

Adam Łazowski, Recent developments in EU case law with regard to the free movement of third-country nationals: case study

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Facts: In September 1997, Ms Pinto, a Portuguese national, moved to Belgium to pursue studies at the Université libre de Bruxelles. She has resided there since then and has been employed full-time since September 2002. Ms Pinto eventually applied for naturalization and, on 12 August 2016, she became a naturalised Belgian citizen, and was issued a Belgian passport, while also retaining her Portuguese nationality. In 2017 she began a relationship with Mr Adamashvili, a Georgian national, who had entered Belgium on a six-month visitor visa on 20 January 2012 and overstayed illegally. Ms Pinto and Mr Adamashvili married on 1 January 2018. Since then they have resided in Belgium.

On 1 April 2018, Mr Adamashvili applied to the Belgian immigration authorities for the issue of a residence card as a family member of an EU national pursuant to domestic law giving effect to Directive 2004/38/EC. On 14 May 2018, he was served with a 'notice to a person liable to removal', together with notice of a decision to remove him from Belgium, on the ground that he had overstayed in that State in breach of immigration controls. By letter of 22 May 2018, the authorities informed Mr Adamashvili of their decision to refuse his application for a residence card and of the reasons for that refusal. The letter stated, in essence, that, following the amendment of Belgian law, Ms Pinto was no longer regarded as an 'EU citizen' for the purposes of domestic law because she had become a Belgian citizen, even though she had also retained her Portuguese nationality. She was therefore no longer entitled to the rights conferred by Directive 2004/38/EC. Consequently, Mr Adamashvili could not claim a residence card as a family member of an EU citizen. Before the amendment of the domestic law, Belgian citizens who, like Ms Pinto, were also nationals of another EU Member State were — unlike Belgian citizens without such dual nationality — regarded as EU citizens for the purposes of Directive 2004/38/EC and relevant domestic law.

Please advise Ms Pinto and Mr Adamshvili as to their rights under EU law (note that the Belgian rules are fictitious). Furthermore, please consider if a reference for preliminary ruling would be required.