-class'.

Other issues also arise in the lack of avenues for children to obtain an independent immigration status. For example, non-EU children are particularly at risk in situations of family breakdown or domestic violence. Without a defined immigration status of their own, they face difficulties securing their own status in situations where they have no choice but to leave the family home.

EU DIRECTIVES

Third county national migrants have been recognized at a European level as being a group particularly vulnerable to poverty and social exclusion in many EU member states. Migration Integration Policy Index (MIPEX) which measures integration policies across 30 countries including EU, US and Canada, found that despite the increased immigration during the economic boom, Irish policies did not match the needs of incoming new communities. Ireland ranked 28th out of 31 countries in relation to access to long term residency and 23rd for inclusive education policies⁷.

Despite a decade of inward migration, Ireland also falls behind many other EU countries who apply inclusive and forward thinking policies in relation to the next generation of migrants. Across the EU the Common Basic Principles, a framework for the development of inclusion policies for EU member states, have been applied and EU directives that ask for inclusion of migrants and their families have been adopted (see below). In particular, principle five of the Common Basic Principles states '*efforts in education are critical to*

EU Directives

There are two main EU directives which effect rights of dependents of non-EU nationals.

Directive 2003/86/EC aims to establish euro-wide conditions for the right to family reunification and establish the rights of family members when resident in an EU state. The Directive states that family members are entitled to; '**a residence permit of the same duration as that of the sponsor**' therefore entitling them to '**access to education and vocational training under the same terms**'. It also allows for the dependents to be granted 'an autonomous residence permit' after five years of residence at the latest¹

Directive 2003/109/EC furthers the rights of dependents as it legislates for the recognition of long term resident status after five years of continuous legal residence for both the migrant worker and their dependents. It also calls for the extension of rights to long term residents to allow them to '**enjoy equal treatment with nationals as regards to education and vocational training, recognition of qualifications and study grants.**'

These two Directives reflect the standard practice in most EU countries. The implementation of these Directives would allow for greater access to third level education for second generation migrants. However, Ireland has not adopted either of these directives.

⁷ www.mipex.eu

*preparing immigrants, and particularly their descendents, to more successful and more active participants in society.*⁸ Inclusion of students living in the host country, yet not born there, is evidence of good practice in EU wide policy as it allows for the second generation of immigrants equal access to education.

STALLED IMMIGRATION REFORM

Over the past decade, consecutive Irish governments have attempted to overhaul the immigration system through proposed immigration legislation, the most recent being the Immigration, Residency and Protection (IRP) Bill 2010. The IRP Bill did propose changes to the immigration system that would alleviate some of the uncertainty arising for children of non-EU migrants born outside of Ireland. Legislation in its current format would have provided for the introduction of the registration of non-EEA children in the state upon arrival, however, it is unclear what immigration stamp they would be granted and what benefits they could obtain from the registration. The IRP Bill also provides for the transference of the rights of a non-EEA national who received long-term residency, to their qualifying dependant. At present, this would mean that minor dependants will be able to obtain a Stamp 4 if one of their parents became a Long Term Resident.

Although the bill would have been a step forward, it does not clarify whether minor dependants will be allowed to apply for permanent residency or naturalization themselves. It offers no solution to those former minor dependants that will reach 18 before their parents succeeded in obtaining citizenship or long-term residency, leaving them in limbo.

⁸<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0389:EN:NOT>

KEY RECOMMENDATIONS

The crisis created for thousands of children and families needs to be addressed comprehensively and urgently. The following recommendations aims to offer a way forward for non-EU migrant children and their families to begin to overcome some of the barriers to integration and equality in Ireland.

Immigration policy, procedures and legislation

- Pass a fair and clear Immigration Residency and Protection Bill with guidelines for the registration of non-EU children including their rights and pathways permanent residency and citizenship.
- Allow for the automatic transfer of permanent residency and citizenship earned by non-EU parents to their children.
- Adopt EU Directive 2003/109/EC and 2003/86/EC in line with other EU countries to enable second generation migrants to access to education and financial grants on the same terms as that of Irish citizens.

Third Level Education

- Develop a coherent set of guidelines for all Irish universities regarding entitlements to EU fees for the children of non-EU migrants. This should include a standard residency test applied in all applications to university courses.
- Provide access to Free Fees and Student Grants for students and parents with long established immigration histories in Ireland.

Labour Market Access

- Give children dependants who have been in Ireland for several years permission to work without the need to apply for an employment permit.
- Allow children dependants who require employment permits to apply for a permit in cases of part-time positions.

The Migrant Rights Centre Ireland is a national organisation working to promote justice, empowerment and equality for migrant workers and their families.

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