



European Migration Network

Ad-Hoc Query on asylum seekers' family reunification

Requested by FI EMN NCP on 19th of December, 2008

Compilation produced on 12th of February 2009

Responses from BE, BG, CZ, DK, DE, EE, ES, FR, LV, HU, NL, AT, SE, UK (14 in total)

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1. Background Information

Questions concerning family reunification of beneficiaries of international protection (in the framework of family reunification directive 2003/86/EC)

Detailed question(s)



What is Your policy towards asylum seekers granted with asylum/subsidiary protection lodging an application for family reunification?

- Are there any restrictions regarding the right to apply for family reunification?
- If some restrictions exist, under what conditions do they apply? (eg. is the right for family reunification dependent on language skills, time of residence, applicant's age, other?)

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- Which categories of persons would fall within the definition of family member?

2. Responses



		Wider Dissemination? ¹	
	Belgium	Yes	<p>If the person has been recognised as a refugee, there are as such no restrictions (language conditions, integration, length of stay, etc) regarding the right for FR. The following family members can obtain a residence permit following the FR procedure:</p> <ul style="list-style-type: none"> - The spouse or registered co-habiting partner, at the condition that both partners are at least 21 years old and if they can proof that they have at least since 1 year a stable and durable relation. This age pre-requisite is not applicable if both partners have been living together for at least one year before the start of the FR procedure; in that case the age condition is brought back to 18 years. - Their minor (less that 18 years old), unmarried children who come to live with them- The minor, unmarried children of only 1 of the partners, at the condition that this person has the guardianship of this minor and that the other parent has given his agreement. - The disabled child older than 18 years old, in case an attestation of a doctor certified by the Belgian diplomatic or consular post states that the person, because of this disability, is not able to take care for himself - The father and the mother who are coming to live with the refugee less than 18 years old"
	Bulgaria	Yes	<p>Questions concerning family reunification of beneficiaries of international protection (in the framework of family reunification directive 2003/86/EC)</p> <p>Detailed question(s)</p> <p>What is Your policy towards asylum seekers granted with asylum/subsidiary protection lodging an application for family reunification?</p> <ul style="list-style-type: none"> - Are there any restrictions regarding the right to apply for family reunification?

¹ A clear "YES", your response may be circulated further (i.e. to national network members) or "NO" should be added here. In case of "NO", then the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further."


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			<p>- If some restrictions exist, under what conditions do they apply? (eg. is the right for family reunification dependent on language skills, time of residence, applicant's age, other?)</p> <p>According to the Law on Asylum and Refugees (LAR) any alien who has been granted refugee or subsidiary protection status is entitled to ask to be reunited with his/her family on the territory of the Republic of Bulgaria.</p> <p>The Chairman of the State Agency for Refugees issues permissions for family reunification.</p> <p>The Chairman of the State Agency for Refugees refuses to grant permission:</p> <ol style="list-style-type: none"> 1. where, with respect to any of the family members, the circumstances specified in Article 12, paragraph (1), subparagraphs (1) to (3) are present; 2. with respect to another spouse, in case of polygamy, where such alien already has a spouse in the Republic of Bulgaria." <p>Which categories of persons would fall within the definition of family member?</p> <p>For the purposes of the Law on Asylum and Refugees the following categories of persons fall within the definition of family members:</p> <p>"Family members" shall mean:</p> <ol style="list-style-type: none"> a) the husband, the wife or an individual with whom the alien has an evidenced stable longterm relationship and their minor unmarried children; b) unmarried children of legal age who are unable to provide for themselves due to grave health conditions; c) the parents of either one of the spouses who are unable to take care of themselves due to old age or a serious health condition and they have share the household of their children.
	<p>Czech Republic</p>	<p>Yes</p>	<p>Preliminary explanation: It is the <u>family member</u> who applies for <u>asylum/subsidiary protection for the purpose of family reunification</u> with the person that was granted asylum/subsidiary protection in the Czech Republic.</p> <ol style="list-style-type: none"> 1) There are two restrictions. 2) The restrictions are as follows: <ol style="list-style-type: none"> a) The marriage or partnership must have been concluded and maintained before the asylum/subsidiary protection was granted to the person with whom the applicant wishes to reunify.





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			<p>b) In case of polygamous marriage, the applicant cannot be granted asylum/subsidiary protection for the purpose of family reunification, once the person with whom the applicant wishes to reunify already lives in the Czech Republic with a spouse, even though the applicant is regarded his/her spouse by foreign country laws.</p> <p>3) Family member is:</p> <ul style="list-style-type: none"> a) a spouse or a partner; b) a single person under 18 years; c) a parent (if the person granted with asylum/subsidiary protection is under 18 years); d) a major, responsible for an unaccompanied minor.
	Denmark	Yes	<p>Family members of beneficiaries of international protection [i.e. convention refugees and beneficiaries of subsidiary protection] residing in Denmark can apply for a residence permit on the grounds of family reunification on the same basis as family members of other immigrants. No special restrictions apply here. Family members in this context are spouses, registered partners, cohabiting partners and children under the age of 15.</p> <p>A temporary residence permit will be granted to the family member provided that certain conditions are met. For spouses etc. this means amongst others that the applicant as well as the beneficiary of international protection in question must be over the age of 24 and their combined attachment to Denmark must be greater than their combined attachment to any other country. For children this means e.g. that the child must not have started his or her own family through marriage or cohabiting partnership.</p> <p>However, in accordance with Denmark's international obligations to protect the right to family life, exemptions from the usual requirements can be granted to certain groups of applicants. According to section 9c, paragraph 1 of the Danish Aliens Act, a residence permit may be issued to an alien if exceptional reasons make it appropriate, including regard for family unity. The exception is as a main rule applied to family members of a beneficiary of international protection provided that he/she still risks persecution in his/her country of origin.</p>
	Germany	Yes	<p>Husbands or Spouses or unmarried minor children of recognized asylum seekers also receive family asylum or family refugee status, if the recognition as asylum-seeker is incontestable and if the marriage already existed in the country of origin. Supplementary the spouse of the recognized asylum seeker must set up her asylum application at the same time as the husband or immediately after arriving in the country of protection. Based on the asylum decision the foreigners authority will decide on the granting of legal residence permits to aliens. An alien who has received asylum or the refugee status or subsidiary protection receives automatically a (temporary) residence permit, also the spouse and the children will receive this kind of residence permit.</p> <p>For members of the family, who are recognized asylum seekers, there are no further restrictions.</p>

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			<p>The family in sense Article 6 of The German Constitution are parents and minor children up the age of 17.</p>
	<p>Estonia</p>	<p>Yes</p>	<p>1-2. The Citizenship and Migration Board (CMB) shall issue to a family member of an alien to whom a residence permit has been issued a residence permit on the same basis and with the same period of validity. A family member shall submit an application for residence permit at the earliest opportunity but not later than three months after the date of issuing a residence permit to the alien.</p> <p>Where family reunification is possible in another country or if the application for residence permit is submitted later than 3 months after the date of issuing a residence permit to the alien, the alien with whom the family member wishes to reside must at the time of applying for residence permit for the family member have permanent legal income to ensure that the family is maintained in Estonia, the family must have an actual dwelling in Estonia and the family member of the alien must have a valid health insurance policy which guarantees the payment, during the period of validity of the residence permit, of the medical expenses incurred by him or her as a result of illness or injury.</p> <p>3. The definition of family member given in the Act on Granting International Protection to Aliens, are:</p> <p>(1) Family members of an asylum seeker are:</p> <ul style="list-style-type: none"> • his or her spouse; • his or her unmarried minor child, including adopted child; • his or her and his or her spouse's unmarried minor child, including adopted child. <p>(2) Family members of a refugee and of a person enjoying subsidiary protection are:</p> <ul style="list-style-type: none"> • his or her spouse; • his or her and his or her spouse's unmarried minor child, including adopted child; • unmarried minor child under his or her or his or her spouse's custody and maintained by him or her or his or her spouse, including adopted child. In case of shared custody the agreement of the other party sharing custody is required; • his or her or his or her spouse's unmarried adult child if the child is unable to cope independently due to his or her state of health or disability; • a parent or grandparent maintained by him or her or his or her spouse if the country of origin does not provide support resulting from other family ties. <p>(3) Family members of an unaccompanied minor refugee and unaccompanied minor enjoying subsidiary protection are:</p> <ul style="list-style-type: none"> • his or her parent; • his or her guardian or other family member if he or she has no parents or if the parents cannot be traced unless this is contrary to the rights and interests of the minor. <p>(4) Family members of a person enjoying temporary protection are:</p> <ul style="list-style-type: none"> • his or her spouse; • his or her or his or her spouse's unmarried minor child, including adopted child; • a close relative who lived with him or her in the country of origin and was dependent on him or her.


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			Family members are considered a family if the family existed in the country of origin, including if marriage was contracted before arrival in Estonia.
	Spain	Yes	In Spain the family reunification is granted to -family members of recognized refugees , not asylum seekers. Only in the case of family members who fear persecution and flee with the asylum seeker, or that staying in the country of origin can all edge funded fear of persecution, they can ask for family reunification. As family members are considered the ancestors and descendants in first degree and the spouse of the refugee, although the draft of the new asylum law was already talk of reunification, as understood in the immigration law and implementing the directive 2003/86/EC.
	France	Yes	The general principle is as follows: The asylum seekers have NO right to family reunification. Refugees , as principal or subsidiary, have RIGHT to family reunification. No condition of resources or housing are imposed on them, unlike other foreigners residing in France. 1- The reunified family members receive a resident card of 10 years. This card can be issued to foreigners settled permanently in France and who have strong ties in that country. For families members of refugees, the issue of a residence permit is automatic. 2- The family members who are in the country of origin/third country submit the application. 3- Family members of refugees shall apply for visas at the French consular services. 4- The 3 months clause (article 12-1 of Directive 2003/86/EC) is not applied.
	Latvia	Yes	The common family reunification procedure has set up for beneficiaries of international protection. There is only one special precondition for procedure of family reunification relating to the beneficiaries of subsidiary protection – person has the right to submit a request for reunification of the family, when he/she has resided in the Republic of Latvia for at least two years after the granting of such status. The definition of family member is given in the Asylum Law, Section 29. Section 29 indicates that persons considered as family members are the following: a person's spouse and his or her minor unmarried children (also adopted), as well as dependent disabled children (also adopted) of legal age. A minor who is not married has the right to take in his or her mother and father (also adopters) who have arrived from a foreign country.
	Hungary	Yes	In Hungary the family reunification of <i>refugees</i> is part of the international protection system. According to the Act LXXX of 2007 on Asylum : “In order to preserve family unity, subject to the exception set out in Subsection (1) of Section 8 (exclusion clauses), the family members of an alien who has been granted refugee status shall also be granted refugee status upon request.”. The family member who is in the country of origin/third country has to submit an application for a long-term visa or a residence permit on the grounds of family reunification at the nearest representation of Hungary to his/her place of residence

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		<p>According to the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals the family members of the refugee are eligible to apply for a long-term visa or a residence permit on the grounds of family reunification on preferential terms: “A decision rejecting an application for family reunification with a person with refugee status may not be based solely on the fact that documentary evidence of the family relationship is lacking.”</p> <p>The executive governmental degree 114 of 2007 of this Act stipulates: “In the course of family reunification with a refugee the family relationship may be certified in any credible way.” “The third country national family member of a refugee has to provide evidence that he/she meets the entry conditions of 1) having accommodations or a place of residence in the territory of the Republic of Hungary; f) having sufficient means of subsistence and financial resources to cover their accommodation costs for the duration of the intended stay and for the return to their country of origin or transit to a third country; g) having full healthcare insurance or sufficient financial resources for healthcare services; only if the application for family reunification is not submitted within a period of 6 months after the granting of refugee status.”</p> <p>According to the Act LXXX of 2007 on Asylum: “In order to preserve family unity, subject to the exception set out in Section 15 (exclusion clauses), the family members of an alien who has been <i>granted subsidiary protection</i> status shall also be granted subsidiary protection status upon request if: a) they file a joint application for subsidiary protection, or b) the family member has submitted an application for subsidiary protection upon the consent of the beneficiary of subsidiary protection, before the resolution for granting subsidiary protection status is adopted.</p> <p>If the family member of the beneficiary of subsidiary protection resides in the country of origin/third country he/she has to submit an application for a long-term visa or a residence permit on the grounds of family reunification at the nearest representation of Hungary to his/her place of residence. As the Act LXXX of 2007 on Asylum stipulates that “the beneficiaries of subsidiary protection - unless expressly provided by an act of parliament of government decree otherwise, and with the exceptions set out in Subsections (2) and (3) - shall have the same rights and obligations as refugees”, the family members of a beneficiary of subsidiary protection may apply for a long-term visa or a residence permit on the grounds of family reunification on the same preferential terms as family members of refugees. (See above) Those family members who reunify with the beneficiary of subsidiary protection this way (after the granting of subsidiary protection status) shall not be granted subsidiary protection status automatically. They may submit an application for international protection on their own, or they can live together with their family according to the regular resident permits system.</p> <p>Act LXXX of 2007 on Asylum defines ‘family member’ as -the spouse, - minor child (including adopted and foster children), - parent, if the person seeking asylum is a minor; of the third country national.</p> <p>According to the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals</p>
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			<p>“The following persons may be granted a long-term visa or a residence permit on the grounds of family reunification:</p> <p>a) family members of persons with refugee status, and b) the parents of unaccompanied minors with refugee status, or their legally appointed guardian.</p> <p>(4) The following relatives of sponsors, the spouses of sponsors or persons with refugee status may be granted a long-term visa or a residence permit on the grounds of family reunification:</p> <p>a) their parents who are dependants; b) their brothers and sisters, if they are unable to provide for themselves due to health reasons.</p> <p>(5) The spouse of a person with refugee status may be issued a long-term visa or a residence permit for the purpose of family reunification if their marriage was contracted before the entry of the person with refugee status into the territory of the Republic of Hungary.</p> <p>As the Act LXXX of 2007 on Asylum stipulates that “the beneficiaries of subsidiary protection - unless expressly provided by an act of parliament of government decree otherwise, and with the exceptions set out in Subsections (2) and (3) - shall have the same rights and obligations as refugees”, these regulations apply also to family members of beneficiaries of subsidiary protection.</p>
	<p>Netherlands</p>	<p>Yes</p>	<p>Family migration to the Netherlands: family reunification and family formation Family reunification can be defined as the reunification of family members with a sponsor in the Netherlands where the family relationship arose in the country of origin. If the family relationship arose after the entry of the sponsor into the Netherlands, we speak of family formation. The Dutch policy distinguishes between conditions for family reunification and family formation. A large part of family migration to the Netherlands falls under the regular aliens policy. In addition, family members of foreign nationals who have been admitted on the grounds of asylum, can apply for family reunification by virtue of the asylum policy.</p> <p>Family migration under the asylum policy An asylum residence permit can be granted to the family members of the holder of an asylum residence permit (asylum status holders) through the channel of family reunification. This specific policy for family members of asylum status holders does not apply to family formation. Asylum residence permits are granted based on the fact that the applicant is a family member of the holder of the asylum permit. A prerequisite is that family members have the same nationality as the asylum status holder and entered the Netherlands together with the sponsor, or joined the sponsor within three months after the granting of a temporary asylum residence permit to the sponsor. Family members, who can derive rights from these provisions, are the spouse and minor children (asylum ground 5) and the partner and the major children insofar as they really belong to the family and are dependant of the sponsor and for that reason belong to the family of the sponsor (asylum ground 6). An application for a residence permit on regular grounds can be lodged if the criterion of entry within three months is not satisfied, if the family members have a different nationality or if it concerns family members other than the aforementioned.</p> <p>Nuclear family <i>Definition in the directive</i></p>

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		<p>The concept nuclear family is not defined in the directive. The preamble shows that nuclear family is understood to mean the spouse and the minor children.² It is unclear whether this refers to the minor children of the couple or whether minor children of one of the spouses also belong to the nuclear family. From Article 4, paragraph 1 of the directive it can be inferred that only the children of the sponsor or the spouse if he/she has custody of the child and if it is a dependant of him/her, belong to the nuclear family.</p> <p><i>Dutch law</i></p> <p>There is no formal definition for the concept nuclear family. From the provisions of the Aliens Decree it can be inferred that the spouse, the unmarried (whether registered or not) partner and the minor children of the sponsor are members of the nuclear family.³ Special circumstances can by exception lead to the issue of a residence permit even when not all conditions have been met. This must be seen in the light of responsibilities on grounds of Article 8 of EHRM. The Aliens Act Implementation Guidelines provides that residence may be granted to minor children who are in the legal custody of the dependent spouse or partner.</p> <p>Sponsor</p> <p><i>Definition in the directive</i></p> <p>The family reunification directive describes a sponsor as a third country national residing lawfully in a member state and applying or whose family members apply for family reunification to be joined with him/her (Article 2, sub c, Directive 2003/86/EC).</p> <p><i>Dutch law</i></p> <p>In the terminology of the Dutch law, the sponsor is referred to as the principal person. The Dutch provisions not only apply to third country nationals but also to Dutch citizens. A Dutch citizen or a foreign national with a temporary or permanent asylum or regular (non-asylum) residence permit, who is at least eighteen years of age, can be a sponsor.⁴ The condition for family formation is that the sponsor is at least 21 years old.</p> <p>EU citizens who reside in the Netherlands can also be sponsors in accordance with the Dutch law. However, they can directly appeal to the more favourable provisions of the Community law as community citizens. Their family members do not have to apply for a residence permit for regular family reunification. The term principal person in this study refers to the sponsor.</p> <p>Family reunification</p> <p><i>Definition in the directive</i></p> <p>Family reunification in the directive is described as the entry into and the residence in a member state by family members of a third country national residing lawfully in that member state in order to preserve the family unit, whether the family relationship arose before or after the resident's entry (Article 2, sub d, Directive 2003/86/EC).</p>
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² Preamble of recital 9.



³ See Art. 3.14 Vb.

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			<p><i>Dutch law</i> Family reunification is not defined in the Dutch Aliens Act or lower regulations, but a definition for the concept family formation has been provided. Family formation is described as family reunification of the spouse, registered partner or non-registered partner, when the family tie arose after the sponsor entered the Netherlands.</p> <p>Family member</p> <p><i>Definition in the present study</i> The directive does not contain a definition of the concept family member. The absence of a definition constitutes a problem for a comparative study, not only where terminology is concerned but also in the case of a founded statistical analysis and comparison. Therefore, a definition for this concept has been provided for the study on family reunification of the European Migration Network, to wit 'dependant'. This definition has been compiled based on a quick scan of the participating countries in this study. A 'dependant' is defined as any person who is granted entry and residence in a member state to stay with their family member (the person referred to as 'sponsor' in Directive 2003/86/EC), and who has explicitly filed an application for reasons of family reunification. The term 'dependent' in this definition denotes the requirement of a family member whose main residence is situated in the Netherlands (the sponsor).</p> <p><i>Dutch law</i> The Dutch law does not contain the concept of 'dependant', as defined herein. The Aliens Decree refers to a family member who may be granted or has been granted a residence permit. After the residence permit has been granted, the 'dependant' is described as the 'holder of a residence permit granted under the family reunification or family formation restriction'. The term dependant has its own meaning in the Dutch context. In the case of a family reunification with major children, 'financial and moral dependence' constitutes a special elaboration of the 'existing family tie'. The usual Dutch terminology for the twin concepts of 'sponsor' and 'dependant' is 'principal person' and 'family member'.</p>
	Austria	No	
	Finland	Yes	<p>Family members of a refugee or an alien who has been granted residence permit on the basis of need for protection can apply for family reunification without restrictions.</p> <p>Other relatives must, however, prove that the persons concerned intend to resume their close family life in Finland, or the relative is fully dependent on the sponsor living in Finland.</p> <p>The definition of family member is given in Finnish Aliens Act, Section 37. Section 37 indicates, that persons considered as family members are the following: spouse of a person residing in Finland, unmarried children under 18 years over whom the person residing in Finland or his/her spouse had guardianship. If the person residing in Finland is a minor, his/her guardian is considered a family member. A person of the same sex in a nationally registered partnership is also considered a family member. Persons living continuously in a marriage-like relationship (common law marriage) within the same household regardless of their sex are comparable to a married couple.</p>

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			The requirement is that they have lived together for at least two years. This is not required if the persons have a child in their joint custody or if there is some other weighty reason for it.
	Sweden	Yes	<p>In Sweden the rules for family reunification are the same regardless of the reference person being refugee or having residence permit on other grounds.</p> <p>There are no restrictions regarding the right to apply for family reunification.</p> <p>A person married to, in partnership or co-habiting with someone who lives in Sweden are entitled to residence permit. A person can be granted a residence permit if he/she plans to marry, enter into partnership or commence co-habiting with someone who lives in Sweden. Children under the age of 18 are entitled to be reunited with their parents. In exceptional cases residence permit can be granted to persons who have lived together in the home country. This category includes children over the age of 18 years and parents of persons who are resident in Sweden. In these cases it must be shown that there was a dependency relationship - financially, socially or emotionally, in the home country which makes it difficult to live apart.</p>
	United Kingdom	Yes	<p>What is your policy towards asylum seekers granted with asylum/subsidiary protection lodging an application for family reunification?</p> <p>Under Part 11 of the Immigration Rules qualifying family members of individuals granted refugee status or humanitarian protection for 5 years are entitled to apply for family reunion as soon as their UK sponsor has been granted refugee status/ humanitarian protection. Successful applicants will normally be granted leave and status in line with their UK sponsor.</p> <p>1. Are there any restrictions regarding the right to apply for family reunification? Yes</p> <p>2. If some restrictions exist, under what conditions do they apply? (eg. is the right for family reunification dependent on language skills, time of residence, applicant's age, other?)</p> <p>Under Part 11 of the Immigration Rules;</p> <ul style="list-style-type: none"> • Only pre existing families qualify for family reunion i.e. those who formed the part of the sponsor's family unit, prior to the time that the sponsor fled their country of habitual residence to seek protection in the United Kingdom (UK). • Sponsors must be a recognised refugee or benefiting from a grant of 5 years humanitarian protection in the UK. British Citizens formally recognised as refugees and those who previously benefited from 5 years humanitarian protection are not entitled to sponsor an application for family reunion. Family members wishing to be reunited with an individual who has become a British Citizen should apply under the general settlement rules contained in Part 8 of the Immigration Rules. • Children applying <u>must</u> be under the age of 18 and have been part of the family unit of the sponsor at the time the sponsor fled their country of habitual residence to seek asylum in the UK. • Applicants must not fall within the terms of any of the exclusion clauses listed under 1F of the 1951 Refugee Convention or Paragraph 339D of the Immigration Rules. • Children (under the age of 18) with leave otherwise qualifying him/her as a sponsor are not permitted to sponsor applications for family reunion

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			<p>4. Which categories of persons would fall within the definition of family member?</p> <p>Under Part 11 of the Immigration Rules for the purpose of family reunion, family members include:</p> <ul style="list-style-type: none"> À A spouse À A civil partner À An unmarried or the same-sex partner, providing the parties have lived together in a relationship akin to either a marriage or a civil partnership which has subsisted for two years or more and the sponsor was granted asylum or humanitarian protection in the UK on or after 9th October 2006; À A child under the age of 18, who is not leading an independent life, is unmarried and is not a civil partnership, or formed an independent family unit; <p>Dependant children over the age of 18 and other dependent relatives (e.g. mother, father, brother, sister) do not qualify for family reunion under Part 11 of the Immigration Rules. However, if there are compassionate and compelling circumstances, which warrant consideration of the application "outside the Rules", they may be granted leave to enter/ remain in the UK.</p>
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