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S O L I C I T O R S

**Relationship Breakdown:
The Effect on
Foreign National Women**

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RELATIONSHIP BREAKDOWN:-

THE EFFECT ON FOREIGN NATIONAL WOMEN

The aim of this talk is to provide you with the following:-

1. General information on some of the ways in which foreign national women can hold immigration status in NI
 2. How foreign a national woman's immigration status can be affected by the breakdown of her relationship
 3. The legal protection that can be afforded to foreign national victims of domestic violence in NI
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Who is a foreign national?

A foreign national is a person who has no automatic right to reside in the UK.

Persons who are entitled to reside in the UK:-

- British citizens
- European nationals

Foreign nationals who wish to come in the UK must firstly apply for a visa to visit, work or reside here.

How can foreign nationals get immigration status in the UK?

There are a number of ways that foreign nationals can get immigration status in the UK

- 1) Applying for a visa in their own right (e.g. applying for a student visa or worker visa)
- 2) Coming to the UK as an asylum seeker and applying for refugee status
- 3) Being 'sponsored' - i.e. applying by virtue of their relationship with a family member who is already entitled to reside (e.g. a British citizen / European national spouse)

We are going to focus solely on point 3 and will ask the following questions:-

- A) In what circumstances can foreign national women come to the UK as the spouse/civil partner/unmarried partner of a person who is already entitled to be here?
- B) What happens if their relationship with this person breaks down?

A) HOW CAN FOREIGN NATIONAL WOMEN COME TO THE UK BY VIRTUE OF THEIR PARTNER??

TWO MAIN ROUTES:-

- They are the spouse, civil partner or unmarried partner of a British citizen or a settled person living in the UK
 - They are the spouse, civil partner or unmarried partner of an EEA national living in the UK.
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ROUTE 1:-

THEY ARE THE SPOUSE/CIVIL PARTNER/UNMARRIED PARTNER OF (i) A BRITISH CITIZEN OR (ii) A SETTLED PERSON IN THE UK

- British citizen? – self-explanatory
- Settled person? – This is someone who has permission to indefinitely remain in the UK on their own right (known as 'Indefinite Leave to Remain' (ILR))

A foreign national can make an application for a visa as the spouse/civil partner/unmarried partner of British citizen or person settled in the UK.

Legislation - UK Immigration Rules ('the Rules')

Examples of who can apply:-

- An African woman married to a British man
- A Brazilian man in a civil partnership with an African man who has ILR in the UK.
- A Canadian woman who is the unmarried partner of a British man and who has been living with him for 2 years.

Period of leave granted:-

- Initially, the foreign national will be granted limited leave to reside in the UK for 2 ½ years.
- After 2 ½ years, they need to apply for an extension – this is granted for a further limited period of 2 ½ years
- During the limited 5 year period they can take employment, but they will be restricted from accessing 'public funds' -i.e. benefits.
- After 5 years in total, they can apply for Indefinite Leave to Remain ('ILR') – if successful, this means that they are now a settled person in the UK in their own right
- When a foreign national has ILR, they can work and access benefits.

- NB: In some cases, foreign nationals may have to wait a full 10 years to apply for Indefinite Leave to Remain if they do not meet certain requirements for a spousal visa (e.g. they do not meet the financial requirements or they have not passed the English language test)

What happens if the relationship breaks down?

Example 1:-

Esther is from Zimbabwe. She married Roger, a British citizen, in 2010 and they live together in the UK. Esther applied for a spousal visa and after a period of limited leave, she was granted ILR. Some months ago, Roger became abusive towards Esther and she was forced to leave the family home with their two children. Esther is scared that her immigration status has been affected by the breakup and needs advice.

- Esther has been granted Indefinite Leave to Remain
- Her relationship breakdown therefore does not affect her immigration status.
- She remains free to work and live in the UK and access benefits even if she separates from Roger.

Example 2:-

Maggie is from the Philippines. She married John, a British citizen, in 2013 and they have a child together. Maggie has limited leave to remain in the UK as she has only been here for 2 years. In recent months, Maggie and John have drifted apart. There has been no domestic abuse but she no longer sees the relationship working. She wishes to leave John and wants to know how this will affect her immigration status.

- Maggie still only has limited leave to remain in the UK
- If her relationship with John breaks down, she would be required to leave the UK within 6 months
- Alternatively, she may wish to find another basis on which to apply for a visa to stay in the UK
- It may be possible for Maggie to make an application to remain in the UK on human rights grounds as her child is a British citizen.

Example 3:-

Gita is from Pakistan. She married Sanjay in 2014. They have one child together. Sanjay has Indefinite Leave to Remain in the UK and so is classed as a settled person. Gita was granted a spousal visa but only has limited leave to remain at present as she has only been here for 1 year. Ever since they got married, Sanjay has become very controlling and physically abusive towards Gita. She has had to call the police a few times. Sanjay has always been very financially controlling and Gita is worried how she would cope financially if she were to leave him. Sanjay has threatened Gita in the past that is she does

leave him, he will inform the Home Office and she will be sent back to Pakistan. Gita is unsure if her immigration status would be affected if she were to break free from this relationship.

- Gita still only has limited leave to remain in the UK.
- **However:-**
Where a foreign national has had to separate from their partner as a result of Domestic Violence, they may still qualify for ILR

How do they qualify?

To qualify for leave to remain in the UK as a victim of Domestic Violence, a foreign national must show:-

- a) They had been granted limited leave to enter/remain in the UK as a spouse of a British citizen or settled person under the Immigration Rules
- b) They still only have limited leave to remain (it does not matter what stage of this leave they are at)
- c) They are the victim of domestic violence - can be proved via Non-Molestation Orders, Court undertakings, convictions, police reports, medical/GP evidence, letter from Social Services etc
- d) Domestic Violence is the reason the relationship broke down
- e) They are no longer living with their spouse/civil partner

Things to note:-

Foreign national spouses/partners applying for ILR under this route do not need to have sufficient knowledge of English and do not have to have completed the 'Life in the UK' test

If a foreign national's limited leave visa expires and they have been unaware that they had to have it renewed, they may still be able to apply for ILR via this route on discretionary grounds.

(E.g. if their husband took control of the application and did not tell them it was to be renewed)

Emergency application - Domestic Violence (DDV) concession)

- If a foreign national has left their spouse due to Domestic Violence, they may require urgent financial assistance - but if they only have limited leave, they will not have access to public funds.
 - However, foreign nationals who intend to apply for ILR as a victim of Domestic Violence can submit an emergency application for discretionary leave with recourse to public funds (i.e. so that they will be allowed to access benefits.)
 - This application form is sent to the Home Office via email and a decision is usually received within one week.
 - If an emergency application is granted, this will allow a foreign national limited leave for 3 months which will allow them to access benefits sooner.
 - A full application for ILR will need to be lodged within this period of 3 months.
- Therefore, even though Gita has limited leave to remain, she could still make an application for ILR as the victim of Domestic Violence

- Gita may also be able to make her application for ILR on an emergency basis if she is struggling financially.

IN SUMMARY:-

- **A foreign national spouse of a British citizen/settled person can ultimately obtain ILR in the UK**
- **If they are granted ILR- right to work and access to benefits**
- **If they still only have limited leave - right to work but no access to benefits**
- **Effect of relationship breakdown:-**
 - **If ILR - no effect on immigration status**
 - **If limited leave and no DV - may have to leave the UK or find alternative basis on which to stay**
 - **If limited leave and DV - may still apply for ILR and may be able to do so on emergency basis**

ROUTE 2:-

THEY ARE THE SPOUSE/CIVIL PARTNER OF AN EEA NATIONAL WHO LIVES IN THE UK

EEA = European Economic Area

Who is an EEA National?

- An EEA national is a national of an EU country. European Community law bestows on all European Union (EU) citizens and their family members the right to move freely and reside within the EU.
- EEA nationals are entitled to reside in the UK for an initial period of three months without needing to exercise a Treaty right.
- If an EEA national wishes to reside in the UK for more than three months, they will have to show that they are what is known as a 'qualified person'.

What is a qualified person?

A qualified person is an EEA national who is in the UK and exercising a Treaty right -i.e.:-

- a worker;
- a job seeker;
- a person who is permanently incapable of work owing to industrial disease or injury;
- a person who is permanently incapable of work for reasons other than industrial disease or injury and has been resident in the UK for at least two years prior to stopping work;
- a self employed person;
- a self sufficient person;
- certain retired persons;
- some persons who are temporarily unemployed;
- students;
- people who work in another EEA Member State while retaining their place of residence in the UK and return there once a week.

Examples of people who would be classed as qualified persons:-

- A French man working in the UK
 - A Polish man actively seeking employment in the UK
 - A Spanish business made who is self employed in the UK
-
- An EEA national who is a qualified person is entitled to have their non-EEA family members come to the UK to live with them.

- This includes spouses, civil partners and unmarried partners.
- A foreign national can therefore make an application to reside in the UK as the family member of an EEA national living here.

Legislation - Immigration [European Economic Area] Regulations 2006 ('the Regulations')

Examples of who can apply:-

- An Indian woman married to an French man who is working in the UK
- An American man who is in a civil partnership with a Spanish businessman who is self employed in the UK
- A Thai woman who is married to a Polish man who is actively seeking employment in the UK

Period of Leave granted:-

- Initially a foreign national will be granted a Family Permit for 6 months which allows them to physically enter the UK
- After, they can apply for a Residence Card which if granted will normally be valid for 5 years
- With a Residence Card, most non-EEA family members can take employment
- Access to benefits with a Residence Card? This is a complex point - need to seek expert advice from benefits expert.
- After 5 years in the UK as an EEA family member, a foreign national can apply for a Permanent Residence Card - this will allow them a *right to work and access to benefits on the same level as UK Citizens.*
- NB: The EEA spouse/partner must continue to remain a 'qualified person' throughout the 5 year period - if they cease to become a 'qualified person' then the non-EEA family member loses their right to reside.

What happens if the relationship breaks down??

Example 1:-

Kathy is an American citizen. She married Robert, a French businessman working in the UK, in 2000 and they have lived in the UK from this time. Kathy has a Permanent Residence Card. Over the past year, there have been difficulties in the relationship and Kathy wishes to separate from Robert however she is worried about how this may affect her immigration status.

- Kathy has a Permanent Residence Card

- Once Permanent Residence has been granted, relationship breakdown is irrelevant
- Kathy will still be entitled to permanent reside in the UK even if she separates from Robert.

Example 2

Lola is from Brazil. She has been living in the UK for the past 4 years with her husband Martin. Martin is originally from Germany but has been living and working in the UK for the last 10 years. Lola has a Residence Card but is not yet eligible to apply for a Permanent Residence Card. There have been many problems in their relationship over the past year. Martin has been drinking heavily and has become verbally and physically abusive towards Lola. He has lashed out at her a couple of times and she has had to call the police. Things have reached a head and Lola has had enough. She has decided to leave Martin and petition for divorce. She wishes to know whether doing this will affect her immigration status.

- Lola is still in her initial period of limited leave. She does not yet have Permanent Residence.
- During the initial 5 year period, Lola will remain entitled to reside in the UK as a family member even if she separates from Martin - until such time as the marriage is dissolved by Decree Absolute

➤ What if Lola petitions for divorce??

Once a Decree Absolute is granted, Lola's right to reside in the UK ends

However,

Lola may be able to argue that she has a retained right of residence

What is a retained a right of residence?

A person who ceases to be a family member of an EEA national on termination of a marriage or civil partnership can retain a right of residence if they can show:

- 1) the marriage /partnership lasted for at least 3 years immediately before the initiation of divorce proceedings and the parties had resided in the UK for at least one year during the duration of the marriage /civil partnership,
or
 - 2) the spouse /civil partner of the EEA national has custody of the children or a right of access to the children in the UK,
or
 - 3) there are particularly difficult circumstances (such as domestic violence) justifying the retention of the right of residence.
- If Lola divorces Martin, she may be able to argue that she has retained a right of residence by virtue of either 1) or 3) above.

- If a Lola were granted a 'retained right of residence' she would be given a further 5 years leave to remain, after which time she could apply for Permanent Residence.

What if Lola & Martin were not married and were instead unmarried partners in a durable relationship?

- If Lola was not married to Martin, her right to reside would end on the date that they separated.
- She would have no further right to reside in the UK unless there was another basis on which she could to apply (e.g. human rights)

IN SUMMARY:-

- **A foreign national spouse of an EEA national can ultimately obtain Permanent Residence in the UK after a period of limited leave**
- **If they have Permanent Residence, they have a right to work and access to benefits**
- **If they have limited leave they have a right to work but may not be able to access to benefits**
- **Effect of relationship breakdown:-**
 - **If Permanent Residence - no effect on immigration status**
 - **If limited leave and not divorced - no effect on immigration status**
 - **If limited leave and divorced- may have to leave the UK unless they can show they have a retained right of residence**
 - **If unmarried and separate - right to remain expires**

B) WHAT LEGAL PROTECTION AGAINST DOMESTIC VIOLENCE IS AVAILABLE FOR FOREIGN NATIONALS?

- Foreign nationals can avail of the same legal protection as any NI citizen, regardless of their immigration status.
- The perpetrator of domestic violence is also subject to the same criminal and legal sanctions as any NI citizen, regardless of their immigration status

Legal protection available :-

The main Orders which can be applied for are:-

1. Non-Molestation Order

- This is an Order stating that a person cannot molest, harass, pester, use or threaten violence against the Applicant.
- It means that they cannot harass the Applicant directly (in person, by text, phone, email or social media) and they also cannot get someone else to harass the Applicant on their behalf.

2. Occupation Order

- This is an Order that the Court can make if the Applicant lives with the perpetrator and they have some right to reside in the home (for example, if the Applicant is on the tenancy agreement or a joint owner).
- If the Applicant is married to the perpetrator but is not legally on the title deeds of the house or on the rental agreement, they can still claim a right to reside in the property - known as matrimonial home rights. An Occupation Order can therefore still be applied for and granted to women in this position.
- If the Court grants the Applicant an Occupation Order against the perpetrator, this means that they can be removed from the home and barred from returning to it.

Exclusion zones

The Courts can also make an exclusion zone, excluding the perpetrator from a particular place, for example from the street the Applicant lives in or their place of work.

How quickly can you obtain an Order??

- These Orders can be granted on an emergency basis if there has been an incident of abuse within the past 7 days.

- The Court can grant an Order on an 'ex parte' basis (i.e. without notice being given to the perpetrator)
- When the Ex-parte Orders are issued, the Court will list the case for 'inter-parte hearing' - this is when the perpetrator has an opportunity to come to Court and indicate whether they intend to defend the case or not
- If the perpetrator wishes to defend the Orders, the Applicant can seek adjournments to allow them to obtain any medical or police evidence which may help their case.
- Any Orders made at the ex parte stage will remain in place until such time as the Court has made a final decision.

Legal Aid

- Everyone applying for a Non-Molestation Order or a Non-Molestation Order combined with an Occupation Order is eligible for legal aid regardless of immigration status.
- However:- An Applicant for an Occupation Order only is not automatically eligible for legal aid and will need to be assessed to see if they are financially eligible.
- If an Applicant is in receipt of a passport benefit, they are automatically entitled to Legal Aid.
- If the Applicant is working, they will still be entitled to Legal Aid, however if their income or capital is above a certain amount they will have to make a "one off" contribution to legal aid.
- The rest of the legal costs are met by Legal Aid no matter how long the case goes on for.
- Some solicitors firms may agree to the Applicant paying the contribution by instalments.
- The perpetrator's income and capital are not included calculating income for this purpose
- The Applicant need only be eligible at the time of signing the Green Form. If their income subsequently increases, it does not matter - they will be entitled to Legal Aid for the entirety of the proceedings.

CHECKLIST WHEN DEALING WITH A FOREIGN NATIONAL VICTIM OF DOMESTIC VIOLENCE

- What is their immigration status in the UK?
- If they are attached to their husband/partner's visa, is their partner a British citizen/settled person or an EEA national?

NB If EEA national, advise on risk to immigration status if petition for divorce

- Are they entitled to access benefits?
May be helpful to contact the Law Centre benefits department for information if unsure.

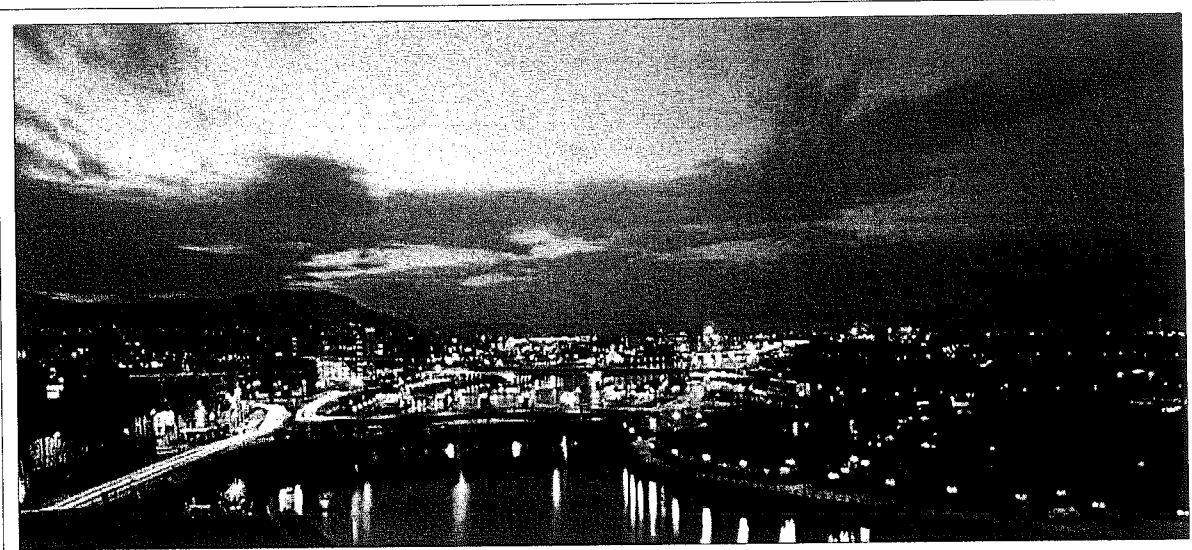
- Has the DV been reported to the police?

- Is medical assistance needed?

- Seek legal advice re: NMO/OO

- No immigration status at all?
Eg: entered the country with partner illegally, overstayed etc

Need to seek urgent legal assistance to try and regularise their immigration status - there may be grounds for making an application for asylum or a human rights based application.



LIFE LAW NI

A blog for life's legal challenges

Life Law NI is a blog with a purpose - we aim to provide both information and a forum for discussion on all legal matters surrounding family life, from the cradle to the grave and inform you on a variety of legal issues which may affect you and your family, including:-

Buying a new home

Concerns about your children

Employment difficulties

Personal injury when the unexpected happens

Matrimonial and relationship issues

Wills and Estate planning

Issues which affect those of us who are vulnerable or disabled

In a nutshell, we hope that the legal information we provide on our blog can help navigate you through some of life's challenges.

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