



Case Study

Ms J and her two children, aged 3 and 6, are Polish nationals and have been supported by the local authority under Section 17 of the Children Act since 5th April 2014. This follows an incident of domestic violence at the hands of Ms J's partner and father of the children; contact with the father is now limited and it is not known whether he is currently in employment or even in the UK. The eldest child is in the first year of primary school, Ms J has not worked since coming to the UK in November 2013, and she does not wish to return to Poland but is looking for work in the UK.

The LA is now spending £300 per week on accommodation and subsistence support (over £15K per annum) and is working out how this considerable cost can be ended.

Please help the LA to find a solution for this case by considering the following:

- Is Ms J exercising her right to reside as an EEA national in the UK?
- Does Ms J have an entitlement to benefits, if so which ones?
- Could the LA discharge Section 17 Children Act 1989 duties to the family by offering tickets in returning home? What considerations must be made?

Advice

Is Ms J Exercising her CT rights in the UK?

A person will be exercising their rights under the Community Treaties if they are a “qualified person” under the Immigration (European Economic Area) Regulations 2006, that is a:

- **Jobseeker;**
- **Worker;**
- **Self-employed person;**
- **Self-sufficient person;**
- **Student;**
- Family member of one of the above.

Ms J could be considered to be a jobseeker as she is now looking for work in the UK, but would need to register as a jobseeker with relevant agency e.g. Jobcentre.

Does Ms J have an entitlement to benefits, if so which ones?

As a 'jobseeker'- possibly to JSA for a limited period; not to HB or LA housing/homelessness assistance.

If she started employment – possibly yes to all (including JSA, HB, LA housing/homelessness assistance). However, even accessing employment does not mean automatic entitlement to these benefits due to eligibility requirements (specifically the Minimum Earnings Threshold).

Could the LA discharge duties by offering tickets home?

As an EEA national Ms J is caught by the restrictions to support under Schedule 3, Section 54 of the Nationality Immigration and Asylum Act 2002. This requires the LA to consider whether withholding or withdrawing of support would constitute a breach of Ms J's Community Treaty (EU) Rights or her rights under the ECHR. In considering return to Poland, the LA would need to complete a Child in Need and Human Rights Assessment considering the following factors:

- Whether return to Poland would be in the best interest of the children, given the financial insecurity faced by the family in the UK but also with consideration of the lives the children are now leading in the UK.
- Would the children be 'in need' on return to Poland, can the family avoid being destitute on return, what services exist in Poland to support those with limited or no income?
- Whether the family could reasonably be expected to establish family life on return, can Ms J work in Poland, are there services available to the family should they struggle financially on return?
- Would offering tickets to Poland unnecessarily interfere with their right to a family and/or private life?
- In relation to the DV, the LA would need to consider that there are safeguards in place to reduce likelihood of further DV if in UK or in Poland

Conclusion

Following detailed and circumstantial enquiry from the LA, it could be possible to discharge duties by offering assistance and support in returning to COO. However, the length of time the family have spent in the UK, whether Ms J is a qualified person under EC treaties, and how close she is to securing employment will be relevant. If it is not reasonable to offer tickets home and the LA decides to support Ms J whilst she becomes a qualified person and exercises her treaty rights in the UK, then this could be for a lengthy period due to the impact of benefit eligibility for EEA nationals.