

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	30 July 2013
Deciding body (in original language)	Bundesverwaltungsgericht (<i>BVerwG</i>)
Deciding body (in English)	Federal administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	1 C 15.12 ECLI:DE:BVerwG:2013:300713U1C15.12.0
Parties	Ghanaian national Local aliens' registration office
Web link to the decision (if available)	www.bverwg.de/entscheidungen/entscheidung.php?ent=300713U1C15.12.0
Legal basis in national law of the rights under dispute	Articles 6 and 8 of the Basic Law for the Federal Republic of Germany (<i>Grundgesetz</i> , GG), www.gesetze-im-internet.de/gg/BJNR000010949.html , www.gesetze-im-internet.de/englisch_gg/index.html , Sections 5, 36 of the German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act (<i>Aufenthaltsgesetz</i> , <i>AufenthG</i>), www.gesetze-im-internet.de/aufenthg_2004/ , www.gesetze-im-internet.de/englisch_aufenthg/index.html .

<p>Key facts of the case (max. 500 chars)</p>	<p>The claimant had entered Germany unlawfully. In Germany he lived with his life partner who also was a Ghanaian national. Together they had two minor children, additionally the seven-year old daughter of the life partner from a former relationship lived in the household. This daughter had the Ghanaian and the German nationality. The life partner was working part-time, the claimant was taking care of the children. The life partner and the two common children were in possession of residence permits. The claimant applied for a residence permit for family reunion which was rejected by the aliens' registration office. The Neustadt administrative court (<i>Verwaltungsgericht, VG</i>) has dismissed the claim for a residence permit according to section 36 (2) of the AufenthG. The Higher Administrative Court Rhineland-Palatinate (<i>Oberverwaltungsgericht, OVG</i>) has obliged the aliens' registration office to provide the claimant with a residence permit according to section 36 (2) of the AufenthG. The BVerwG has annulled the decision and has referred the case back to the OVG.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The claimant has applied for residence according to Section 36 (2) of the AufenthG that provides other dependants of a foreigner with a temporary residence permit for the purpose of subsequent immigration to join the foreigner, if necessary in order to avoid particular hardship. The VG has negated the existence of particular hardship in the present case reasoning that the legislator with Section 36 of the AufenthG did not provide a general right of entry but rather an exemption clause. The OVG has reasoned that there was particular hardship since the claimant without residence could not continue the family relation with his children. This family relation was also protected by Article 6 of the GG that protects marriage, family and children. The BVerwG has reasoned that the OVG has put the standard for Section 36 of the AufenthG too low and that the case had to be further investigated. A negative decision would however have to be in accordance with EU law. Even if Directive 2004/38 was not applicable since the claimant was no family member in the sense of the Directive, Articles 20, 21 of the TFEU were to be considered. It had to be prevented that a EU national did not have a different choice than to leave the EU to live with his or her family, he or she would in this case be affected in the core components (Kernbestand) of his or her rights as EU national. The reference to Articles 20 and 21 of the TFEU was however limited to very rare exceptions.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The BVerwG in 2013 has issued several decisions on the question of residence for dependants from third-countries. Besides the present decision there have been the following: decision of 13 June 2013, 10 C 16.12 and decision of 30 June, 1 C 9.12.</p> <p>The BVerwG has with these decisions clarified that it will follow the jurisdiction of the CJEU for example from the Dereci and the O&S case in that the status as EU national prevents national measures that have the effect that the EU national may not exercise his or her rights. The BVerwG has however made clear that such an interpretation according to Articles 20, 21 of the TFEU will only be accepted in exceptional cases.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the</p>	<p>The decisions have ensured more legal clarity for family members from third countries.</p>

<p>case (max. 500 chars)</p>	
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>„Die Verweigerung einer Aufenthaltserlaubnis gegenüber einem nachzugswilligen Mitglied einer „Patchwork-Familie“ kann in seltenen Ausnahmefällen einen Verstoß gegen Art. 20 AEUV darstellen (im Anschluss an EuGH, Urteil vom 6. Dezember 2012 - Rs. C-356/11, O. und S.)“</i> (BVerwG, decision of 30 July 2013, 1 C 15.12, Paragraph 1.</p> <p>The rejection of a residence permit to a family member from a “patchwork-family” that is willing to follow the family may in rare exceptional cases constitute an infringement on Article 20 of the TFEU (following CJEU, decision of 6 December 2012 – Rs. C-356/11, O. and S.).</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No.</p>