

Policy on family members of third-country nationals who do not qualify for family reunification by means of the Family Reunification Regulations S.L. 217.06

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Abstract

Family reunification processes are implemented by means of the provisions of the Family Reunification Regulations Subsidiary Legislation 217.06. In view that not all those persons who migrate to Malta may fulfil the conditions of the said legislation, the Government is providing an avenue on an ex-gratia basis for those family members to join their sponsor in Malta provided that the relative conditions are fulfilled as stipulated in the policy.

The said policy contains the following features:

- The definition of the stable resources in order that family members become eligible for such reunification, that is, they should be equivalent to the median wage, as established by the National Statistics Office – the latest published amount is 15,354 Euro, in addition to a 20% of the said median wage for each family member. The policy defines what source of income would be taken into account as long as they were declared with the Commissioner of Revenue.
- Such reunification is possible only after one year of residence of the sponsor.
- Any applications submitted prior to such date or the family member is in Malta will be deemed inadmissible.
- The policy defines also the family members who are eligible, the specific documentation to be submitted as well the application processes.

The decision shall be communicated within 60 days after submission

Policy

The below policy on family members of third-country nationals who do not qualify for family reunification by means of the Family Reunification Regulations may be periodically reviewed. The latest version will be available online and may be accessed through the following link <http://www.identitymalta.com/noneufamilypolicy>

A printed copy of the latest version of the policy may be requested from the front office of Identity Malta Agency, Head Office Valley Road, Msida.

1. Introduction

Family reunification processes are implemented by means of Subsidiary Legislation 217.06 <https://legislation.mt/eli/sl/217.6/eng/pdf> which legislation is transposing the provisions of the European Union Directive 2003/86 and the policy which will be outlined hereunder.

The right of family members of third country nationals to join their sponsor, who has immigrated to Malta, emerges only on the basis of the said legislation and depends mainly on two essential features. The first one is that the sponsor should have reasonable prospects of permanent residence and stable resources which would enable him/her to maintain himself and his family members.

In this regard the general category of migrants, especially those coming for the purposes of work, do not have such reasonable prospects in view of the quality of the type of authorization they have been given to reside here. Should migrants think that they do have such prospects the onus to provide proof rests with the migrant. Identity Malta Agency will then assess as to whether indeed such prospects are realistic or not.

The Government wishes, nevertheless, to provide an avenue in order that the family of migrants, who do not qualify under the above statutory provisions would, during their stay, enjoy family life, provided that they would satisfy, among other conditions, benchmarks regarding stable resources which would be sufficient so as not to be conducive to undesirable social situations. Such facilitation would be granted *ex-gratia* in a uniform, consistent and transparent process and in a non-discriminatory manner except where necessary in situations concerning public policy and public security. Each request shall be examined on the merits of the case.

2. Definition of family members

For the purpose of this policy, family members are defined as:

- i. The sponsor's spouse who shall be twenty-one years of age who is engaged in a monogamous marriage by law;

(Spouses engaged in polygamous marriages shall not be authorised to be admitted to Malta on the basis of this policy if the sponsor is already joined by a spouse in Malta.)

ii. The unmarried minor (eighteen years or under) children, including adopted children, of the sponsor and of his spouse,

{Children must be adopted in a manner which is recognized by Maltese law. Where the custody of adopted children is shared, Identity Malta must be provided with a written attestation expressing the consent of the other custodian.}

iii. The unmarried minor children, including adopted children, of the sponsor or the spouse where one of the parents has custody and the children are dependent on that parent.

iv. Unmarried adult family members may still be admitted to Malta if the sponsor provides evidence that they are dependent on the family's household, mainly financial or physical dependency. The Agency shall make an extensive examination of the particular circumstances to determine as to whether the said family members will be allowed to join the sponsor taking into consideration all the facts that would merit such facilitation.

3. Eligibility of sponsor

The policy applies to persons who are legally residing in Malta after having been granted a residence permit (single permit or otherwise) and who wish to act as sponsors in order to have their family members joining them in Malta.

Sponsor, can submit an application in this regard for his family members after 12 calendar months from the date of issue of his/her first residence permit. Any applications before such a timeframe will be deemed inadmissible

The policy does not, however, apply to:

- i. Citizens of the European Union and their family members, including third-country nationals who have free movement in the EU;
- ii. Refugees, persons granted subsidiary protection, persons granted SRA (Specific Residence Authorization) status or third-country nationals who have applied to obtain such status;
- iii. Beneficiaries of any other form of protection or status as provided for in international obligations, national legislation or policies.
- iv. third country nationals whose residence authorizations will not be extended beyond the period of one year.

4. Access to Employment

Residence permits issued to family members under these guidelines do not grant them the automatic right to work in Malta.

The said third-country nationals who wish to take up employment in Malta must change the purpose of their stay in Malta by submitting an application for a single permit to the Expatriates Unit.

5. Application procedure

The sponsor, who is already legally staying in Malta, must submit a request to the Agency in order to determine eligibility of applying for such a residence permit, by means of an email on noneu.ima@gov.mt attaching all relevant documentation. Following such eligibility request, the Agency will confirm prospects of eligibility or otherwise and issue confirmation in writing.

Requests must be presented to the Expatriates Unit before the family members are physically present in Malta. If they are in Malta the application shall be considered **inadmissible** unless the said family members are minor children who were born here. In the circumstances that family members are in Malta, apart from the fact that the application would be considered inadmissible, no further authorization shall be given for further stays in Malta beyond his/her original authorization to reside here.

Documents to be presented

The sponsor shall submit the following documents in order to determine eligibility:

a. A request in writing to the Agency by the sponsor in order that the family member may join him/her in Malta, which should include details about the sponsor's

- (i) length of stay in Malta,
- (ii) relationship with the family member, and
- (iii) other relevant information, including details on the place of residence where the family shall be residing, and
- (iv) the expected duration of the sponsor's stay in Malta, and

b. Photocopy of all of the pages of the passport of the family member;

c. Civil status certificates, such as birth or marriage certificates, attesting the relationship between the sponsor and the family member;

d. Evidence of stable and regular resources declared with the Office of the Commissioner for Revenue– the information hereunder refers;

e. The last six (6) payslips of the sponsor prior to the date of application if the person is working in Malta or any additional acceptable income for the last six (6) months prior to application which would render eligible applicant to apply for such family reunification. In other instances evidence of stable resources for the six (6) months prior to application.

This is without prejudice for the Agency to request further documentation as the case may be.

N.B. The documentation shall be presented in original format. Identity Malta Agency shall only retain copies of the original documents. Copies of passports and civil status certificates will be verified against the original ones once the applicants are physically present in Malta.

Any documentation in a foreign language must be translated to Maltese or English by a translator as indicated in the following link

<https://identitymalta.com/servizzi/lista-ta-tradutturi/?lang=mt>

Stable Resources

Sufficient resources shall be calculated on the basis of the last published median wage in Malta as estimated by the National Statistics Office, with an addition of another twenty percent income or resources for each member of the family who will be the subject of the application.

Currently the threshold is estimated to be €15,354 as per the news release issued by the National Statistics Office on 20th of August 2020.

The above mentioned figure may be reviewed periodically upon the publishing of the new median by the National Statistics Office.

In order to qualify the disposable income of the sponsor shall be superior to this threshold. Such income is calculated on monies emanating from these sources:

- Gross basic employment income
- Old-age benefits
- Interests and dividends
- Survivors benefits and other benefits for social exclusion
- Family / Children - related allowance
- Sickness / Disability benefits
- Rental of property or land (provided it is declared with the Commissioner for Revenue)
- Education allowances
- Unemployment benefits
- Housing allowances
- Regular inter-household cash transfer received
- Other household income

NB: Gross basic employment incomes means income declared with the Commissioner for Revenue, whereby overtime is to be taken into consideration if it is stable and consistent and as long as it is performed for six months or more during one year. All allowances shall be taken as part of the gross employment income.

NB: From this income there shall be deducted: Tax on income and social security contributions.

6. Decisions on Requests

Applications for a residence permit submitted by applicants over the age of 12 years are vetted by the Police Immigration Office. The application will be rejected if it is determined that the applicant is considered a threat to public security or public policy.

Identity Malta Agency shall communicate the decision on the request submitted by the sponsor within 60 days from the submission of the application. The sponsor shall be informed in writing whenever it is found to be impossible to conclude the verifications within the said period.

In the case that requests are not acceded to the Identity Malta Agency shall communicate the decision to the sponsor informing him/her of the reasons for such a decision.

In the case that a couple who are already in Malta do not satisfy the financial benchmarks any request to be joined by any other family member shall be refused.

Family members whose request is acceded to by the Expatriates Unit, if they require a visa to enter Schengen territory, may submit an application for such visa at the nearest Maltese representation abroad. If no Maltese representation is available at the country of origin, successful applicants may request the authorisation of the Central Visa Unit to submit the application for a visa at a different representation in another country.

Once they arrive in Malta, family members must call immediately at the Expatriates Unit in order to be issued with a temporary residence permit that reflects their immigration position in Malta.

7. Renewal of Permits

Permits issued to family members in accordance with these guidelines shall only be renewed if the conditions continue to be satisfied.