

VISA POLICY AS MIGRATION CHANNEL: IRELAND

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European Migration Network



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The European Migration Network

The aim of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum at Member State and EU-level with a view to supporting policymaking and informing the general public.

The Irish National Contact Point of the European Migration Network, EMN Ireland, is located at the Economic and Social Research Institute (ESRI).

The ESRI

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The Author

Emma Quinn is National Co-ordinator of EMN Ireland, the Irish National Contact Point of the European Migration Network, located within the ESRI.

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The opinions presented in this report are those of the Irish National Contact Point of the European Migration Network and do not represent the position of the Irish Department of Justice and Equality or the European Commission Directorate-General Home Affairs.

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Abbreviations and Irish Terms

ACEL	Accreditation and Co-ordination of English Language Services
AFIS	Automatic Fingerprint Identification System
An Garda Síochána	Police
AVATS	Automated Visa Application Tracking System
BIODEVEU	Project for collection, storage and searching of biometric data captured from visa applicants
CTA	Common Travel Area
EFL	English as a Foreign Language
EU VISEU	Visa Information System, under which visa information is exchanged between Member States
Gardaí	Police
GNIB-IS	Garda National Immigration Bureau Information System
IBC/05	Irish Born Child Scheme 2005
ICI	Immigrant Council of Ireland
ICOS	Irish Commission for Overseas Students
IEHC	Irish Electronic High Court
IHRC	Irish Human Rights Commission
IILU	Investigations and International Liaison unit
INIS	Irish Naturalisation and Immigration Service
NGO	Non-governmental Organisation
NQAI	National Qualifications Authority Ireland
Oireachtas	Parliament
ORAC	Office of the Refugee Applications Commissioner
RAT	Refugee Appeals Tribunal
Taoiseach	Prime Minister
TFEU	The Treaty on the Functioning of the European Union
UKBA	UK Border Agency
VAC	Visa Application Centres
VFS	Visa Facilitation Services GNIB – Garda National Immigration Bureau
VIS	Visa Information System

Executive Summary

An Irish visa is a form of pre-entry clearance to travel to a point of entry to the State only. Whether or not the visa carries any legitimate expectation of entering the State has been debated in the courts. Ireland and the UK lie outside the Schengen zone and the issuing of both short and long-term visas is a national competence. Within the Schengen zone, the regulation of short-term visas falls within the competence of the EU, while long-term visa policy is set by the Member State. The Schengen short-stay regime concerns visas, issued by a Member State, which allow Third Country Nationals to enter that Member State, or several Member States, for stays not exceeding three months per six-month period. The Irish system is essentially discretionary, whereby the Minister for Justice and Equality¹ decides whether or not to grant applications for visas; exceptions relate to beneficiaries of EU Treaty free movement rights.

Available Data

Historical statistical records of visa applications, refusals and approvals processed in Dublin and internationally are very limited. Prior to 2010, collated data often do not exist due to the fact that separate records were maintained at the various embassies and consulates involved. Since mid 2009, all applications for Irish visas must be made via an online system namely the Automated Visa Application Tracking System (AVATS). The introduction of this system has improved data availability, however the first full year of data from this system relates to 2010. One key problem is that detailed statistical reports from the AVATS system do not distinguish between C (short-term) and D (long-term) visas.

National Policy, Legislative and Operational Framework

The main domestic instruments relevant to visas include the *Immigration Acts 2003 and 2004*; the *Immigration Act 2004 (Visas) Orders*; and the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006)* as amended. As discussed in Chapter 2, much of the system is administratively based. Ireland, like the UK, has the right to opt out of EU legal instruments on immigration and asylum. However, Irish visa law, policy and practice are impacted upon by EU legislation. For example the *Immigration Act 2004 (Visas) Order 2011* contained a new element, which included the non-national holders of a 'Residence card of a family member of a Union citizen', referred to in Article 10 of the *Free Movement Directive 2004/38*, as visa-exempt for the first time.

¹ Note with the change of government in March 2011 the Department's name changed from the Department of Justice and Law Reform to the Department of Justice and Equality. The Minister's title also changed accordingly.

In Ireland, codified visa policy is limited. The visa system, as a system of pre-entry clearance, is seen as the 'first line of defence' in the immigration system and supports and follows overall migration policy. Irish Naturalisation and Immigration Service (INIS) officials commented that, given Ireland's current economic circumstances, it is important that visa policy assists with attracting migrants who can make a valuable economic or cultural contribution and deter those who are likely to cost the State in terms of resources.

There have been several recent policy and operational developments regarding visas in recent years which are discussed in Chapters 2 and 3. These include:

- The introduction of a new Short-stay Visa Waiver Programme for holders of certain UK visas in July 2011. Under a pilot scheme passport holders from 16 named countries, who are granted a UK visa and who have a current permission to be in the UK, are able to travel to Ireland without the requirement to obtain an Irish visa. It is hoped that potential tourists, who may have been discouraged by the inconvenience and cost (€60 per person, including per child) of extending their trip, may now be persuaded to do so.
- The opening of six INIS 'branch offices' in Irish embassies in Abuja, Abu Dhabi, Beijing, London, Moscow and New Delhi between 2002 and 2010. It was noted by INIS officials that the 'hub and spoke' model of processing visa applications is generally becoming more common internationally.
- In India, Nepal, Ghana and Nigeria commercial partners, Visa Facilitation Services (VFS), manage Visa Application Centres (VACs) where applications for Irish visas are made. VFS also perform administrative tasks in relation to visa applications such as collecting fees, posting documents, collecting biometric data (fingerprints) and checking photographs.
- In March 2010, Ireland completed the roll out of biometric data collection as part of the visa application procedure in Nigeria, a project known as 'e-Visa'. Visa officials stated that the fact that biometric testing is being introduced by other countries of destination, and at EU level through the Visa Information System (VIS), means that Ireland needs to act to avoid 'visa shopping' by fraudulent applicants.

Visa-required nationals, who are legally resident in Ireland, must hold an Irish re-entry visa in order to temporarily leave the State during their stay. This requirement is unusual in a European context. The Irish visa system is self-financing, attracting €6.9 million in fees in 2010. The revenue generated through the re-entry visa system is significant in ensuring this is the case.

Visas are the first step in the Irish immigration system for visa-required nationals, and the interests of such would-be migrants and their representatives (Non-Governmental Organisations (NGOs), business groups, family members) can be at odds with the priorities of those tasked with enforcing immigration controls.

Media reports indicate that groups such as Tourism Ireland, the Coach, Tourism and Transport Council and Enterprise Ireland have lobbied the State for a more convenient visa system. Visa officers meet with various representative bodies bilaterally to gather information on current issues as well as attending quarterly collective meetings with NGOs and advocacy groups.

Visa Processing

The procedures followed in processing visa applications are discussed in Chapter 3. INIS officials consulted for the study stated that examining a visa application involves an overall assessment of:

- The applicant's credibility;
- The suitability of the applicant's profile to the particular visa for which they have applied;
- Whether or not issuing the visa would be consistent with overall government policy;
- The likelihood of the applicant observing the terms and conditions of the visa, including returning home at the end of their stay.

An important part of examining the application is document verification. Occasionally background checks are also performed. Historical records in the central visa processing system, available from mid 2009 onwards, are relied on heavily when processing new visa applications to check prior immigration history of both applicant and named host. A range of other databases may also be consulted by visa officers, for example the repatriation database, which contains details on deportations; hard copy files of correspondence with non-EU nationals (so called '69-number files'); the Garda National Immigration Bureau Information System (GNIB-IS); and the records of the Office of the Refugee Applications Commissioner (ORAC). These records can show both a compliant and less favourable visa history on the part of the applicant and on the part of the host named on the application.

Negative visa decisions of all types and categories may be appealed within two months of the decision, unless the application in question has been deemed to have included false, fraudulent or misleading information. A five-year ban on reapplication applies to Nigerian nationals who are found to have supplied false information. An NGO consulted for the current study, observed that information in refusal letters is sometimes not detailed enough, in particular regarding the explanation 'insufficient funds', leading to confusion and sometimes inconsistent decisions.

Common Travel Area Shared with the UK

Ireland shares a Common Travel Area (CTA) with the UK, which means that there are no passport or visa controls in operation for Irish and UK citizens travelling between the two States, although travellers must carry photo-identification. The

CTA only applies to Irish and UK citizens however it has the effect that there are increased opportunities for other nationality groups to evade immigration controls if they have reason to do so. With the objective of protecting the CTA Ireland and the UK have recently significantly escalated the extent of data sharing in relation to visa applications. The sharing of such data began on a local level, for example between the Irish and UK embassies in sending countries. In mid November 2011 Ireland and the UK will sign a Memorandum of Understanding which will have the effect that visa application data, from nine specified countries, will be automatically shared between INIS and the UK Border Agency (UKBA). The countries concerned are: Bangladesh; China; Ghana; India; Iran; United Kingdom; Nigeria; Pakistan and Sri Lanka.

Co-operation with Third Countries: Case Studies on Nigeria and China

Case studies on Nigeria and China are provided in Chapter 4. In the absence of significant, visa policy-related agreements with Third Countries, the focus is on the administrative practice of the Irish visa system. Nigeria is a significant country of origin of migration to Ireland. Although annual flow data are not disaggregated by individual country of origin it is known that Nigerian nationals are a dominant group in asylum application data and much less so in employment permit data. Nigerian nationals are also overrepresented among persons refused leave to enter the State, persons issued with deportation orders and persons returned from Ireland. The Irish government has undertaken several initiatives to manage the flow of Nigerian nationals into the State; the introduction of a requirement for biometric data to support visa applications is one such approach.

The number of visa applications made in Nigeria almost doubled between 2007 and 2008. INIS linked the steep increase in applications to the introduction of biometric testing by UKBA and concluded that Ireland had become the target of 'visa shopping'. The e-Visa project, introduced as a six month pilot, has since become a permanent feature of visa applications made in Nigeria. The collection of biometric data is not practiced by Ireland in connection with visa applications in any other countries, although INIS has signalled that it would like to roll the system out to other states, notably Pakistan. Numbers of visa applications lodged in Nigeria have fallen by 55 per cent in the period 2008-2010. Unpublished figures for the first half of 2011 show that visa applications in Nigeria are down 11 per cent on same period in 2010. Perhaps a stronger indicator of the success of the project is that the average annual approval level of applications made in Nigeria has risen from 41 per cent in 2008, just before the introduction of e-Visa, to 52 per cent in 2010.

Almost three quarters of first residence permits issued to Chinese nationals in 2010 were for education-related reasons. China was the third largest country of citizenship among (long and short-term) visa recipients in 2010 and 14 per cent of total visas issued were for educational reasons. The case study on China focuses on Ireland's attempts to attract Chinese students to Ireland while tackling the problem of migrants using the student visa to access the Irish labour market.

In May 2002, four visa officers from INIS were posted in the Irish Embassy in Beijing to run a visa office with full power of decision in all types of visa applications. The visa officers were tasked with processing a large backlog of applications as well as addressing suspected fraudulent applications. In China it is common practice for potential language students and Irish language schools to make contact with each other via agents, usually located in China. At the time of the establishment of the Beijing visa office in 2002 there were indications that some of these agents were offering a service to secure Irish visas by fraudulent means. Following the setting up of the Beijing visa office INIS initiated various new administrative procedures, for example agents were asked to verify all new applications and to identify applications which contained fraudulent documents. Cases identified by the agent as fraudulent or suspicious were refused without checking.

In 2004 a 'privileged status' list of provinces in China was advertised, from which provinces applicants could make applications without first having to pay the fees. In 2005 the Irish Visa Office in Beijing signed an agreement with one of the Chinese banks which meant that they would guarantee the fees and living expenses of prospective students, and that they would transfer the fees directly to the college for the entire duration of the study plan. Following the opening of the visa office in Beijing there was an increase in overall study visa approvals over the period 2005-2008, with most of the increase seen at higher educational levels. The total visas approved for third level, further education and general education increased by 68 per cent in this period.

Effects of EU Policy and Legislation

While Ireland lies outside the Schengen zone and therefore visa policy is a national competence, EU policy and legislation nonetheless impact on Irish visa policy, as shown in Chapter 5. The *Free Movement Directive 2004/38* is particularly important in this regard providing inter alia that Third Country family members of an EU citizen, in possession of an EU residence card, are exempt from visa requirements; furthermore, a Third Country family member not in possession of residence card or visa, who presents at the border, must be given the opportunity to obtain a visa before being refused 'leave to land'. In a related case, *Raducan & Anor v The Minister for Justice & Anor*, the Moldovan wife of a Romanian national residing in the State, who was in possession of a 'residence card of a family member of a Union Citizen', was refused permission to land in Ireland. The Court of Justice subsequently found that the State had failed to comply with its obligations under the *Free Movement Directive*. The *Metock* and *Zambrano* judgments have also had an impact on Irish visa policy.

Chapter 1

Introduction: Purpose and Methodology Followed

1.1 INTRODUCTION

The current report is the Irish contribution to a European Migration Network (EMN) study on ‘Visa Policy as Migration Channel’, which aims to look at the effect of visa policy and practice on the management of migration; both in terms of facilitating legal migration and preventing irregular migration. A similar report will be compiled by each EMN National Contact Point and a synthesis report will then be produced. The EU-level study will investigate the degree of co-operation with non-EU countries, particularly concerning facilitation and bilateral/multilateral agreements, and attempt to highlight best practice. The effects of EU policy and legislation on national policymaking and practices will also be explored. It is intended that the current national study should be useful to policymakers, NGOs and researchers working in the field of migration and asylum in Ireland. ‘Policy’ in the current report is understood to encompass strategic principles, including law, and day-to-day operational guidance, both formal and informal in substance.

As discussed below, available data on visas are limited, however it can be assumed that the number of Irish visa applications have increased in the last two decades as Ireland has moved from being a country of emigration to one of high net immigration during the 2000s. Ireland and the UK lie outside the Schengen zone and the requirement to hold an Irish visa is, in the main, a national competence. In circumstances governed solely by national law, an Irish visa gives the bearer the right to present at an Irish border only and does not carry with it any clear entitlement to enter the State or to stay in the State. EU law has the effect that certain groups of people must be facilitated with Irish visas, and that others must have any national law visa requirement waived. While other EU states within the Schengen zone participate in a clearly defined visa code, the Irish system is essentially discretionary, whereby the Minister for Justice and Equality² decides whether or not to grant applications for visas; exceptions relate to beneficiaries of EU Treaty free movement rights. As a system of pre-entry clearance, Irish visa policy tends to follow and support wider migration policy, acting as the first line of defence in the immigration system.

² Note with the change of government in March 2011 the Department’s name changed from the Department of Justice and Law Reform to the Department of Justice and Equality. The Minister’s title also changed accordingly.

The current study discusses evidence on the effectiveness of different Irish visa practices and related policies in facilitating legal migration and deterring irregular migration. An overview of existing policy and the legal framework is provided in Chapter 2. Much of the Irish visa system is based on administrative procedures and guidelines and the issuing of visas is not covered by statute. The existing legislation that is relevant to visa-issuing is described. The practical implementation of the system is considered in Chapter 3. There have been significant changes in this regard in recent years with the opening of branch offices of the Irish Naturalisation and Immigration Service (INIS) between 2002 and 2010 in six high-volume locations around the world; the involvement of commercial partners in the application process; and the introduction of biometric data collection for certain applications. Case studies of Nigeria and China are included in Chapter 4 in order to explore the nexus between visa policy and practice and migration management and control. In the absence of significant visa policy-related agreements with Third Countries, the focus is on the administrative practice of the Irish visa system. Nigeria is discussed as the location of the introduction of biometric testing as part of the visa application process, while the case study of China explores visa practices and policies relating to international students. The recent impact of EU law and policy on the Irish visa system is discussed in Chapter 5. The study concludes in Chapter 6.

Table 1.1 shows that between 2005 and 2010 visa applications peaked at almost 102,400 in 2006, before falling by 24 per cent to reach just under 78,000 in 2010. It is likely that the accession of Romania and Bulgaria to the EU in January 2007 influenced this decline as well as Ireland's deteriorating economic circumstances from 2008 onwards, but many other international factors will also have been at play. Table 1.1 also shows that the overall rate of visas issued to applications lodged has steadily increased during the period 2007-2010. Furthermore, it is shown that in 2009-2010 the ratio of visas rejected to visas granted is considerably higher for long-term visa applications than short-term visa applications.

Visa-required nationals who are legally resident in Ireland must hold an Irish re-entry visa to re-enter the State if they wish to leave it for a short time during their stay. Table 1.2 shows that the number of re-entry visas applied for and granted has been relatively stable in the period 2007-2010, aside from a dip in 2009.

Table 1.1 Visa Applications, Visas Issued and Rejected

	Applications		Rejected		Issued		Total issued	% Issued*
	Short-term	Long-term	Short-term	Long-term	Short-term	Long-term		
2005		75,026	na	na	na	na	na	
2006		102,396	na	na	na	na	na	
2007		91,165	na	na	68,564		68,564	75.2%
2008		86,098	na	na	60,388	11,000	71,388	82.9%
2009		76,554	8,560	2,140	55,921	9,750	65,671	85.8%
2010		77,940	6,400	1,558	60,362	8,743	69,105	88.7%

Source: Visa Section, Irish Naturalisation and Immigration Service.

Notes: *Visas issued may relate to applications lodged in a previous year. Available detailed visa records (i.e. with re-entry visas removed) do not distinguish between C and D visas. Estimates have been supplied by the Visa Section of INIS for the period 2008-2010. In general visas are not recorded as C or D in INIS records until they are issued, for this reason visa applications cannot readily be broken into C and D.

Table 1.2 Re-Entry Visas Applied For and Issued

	Applied	Issued
2007	66,000	na
2008	64,000	na
2009	57,413	57,411
2010	64,504	64,493

Source: Department of Justice and Equality, 2011, 2010, 2009, 2008.

1.2 METHODOLOGY

Irish visa policy stems from migration policy and as a result is not significantly documented in terms of research or policy statements. Desk research was limited to review of the INIS website, press releases, media and parliamentary questions as well as migration-related policy documents. Online journal repositories were also consulted. The most important sources for the current study were interviews conducted with officials of the Visa Section of INIS in Dublin as well as internal documents supplied by the same officials. A draft of the study was circulated and comments received from INIS, ORAC, NGOs working in the field and legal experts. Unless otherwise stated, terms used have the meaning set out in the EMN Glossary.³

1.2.1 Statistical Data

Historical statistical records of visa applications, refusals and approvals processed in Dublin and internationally are very limited. Prior to 2010, collated data often do not exist due to the fact that separate records were maintained at the various embassies and consulates involved. Furthermore, visa applications must only be retained in storage for two years so the potential for further historical research is restricted. INIS officials compiled the pre-2010 data supplied in Table 1.1 from a variety of statistical reports. These data limitations mean that the potential for analysing trends in the current study is very limited.

Since July 2009 all Irish visa applications have been processed through a single application processing IT system, AVATS (Automated Visa Application Tracking

³ <http://www.emn.ie> or <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=117>.

System), therefore available data are much improved. The first full year data available from this system relate to 2010. One key problem, however, is that detailed statistical reports from AVATS do not distinguish between C (short-term) and D (long-term) visas. Estimates of the breakdown of visas issued and rejected have been supplied by the Visa Section of INIS for the period 2008-2010. In general visas are not recorded as C or D in INIS official records until they are issued, for this reason visa applications cannot be broken into long and short-term. The majority of the visa-related statistics in the current report have not been previously published in the public domain. Further statistics which provide context for the discussion have been sourced through Eurostat and the Central Statistics Office.

Chapter 2

Policy and Legal Framework for the Granting of Visas in Ireland

2.1 NATIONAL POLICY AND LEGISLATIVE FRAMEWORK

2.1.1 Overview of National Visa Policy

The Minister for Justice and Equality is the Minister responsible for setting overall visa policy.⁴ The Irish Naturalisation and Immigration Service (INIS), an executive office of the Department of Justice and Equality, is the body responsible for processing and deciding visa applications. Authority to grant certain categories of visa, principally short-stay visas, has been delegated by the Minister for Justice and Equality to diplomatic staff of the Department of Foreign Affairs and Trade, who are located at embassies and consulates around the world.

Within the Schengen zone, the regulation of short-term visas falls within the competence of the EU while long-term visa policy is set by the Member State.⁵ The Schengen short-stay regime concerns visas, issued by a Member State, which allow Third Country Nationals to enter that Member State, or several Member States, for stays not exceeding three months per six-month period. Ireland and the UK are outside the Schengen area⁶ and accordingly national legislation regulates the issuing of both short and long-term visas. EU law has, however, the effect that certain people must be facilitated with Irish visas and that other groups of people must have any national law visa requirement waived. These matters will be discussed fully in Chapter 5. A Common Travel Area (CTA) is in existence between Ireland and the UK, which is discussed further in Section 3.3.1.1. This means that there are no passport or visa controls in operation for Irish and UK citizens travelling between the two States, although travellers must

⁴ This Minister's Department has changed title twice in recent years. In 2010 the Department of Justice, Equality and Law Reform became the Department of Justice and Law Reform, while in 2011 a further change resulted in the title: the Department of Justice, Equality and Defence. To avoid confusion current titles, for both Department and Minister, will be used in this report.

⁵ This common policy is based on the inter-governmental framework of the Schengen Agreements (1985 and 1990). The Schengen *Acquis* on short-term visas includes common rules on determination of the EU Member State responsible for granting a visa; conditions of delivery of a visa; creation of a database; a list of Third Countries whose nationals are or are not subjected to a visa obligation; the conditions and procedures for the delivery of visas; and a uniform format for visas (International Organization for Migration, 2009).

⁶ In accordance with *Council Decision 2000/365/EC* of 29 May 2000 and *Council Decision 2002/192/EC* of 28 February 2002, the United Kingdom and Ireland co-operate in some aspects of Schengen, namely police and judicial *co-operation* in criminal matters, though are not bound by the entire Schengen *Acquis*.

carry photo-identification. Visa systems in Ireland and the UK are separate and quite different to each other.

Irish visas are unusual in an international context in several respects. Visas are the first stage of Ireland's immigration regime. An Irish visa is a form of pre-entry clearance to travel to a point of entry to the State only. Whether or not it carries a legitimate expectation of entering the State has been debated in the Courts, as discussed in Section 3.1.3. Under Section 2 of the *Immigration Act 2003* carriers are required to check for the appropriate documentation, including visas, before allowing a traveller to board. The visa holder must seek to be granted permission to land by an immigration officer at the border and must then register with the Garda National Immigration Bureau (GNIB) or Gardai if they intend to stay longer than 90 days. In contrast, short-term Schengen visas carry an entitlement to enter the relevant State(s). A person in possession of a Schengen visa issued by one Schengen area State does not require a further visa to travel to the others.

In general, within the EU visas are granted by Schengen member states under the following categories: Type A: Airport transit visas; Type B: Transit visas;⁷ Type C: Short stay visas for stays of less than three months; Type D: National visas for stays of more than three months in a 12 month period. Ireland also issues type C visas for short stays of under 90 days and type D visas for longer stays. In practice Ireland does not issue transit visas although legal provision for such a visa does exist.⁸ Irish visas are issued under the following categories:

Short Stay (C Visas): Visit (Family or Tourist); Study, Research or Exam; Employment, Training or Van der Elst;⁹ Business, Conference or Performance; Medical Treatment, Religious, Lay Volunteer.

Long Stay (D Visas): Join Family; Employment or Intra-company Transfer; Scientific Researcher, Training, Van der Elst; Study, Research or Exam; Medical Treatment, Religious or Lay Volunteer.

2.1.2 Overview of Legal Framework

The State's inherent power to control the entry and presence of non-nationals in the State is vested in the Government pursuant to Article 28(2) of the Constitution of Ireland. Certain powers relevant to immigration management are delegated to the Minister for Justice and Equality. The legislative framework with respect to immigration management is provided by the Aliens Act, 1935 and by the Immigration Acts 1999, 2003 and 2004, and S.I. No. 656 of 2006 as amended by S.I. No 310 of 2008, among other measures. Ireland, like the UK, has reserved the right to opt out of EU legal instruments on immigration and asylum. Although Ireland and the UK lie outside the Schengen area EU law does impact on Irish visa

⁷ No longer issued in Schengen states following the Visa Code effected on 5 April 2010.

⁸ Section 17(1)(b) of the *Immigration Act 2004*.

⁹ To qualify for such a visa the non-EEA national concerned must be lawfully employed in another EU Member State and be coming to Ireland to provide services on behalf of their employer.

policy as will be discussed in Sections 2.3, 3.1.3 and Chapter 5. The main domestic instruments relevant to visas are as follows:

a) *Immigration Act 2003*

- Section 1 of the Immigration Act 2003 defines an ‘Irish visa’: “‘Irish visa’ means an endorsement made on a passport or travel document other than an Irish passport or Irish travel document for the purposes of indicating that the holder thereof is authorised to land in the State subject to any other conditions of landing being fulfilled”. Section 1 of the 2003 Act also provides the definition of an Irish transit visa.
- The requirement for carriers to check documents, including visas, before allowing individuals to board is contained in Section 2 of the Immigration Act 2003.

b) *Immigration Act 2004*

- The power to designate classes of foreign nationals as requiring, or not requiring, a visa is set out in Section 17 of the 2004 Immigration Act.
- Visas are pre entry clearance documents. In matters of domestic immigration law, immigration officers have power to grant or deny entry, decide on the duration of the stay, and any conditions under Section 4 of the 2004 Act.
- In situations where EU law does not apply, an immigration officer may refuse to give permission to land or be in the State if satisfied that any of the situations set out in Section 4 apply, these are summarised in Section 3.1.3.

c) *Immigration Act 2004 (Visas) Orders*

- Statutory Instruments, or Orders, made under Section 17 of the *Immigration Act 2004* set out the categories of person that do, and do not, require a visa when travelling to Ireland.
- The most recent of these Orders, *the Immigration Act 2004 (Visas) (No. 2) Order 2011 (S.I. No. 345 of 2011)*, sets out that the following groups are visa-exempt when travelling to Ireland:
 - Passport holders of 89 identified states listed in Annex 1;¹⁰
 - Holders of a Convention travel document issued by specified states,¹¹ in accordance with Article 28 of the Geneva Convention (for visits of up to 90 days);

¹⁰ Passport-holders of the identified states are visa exempt regardless of the proposed length of stay. While in the UK a visa exemption applies only to short-term visitors (i.e. less than six months).

- Holders of a valid residence card;
- Non-Irish nationals who are family members of a Union citizen and holders of a “Residence card of a family member of a Union citizen”, as referred to in Article 10 of the *Free Movement Directive 2004/38/EC* on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Note that, with exceptions discussed in detail in Section 3.1.3 where EU law prevails, it is still possible for permission to land to be refused to visa-exempt groups by an immigration officer at the Irish border.

- S.I. No. 345 of 2011 also lists states, citizens of which are required to be in possession of a valid Irish transit visa when transiting through Ireland and provides the basis for the Short-Stay Visa Waiver Programme discussed in Section 2.4.
- d) *The European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006), as amended by the European Communities (Free Movement of Persons) Regulations 2008 (S.I. 310 of 2008).*
- S.I. No. 656 of 2006, as amended by S.I. 310 of 2008, transposes *the Free Movement Directive* (Directive 2004/38, also known as the Citizenship Directive) into Irish law. This Directive impacts directly on Irish visa policy as discussed in Chapter 5, dealing with *inter alia* permission for Union citizens and their family members to enter the State.¹²

The issuing of visas is otherwise governed by administrative arrangements. In the judgment handed down in *RMR & Anor v Minister for Justice, Equality and Law Reform*¹³ it was stated that:

It is clear that the Minister is under no legal obligation to grant a visa – the grant or refusal of visas is entirely within his discretion and it is for the visa applicant to convince the Minister that he or she should be granted a visa. Government policy determines which foreign nationals require visas to visit or transit the State and whether they can work in the State. The inherent executive power and responsibility of the Government to formulate immigration policy is supplemented by statutory provisions including the Aliens Act 1935 and the Immigration Acts 1999, 2003 and 2004. There is at present no statutory framework for issuing visas.

The draft *Immigration, Residence and Protection Bill 2010*, currently before the Oireachtas, proposes to codify elements of the visa system into legislation.

¹¹ Belgium, Czech Republic, Denmark, Finland, Germany, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden or Switzerland. Note the UK is not a specified state.

¹² Other national legislative measures with relevance to visas include: *The European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977)*; the *European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997)*; Section 9(1) of the *Refugee Act 1996*.

¹³ [2009] IEHC 279.

Detailed provisions regarding individual groups of applicants/visa holders will continue to be administratively determined.

2.1.3 Links between Visa and Migration Policy and Legislation

In Ireland, codified ‘visa policy’ is limited. The visa system, as a system of pre entry clearance, is seen as the ‘first line of defence’¹⁴ in the immigration system and supports and follows overall migration policy. The Irish immigration system was characterised, in a discussion document published in advance of draft immigration and residence legislation, as having “...dual roles of being welcoming to bone fide visitors and also of deterring those who have malevolent intentions in seeking to come to Ireland.” On the subject of visas the same document places clear emphasis on deterring irregular migration:

Control of the entry of foreign nationals to any State is an inherent element of national sovereignty. It is necessary for the protection of the fundamental rights of citizens and residents and for the defence of the immigration system and of the State itself. Visa and pre-entry clearance systems are a crucial element of such immigration controls and allow States to apply such controls in advance of a person arriving at the borders of a State to seek entry. (Department of Justice and Equality, 2005).

Ireland is a country traditionally characterised by emigration and, until recent years, lacked large groups of long-term or permanent migrants. This situation was reversed in the mid 1990s and dramatically from the mid 2000s, when very substantial numbers of migrants moved to Ireland. Ireland’s non-EU migration policy and legislative development in the last two decades has focused on managing the entry, stay and departure of the various groups of non-EU migrants coming to Ireland, mainly asylum applicants, labour migrants, family members and international students. In more recent years policy development has also been concerned with the attraction of groups of migrants such as international students and highly skilled workers to the State; attention has also been turned to the integration of legally resident migrants.

Migration-related policy priorities are decided by the Department of Justice and Equality, based on consultation with other government departments and external stakeholders for example, the Department of Jobs, Enterprise and Innovation, employers groups and unions in relation to employment permits; the Department of Education and Skills, colleges, universities and other educational service providers in relation to international students. The Visa Section of INIS participates in such joint initiatives.

The following are examples of recent developments in migration policy in which the visa system plays a role in facilitating legal migration:

¹⁴ Interview with visa officials.

- Ireland is pursuing a policy of developing the international education sector by developing a quality Irish education ‘brand’ abroad. The stated target is to double the number of international students studying in Ireland with a particular focus on students from India, China and the Middle East. As part of that process it is intended to “overhaul the student visa regime and ensure that advertising, Diaspora policies and quality assurance systems are strategically developed to best position the international education sector.”¹⁵ Recent policy developments relating to the international education sector are discussed in Section 4.2.
- The government has stated a desire to attract increased numbers of tourists, in particular from emerging Asian economies. The recent introduction of the visa waiver programme for holders of certain UK visas, outlined in Section 2.4 is intended to support the development of this sector.
- The Visa Section at INIS works with bodies such as Tourism Ireland, Enterprise Ireland and individual business interests to facilitate the travel of business people. Location-specific guidelines are issued to embassies in relation to certain industries and visa officials abroad regularly participate in trade fairs.

INIS officials commented that given Ireland’s current economic circumstances, it is important that visa policy assists with attracting migrants who can make a valuable economic or cultural contribution and deter those who are likely to cost the State in terms of resources. Direct links between visa and migration law exist in the instruments discussed above in Section 2.1.2.

2.2 AGREEMENTS WITH THIRD COUNTRIES

As stated above Ireland maintains a list, which changes periodically, of countries whose citizens do not require a visa to enter Ireland, defined in the *Immigration Act 2004 (Visas) (No. 2) Order 2011 (S.I. No. 345 of 2011)*. The most current list is supplied in Annex 1 and comprises the 26 other EU Member States, Iceland, Norway and Liechtenstein and 60 additional states including the US and Canada. There are also a number of bilateral agreements in place regarding visa processing fee exemptions, for example between Ireland and Jamaica, and Ireland and Serbia.

2.3 RECENT CHANGES TO VISA POLICY AND LEGISLATION WITHIN CONTEXT OF A COMMON EU DIMENSION

Ireland, like the UK, has reserved the right to opt out of EU legal instruments on immigration and asylum. However, Irish visa law, policy and practice is

¹⁵ Written Answer by Minister for Justice and Equality to Parliamentary Question Thursday, 7 April 2011. <http://debates.oireachtas.ie/Dáil/2011/04/07/00028.asp>.

significantly impacted upon by EU legislation, including by Articles 20 and 21 The *Treaty on the Functioning of the European Union* (TFEU), and the *Free Movement Directive*, which is transposed into Irish law by S.I. 656 of 2006 as amended by S.I. 310 of 2008. The impact of EU policy and legislation will be discussed in detail in Chapter 5.

In terms of recent changes to Irish visa policy the *Immigration Act 2004 (Visas) Order 2011 (S.I. No. 146 of 2011)* contained a new element, which takes account of common EU law. Irish domestic visa orders, made under Section 17 of the *Immigration Act 2004*, set out the categories of people that do, and do not, require a visa when travelling to Ireland. Other groups of people who are visa-exempt when travelling to Ireland are also identified, including certain Convention Refugees and holders of a valid permanent residence card or a residence card. The first 2011 Visa Order included the non-national holders of a ‘Residence card of a family member of a Union citizen’, referred to in Article 10 of the *Free Movement Directive*, as visa-exempt for the first time. This Order has recently been superseded by *Immigration Act 2004 (Visas) (No. 2) Order 2011 (S.I. No. 345 of 2011)*, which retains this new provision.

In a related case, *Raducan & Anor v The Minister for Justice & Anor*,¹⁶ the Moldovan wife of a Romanian national residing in the State, who was in possession of a “residence card of a family member of a Union Citizen”, was refused permission to land in Ireland, and was detained pending removal. The Court found that by refusing to admit Ms. Raducan to the State or by failing to offer a visa processing facility within the State, the State had failed to comply with its obligations under Arts. 5(2) and 5(4) of *Directive 2004/38*. The High Court found that her detention was unlawful and that she had been unlawfully refused leave to enter the State. She was awarded €7,500 in damages.

Further recent Court of Justice jurisprudence has had a clarifying effect on Irish visa policy and is discussed further in Chapter 5.

2.4 RECENT CHANGES TO VISA POLICY AND LEGISLATION RELATING TO NATIONAL VISAS

A new Short-stay Visa Waiver Programme for holders of certain UK visas commenced on 1 July 2011 and will run as a pilot up to end October 2012. Under the pilot scheme, passport holders from 16 named countries,¹⁷ who are granted a UK visa as a general/child/business/sporting visitor and who have a current permit to be in the UK, are now able to travel to Ireland (within the period of validity of their leave to remain in the UK) without the requirement to obtain an Irish visa. Citizens of other states who wish to travel to Ireland and the UK continue to require separate visas to do so.

¹⁶ Unreported, [2011] IEHC 224, 3rd June 2011.

¹⁷ Listed in Annex 2.

INIS has signalled that the visa waiver initiative is unprecedented and is intended to promote tourism from emerging markets, taking account of the increased number of tourists likely to travel to attend the Olympic Games 2012 in London. It is hoped that potential tourists, who may have been discouraged by the inconvenience and cost (€60 per person, including per child) of extending their trip, may now be persuaded to do so.

Other types of UK visa-holders, for example those with transit visas, long-term student visas, those travelling to join a spouse or family, and those visa-required nationals who are not citizens of the 16 named states, will still require a separate visa to extend their trip to Ireland.

Visitors who are visa-required still require an Irish visa for direct travel to Ireland or a UK visa for travel to Ireland via the UK. Transit passengers through the UK to Ireland, who do not pass through immigration in the UK, still require an Irish visa. There is no minimum length of stay in the UK required before travel to Ireland.¹⁸

Ireland has worked to streamline visa regimes for identified groups of students with a view to attracting them to the State. For example Ireland has been successful in attracting students from Saudi Arabia under the auspices of programmes such as the King Abdullah Scholarship Programme. In addition Ireland has recently put in place limited programmes for short-stay English language students from Turkey. Visas are issued with the minimum of formality to nominated students. A pilot 'trusted agent scheme' has recently been introduced in co-operation between INIS and Enterprise Ireland and selected Indian educational institutions, which accords priority to student visa applications involving those institutions.

A roll-out of AVATS was completed worldwide in mid-2009. Since then all Irish visa applications must be made online. This was a major operational development in that, for the first time, a single repository of information on all Irish visa cases worldwide was created. As well as the information gathered through the online application form, AVATS records a scanned photograph of visa applicants.

¹⁸ http://www.justice.ie/en/JELR/Pages/visa_waiver_pr.

Chapter 3

Practical Implementation and Organisation

3.1 GENERAL PROCEDURE FOLLOWED IN THE STAGES OF THE VISA PROCEDURE

This section provides an overview of the general procedure followed in Ireland when applying for a visa and the subsequent examination of such an application by the Visa Office. Although not part of the Irish visa system the entry, stay and exit of non-EEA nationals are briefly considered.

3.1.1 Application Stage

3.1.1.1 Application Form and Accompanying Documents

All applications for Irish entry visas must be submitted online via AVATS, the visa application facility of the Irish Naturalisation and Immigration Service (INIS). Each person proposing to travel must hold a visa in their own right, this includes children even if the child is included on the adult's passport. On submission of the online application the applicant is invited to print an application summary and is advised at which Irish Embassy or Consulate he or she must submit hard copy documents.

Hard copy documents related to the application must be submitted to a designated Irish Embassy, Consulate General or Honorary Consulate. Some of these bodies may be able to process the full application locally, others may forward the application on to one of six INIS 'branch offices' in Irish embassies in Abuja, Abu Dhabi, Beijing, London, Moscow and New Delhi or to INIS in Dublin. It was noted by INIS officials that this 'hub and spoke' model of processing visa applications is generally becoming more common internationally. In Abu Dhabi for example the Irish Embassy will be accepting applications from close to 20 countries by the end of 2011.

Table 3.1 shows the number of applications received by the six main visa offices abroad, by the office in Dublin and by the Department of Foreign Affairs and Trade and the corresponding approval rates.

Table 3.1 Visa Applications Processed in 2010 by Processing Office

	Abuja	Beijing	Cairo	London	Moscow	New Delhi	Dublin	DFA&T	Total
Applications Received	5,211	5,211	3,510	7,135	11,469	11,288	1,013	34,282	79,119
Approval rate*	52%	90%	91%	99%	97%	91%	63%	100%**	90%

Notes: *Calculated as: total approvals (at first instance plus appeal), as a percentage of net refusals (first instance refusals minus refusals overturned on appeal) plus approvals.

** Department of Foreign Affairs and Trade does not have the power to refuse a visa application or to grant a long-stay visa.

Source: INIS.

Documents must be submitted within 30 days of completing the online visa application. The basic documents include:

- Signed and dated copy of the application summary;
- Photograph;
- Notarised translations of any documents not in English;
- Passport (or travel document if relevant) which for short stay visas is valid for at least three and preferably six months after the date the applicant proposes to leave Ireland. For applications for long-term stays such as employment, study, or joining a spouse, it is advised that the applicant's passport should be valid for at least 12 months after the date of applications;
- Detailed bank statements, showing sufficient funds, and covering the immediate six month period prior to submitting a visa application. This is to show the visa officer¹⁹ that the applicant will not become a burden on the State during their proposed time in Ireland.
 - Lump sum lodgements made in the run up to an application being made are not taken into consideration when assessing a person's ability to support themselves;
 - Different sums apply to different groups of visa applicants. For example in the case of students the visa officer looks for approximately €7,000 to cover set-up costs and some of the first year of living expenses. If the student then seeks to register 90 days later with the GNIB, evidence will be requested of €3,000 in remaining funds.

Additional and sometimes extensive documentary requirements apply to various groups of applicants. These are detailed in Section 3.2 below. All visa applicants must explain their reasons for wishing to come to Ireland, and give details of any family members currently in Ireland, or any other EU State. Applicants for short-stay visas must state how long they intend to stay in Ireland, and must sign a

¹⁹ Note that the title 'visa officer' does not exist in statute. This is a term used internally within INIS to describe the role and for convenience will also be used in this report.

written undertaking that they will observe the conditions of a visa, that they will not become a burden on the State, and that they will leave the State on expiry of their permission to remain.

Most visa applicants are not required to submit a certificate of medical/travel insurance with their visa application. However, applicants are informed that evidence of insurance cover will help in deciding their application. Applicants are advised that proof of medical/travel insurance should be shown when arriving at an Irish port of entry. For some categories of visa purpose, including education, evidence of medical or travel insurance cover must be submitted at visa application stage. In some cases, for example on occasion of the organisation of an international conference in Ireland, direct bilateral contact with the Visa Section in Dublin is recommended in order to inform the visa officials about the host organisation and the likely visa applications to result.

In a limited number of family-related cases visa applicants may be invited to provide a DNA sample. The sample is sent via the embassy concerned to Dublin and any costs are the responsibility of the applicant.

Re-entry visas are processed in the Dublin INIS office only. Applications may be made to this office by post or in person.

INIS posts information on procedures for visa applications at www.inis.gov.ie. A telephone helpline for visa enquiries is operational on Monday, Wednesday and Friday mornings between 10 am - 12.30 pm and email visa queries may also be submitted. Additional information on local application procedures and requirements can be viewed on the websites of Irish embassies.

3.1.1.2 Application Fees

The visa applicant must also pay the relevant fee. Visa application fees are: single journey visa application €60; multiple-journey visa application €100; transit visa application €25. The same fees apply to visa-required nationals applying for a re-entry visa prior to departing from the State for a short period. The visa fee is not refunded if an application is refused or withdrawn. Children incur the same fees as adults.

In relation to the *Immigration, Residence and Protection Bill 2010*, the Immigrant Council of Ireland (ICI) has criticised ‘a regime of creeping charges’ regarding visas, entry, residence permits²⁰ and review applications. They also criticised the provision under which the Minister for Justice and Equality has regard to “the likely effect that a particular fee, if prescribed, would have on the demand for a visa or permission, or for a visa or permission of a particular category”. The ICI argues that fees should correlate to administrative charges rather than act to dissuade groups of migrants from travelling to Ireland i.e. it is argued that if it is

²⁰ In the current study a ‘residence permit’ is taken to mean the Certificate of Registration issued by the GNIB/Gardai on registration of a non-EEA national.

not appropriate for an individual person to be in the State, he or she should be denied a visa. INIS has stated that visa fees have not increased since 2004, are necessary to finance the Irish visa system and are in line with international norms.

In certain circumstances a further fee may be payable to the Irish Embassy or Consulate to cover extra charges such as postal or courier charges. Honorary Consulates may also charge an administrative fee which is often the same as the visa application fee.

Some applicants are not required to pay a visa processing fee. This includes visa-required spouses and certain family members of EEA citizens (including Irish nationals) and Convention Refugees. In order to have the fee waived, proof of the relationship must be submitted with the application. In addition, various reciprocal bilateral agreements provide that applicants from countries such as Serbia and Jamaica are not required to pay a visa application fee. Often in such cases an administrative fee will instead be charged by the Consulate that processes the application. In an initiative designed to increase tourism from China Ireland also waives fees for 'Approved Destination Status' tourists who already hold a UK visa. Finally as an 'add-on' to the Short-Stay Visa Waiver Programme discussed in Section 2.4, visa-required nationals from the 16 countries specified under this scheme, who are legally resident in the UK, do not pay a fee when applying for an Irish visa.

3.1.1.3 Use of Commercial Partners

In India, Nepal, Ghana and Nigeria commercial partners, Visa Facilitation Services (VFS), manage Visa Application Centres (VACs) where applications for Irish visas are made. VFS also perform administrative tasks in relation to visa applications such as collecting fees, posting documents, collecting biometric data (fingerprints, in the case of Nigeria only) and checking photographs. Very basic checks on the presence of documents are performed. In cases where there is a commercial partner involved there is often an additional fee payable directly by the applicant to the commercial partner. The involvement of VFS is believed by INIS to reduce overall costs to the applicant by reducing the distance the applicant needs to travel and cutting courier costs, as applications are sent in bulk. INIS also stated that commercial partners tend to improve the quality of applications being submitted. It was suggested that because a fee is paid by the applicant to VFS, the applicant will expect a higher level of customer service, for example by VFS performing basic checks as an aid to the applicant.

INIS officials observed that it is practice for VFS to offer services for several destination countries at one location. This offers destination countries greater economies of scale and wider coverage than could be provided through the Consular network. In India VFS provides services for Irish visa applicants in Delhi, Jalandhar, Chandigarh, Chennai, Cochin, Hyderabad and Kolkata. In Nepal the VFS

facility is located in Nepal while in Nigeria VFS have facilities in Abuja and Lagos while in Ghana the facility is located in Accra. It was noted that some VFS staff within VACs are locally recruited, and that this has advantages in terms of communicating with visa applicants. VFS collect a processing fee from the applicant, as set out in service agreements with the Irish government and no direct payments are made by Ireland to VFS. It was stressed by the INIS officials consulted that commercial partners have no power of decision in relation to visa applications and they are not aware of whether a visa has been refused or granted in any case. This was considered to be essential to minimise corruption.

3.1.2 Examination Stage

3.1.2.1 Authorities Involved

Officials of the Department of Justice and Equality, located within the Visa Section of INIS, Dublin, consider and decide visa applications from selected countries where Ireland does not have consular representation. Authority to grant certain categories of visa, principally short-stay visas, has been delegated to diplomatic staff of the Department of Foreign Affairs and Trade by the Minister for Justice and Equality. Such Department of Foreign Affairs and Trade staff cannot refuse applications and these cases are referred to INIS, Dublin. INIS, Dublin also considers and decides visa applications referred by the Department of Foreign Affairs and Trade in cases where delegated authority does not apply (e.g. long term visa applications), or in complicated cases, for example family cases.

In addition visa applications may be examined by staff of the Department of Justice and Equality placed on secondment in six high-volume visa processing offices in Irish embassies abroad. The offices in Moscow and Beijing opened in 2002; New Delhi in 2006; Abuja and London in 2007; and Abu Dhabi in 2010. These offices are effectively 'branch offices' of INIS and as such may make decisions on every type of visa application.

3.1.2.2 Procedure Followed in Examining an Application

INIS officials consulted for the current study indicated that examining a visa application involves an overall assessment, by the visa officer in question, of:

- The applicant's credibility, for example that the visa applicant is who they say they are and that the supporting information and references supplied are reliable;
- The suitability of the applicant's profile to the particular visa for which they have applied. This helps in assessing whether the stated purpose for which the applicant wants to come to Ireland is true;
- Whether or not issuing the visa would be consistent with overall government policy. For example, it is operational policy to prevent the

migration of people who may become a burden on the State. This impacts upon decisions on visa applications made by groups such as grandparents wishing to travel to Ireland to provide childcare for migrants working here;

- The likelihood of the applicant observing the terms and conditions of the visa, including returning home at the end of their stay.

INIS officials stated that visa officers must make use of the information and resources available to satisfy themselves that a visa should be granted.

INIS officials indicated that some internal written guidelines for assessing visa applications exist but that decisions are based heavily on on-the-job learning. Topic-specific guidelines, on how to spot bank fraud for example, or warnings on certain schools, colleges, businesses or agents found to be fraudulent, are available to visa officers. In general it is not practice for visa officers to check information to the level of, for example, phone numbers noted on an application form, unless there is a particular reason for doing so. The interviewing of individual applicants is relatively rare.

Visa officers in Dublin decide on a wide range of cases per day with family reunification cases taking the longest time to examine and the processing of visas for short-term visits being relatively quick. While some spot checking of decisions takes place by visa officers of a higher grade, staff constraints mean that this is somewhat limited. It was indicated in interviews that certain types of visas, for example visas for the family members of higher-level students, may not be refused without consultation with a supervisor.

An important part of examining the application process is document verification. Occasionally background checks are also performed such as sharing intelligence with visa authorities of other states, particularly the UK (see Section 3.3.1.1.). Criminal records may only be checked with the co-operation of the Gardaí. These types of extra checks are undertaken where particular cause for concern arises, often on a local, bilateral basis between missions. Applications may also be checked by visa officers against international watch lists.

Historical records in the central visa processing system, available from mid 2009 onwards, are relied on heavily when processing new visa applications to check prior immigration history of both applicant and named host. A range of other databases may also be consulted by visa officers, for example the repatriation database, which contains details on deportations; hard copy files of all correspondence with non-EU nationals (so called '69-number files'); the GNIB Information System; and the records of the Office of the Refugee Applications Commissioner. These records can show both a compliant and less favourable visa history on the part of the applicant and on the part of the host named on the application. It was indicated by visa officials consulted, that if for example there

was a history of applications for leave to remain in the State against a host's name, this could work against the applicant.

Under the e-Visa scheme, biometric data is collected to support visa applications lodged in Nigeria. INIS has stated an intention to extend the system to certain other countries notably Pakistan (Department of Justice and Equality, January 2011), however resource constraints prevent wide scale extension of the regime at the present time. Further discussion of e-Visa is supplied in Section 4.1.1. Such biometric records provided in connection with visa applications may be checked against the Automatic Fingerprint Information System (AFIS) as operated by An Garda Síochána (national police force) Technical Bureau. Although not yet fully rolled out this database will contain all fingerprint records for asylum applicants, non-Irish nationals registered to live in Ireland and previous biometric visa records related to criminal cases. At time of writing fingerprints could be held on file for ten years. (Current Irish legislation does not provide for the capture of prints for foreign nationals who are refused 'leave to land'. If enacted Section 124 of the Immigration, Residence and Protection Bill will allow for the fingerprints of migrants apprehended in the State for immigration-related reasons to be captured for the first time.)

Nigerian nationals seeking permission to enter at the border may have their fingerprints, gathered through e-Visa, checked against records in AFIS at Dublin airport. It is not known how frequently these checks are performed at present as it was stated they can be time consuming. INIS officials consulted for the study stated that checks on fingerprints held in the AFIS have been useful in both exposing attempts at concealment/distortion of identity and non-compliant immigration history, as well as supporting the veracity of applicants' submissions.

If a visa is granted a sticker is printed and affixed to the applicant's passport. This is performed by embassy/consulate staff where visas have been granted. Visa stickers granted on foot of applications submitted directly to the Visa Section in Dublin are printed and affixed in Dublin.

Details of visa decisions regarding applications which have been referred by missions to Dublin for decision, or where an application has been submitted directly to the Dublin office for processing, may be obtained by the applicant from the INIS website.²¹ Other applicants receive information from the embassy/consulate which processed their application.

3.1.2.3 Potential for Appeal at the Examination Stage

If a visa is refused the applicant receives a decision letter which notes the reason(s) for the refusal. A list of the main categories of explanations given for refusal decisions is supplied in Annex 3. INIS officials stated that more detail is supplied where deemed necessary, for example if the visa has been refused due

²¹ <http://www.inis.gov.ie/>.

to a lack of documentation the visa officer will specify the documentation that is missing. Some INIS offices post weekly visa decision lists on their websites. The Immigrant Council of Ireland (ICI), an NGO consulted for the current study, observed that information in refusal letters is sometimes not detailed enough. In particular regarding the explanation ‘insufficient funds’, the ICI noted that information on what constitutes ‘sufficient funds’ is not freely available for non-student visa applicants, leading to confusion and sometimes inconsistent decisions.

Negative visa decisions of all types and categories may be appealed within two months of the decision, unless the application in question has been deemed to have included false, fraudulent or misleading information. The NGO Alliance Against Racism (2011) recommends that given the serious nature of an allegation of fraud, information on the decision and access to some form of an administrative appeal should be allowed to those accused of submitting a fraudulent visa application. A five-year ban on reapplication applies to Nigerian nationals who are found to have supplied false information (see Section 4.1.4). INIS noted that the application of this policy to visa applicants of other nationalities is under constant review. Currently there is no fee charged for an appeal. Appeals are considered by a visa appeals officer, different to the officer who decided the original visa application. Almost exclusively this officer is at a higher rank than the original visa officer. Visa decisions may also be judicially reviewed in the High Court. There are a relatively low number of judicial reviews (<10 per year). As is the nature of judicial reviews these tend to be on procedural issues and the Courts do not have the power to instruct the Minister to grant a visa. Information on visa decisions may also be requested from INIS under the *Freedom of Information Act 1997*.

The draft *Immigration, Residence and Protection Bill 2010* makes provision for a process for review of negative visa decisions by the Department of Justice and Equality. Groups, including the Migrant Rights Centre Ireland (2008) and the Irish Council for Overseas Students (2008), commenting on an earlier version of the Bill, regret that the proposed review process is not independent. The new Minister for Justice and Equality has recently signalled that he intends to bring forward amendments to the Bill to provide for a transparent, statutory appeals mechanism.²² The extent to which such a system would apply to visa decisions is not yet clear.

3.1.3 Entry, Stay and Exit

Nationals of non-EEA countries must secure permission to enter the State (‘leave to land’)²³ from an immigration officer when they arrive at an Irish port of entry.

²² Written Answer by Minister for Justice and Equality to Parliamentary Question Thursday, 7 April 2011. <http://debates.oireachtas.ie/Dail/2011/04/07/00028.asp>.

²³ Denial of ‘leave to land’ equates to ‘Entry (Refusal of)’ as defined for the global context in the EMN Glossary.

The land border with Northern Ireland is not controlled, however this does not exempt travellers from immigration and visa requirements and they must present to an immigration officer at the earliest opportunity. The immigration officer at a border, normally a member of An Garda Síochána (police), decides whether or not to admit a person to the State, the duration of their stay and the date by which the migrant concerned must register with the GNIB/Gardaí within the State. There are certain conditions, discussed below, under which an immigration officer's discretion in this regard is constrained.

Section 4 of the *Immigration Act 2004*, set out grounds on which a person may be refused permission to enter the State under situations governed solely by national legislation. Under Section 4 of the *Immigration Act 2004* an immigration officer may refuse 'leave' to land if he or she believes that person:

- Has insufficient funds to support the person plus dependants;
- Intends to take up employment without the relevant permit;
- Suffers from certain specified conditions including TB, other infectious diseases, drug addiction or profound mental disturbance;
- Has been convicted of an offence which carries a penalty of a year's imprisonment or more;
- Does not have a requisite visa;
- Is the subject of a deportation order, an exclusion order, or a determination by the Minister that it is conducive to the public good that he or she remain outside the State;
- Does not have a valid passport;
- Intends to abuse the Common Travel Area (CTA);
- Poses a threat to national security or that their admission to the State be contrary to public policy;
- Intends to enter the State for reasons other than those expressed by the foreign national.

Immigration officers do not have the same discretion when someone seeks to enter the State on foot of a visa which is governed by EU law i.e. regarding EU citizens and non-EU family members of EU citizens. In such cases the immigration officer may only refuse permission to land, pursuant to Regulation 4(2) of S.I. No. 656 of 2006, if:

- a) The non-national concerned is suffering from a specified disease or
- b) His or her personal conduct has been such that it would be contrary to public policy or would endanger public security to grant him or her permission to enter the State.

In the case of a ‘permitted’ family member,²⁴ the immigration officer may refuse ‘leave to land’ also if he or she is not satisfied that the person concerned is a permitted family member. See discussion on *Raducan & Anor v The Minister for Justice & Anor* in Section 2.3 and Chapter 5.

In situations governed entirely by national law, not holding the requisite visa is one ground under which migrants may be refused entry to the State. The decision on whether or not to allow entry is separate to the visa issuing procedure however, the issue of whether or not an Irish visa carries with it a legitimate expectation to enter the State has been the subject of some debate in the courts.

In the case *VI v Minister for Justice, Equality and Law Reform*,²⁵ the Court found that the holder of an Irish visa does not have an automatic right to enter the State, since a visa is simply “a permission to land and amounts to a form of pre-clearance to that end”.

In *Ezenwaka & Anor v The Minister For Justice, Equality And Law Reform*²⁶ the first named applicant was granted residency in Ireland under the administrative scheme known as the IBC/05 scheme. His wife and children applied for a family reunification visa, but this was refused. After reapplying, a type “D” visa permitting for family reunification was granted by the Embassy in Abuja in June, 2008. On arrival at the Irish border the family was refused permission to land by immigration officers who were of the view that the visa had been issued in error and that Mr. Ezenwaka was not entitled to seek family unification. Permission to land was refused on the ground that the admission of the family into the State would be contrary to public policy. In response to correspondence on behalf of the Ezenwakas, the Minister for Justice subsequently confirmed that there had been a misunderstanding regarding the entitlements of residents under IBC/05 and that the Embassy in Nigeria should not have issued the family unification visa.

The Court held that while the applicants, as the holders of Irish visas, were not entitled to assert an unhindered legitimate expectation that they would be permitted to land, the decision to refuse permission to land based on the ground that their entry would be contrary to public policy was unlawful. This was because, in that context, the words ‘public policy’ did not simply mean contrary to existing Government policy, but rather connote a situation where the personal conduct of the immigrant poses a real and immediate threat to fundamental policy interests of the State.

²⁴ Regulation 2 of the 2006 Regulations defines ‘permitted’ and ‘qualifying’ family members as follows. A permitted family member, in relation to a Union citizen, means any family member, irrespective of his or her nationality, who is not a qualifying family member of the Union citizen, and who is: a dependant or member of the household of the Union citizen; and who on the basis of health grounds requires the personal care of the Union citizen; or is the partner with whom the Union citizen has a durable relationship. A qualifying family member, in relation to a Union citizen, means the citizen’s spouse; a direct descendant of the Union citizen who is under 21 and/or dependant of the Union citizen; a dependent direct relative of the Union citizen or their spouse in the ascending line.

²⁵ [2007] 4 I.R. 42.

²⁶ Unreported, High Court, Hogan J, 21st July, 2011; [2011] IEHC 328.

*Desiree O'Leary & Ors v The Minister for Justice, Equality and Law Reform*²⁷ concerned the South African parents of a woman resident in Ireland with her Irish citizen son. The applicants sought to quash a decision of the Minister for Justice to refuse them permission to reside in the State. The judge noted that because the O'Learys were citizens of a visa-exempt State, there was no procedure whereby the couple could have applied for residency in advance of their arrival at the border.

In 2009 the Irish Human Rights Commission (IHRC) recommended that the relevance of 'international human rights standards' raised in their enquiry into the experience of a Pakistani businessman who was refused entry to the State be "considered against current immigration law and practice in the State". The man travelled to Ireland with a visitor visa, was refused permission to enter the State, was then arrested and detained overnight before being removed from the State. The IHRC reported that the man's passport was stamped with a refusal order with the result that he was questioned in London, Kuwait and Pakistan on his return journey. The IHRC recommended that the criteria on which immigration officers could base their decisions to refuse 'leave to land' be made less vague and that the practice of marking passports, which had an "unclear legal basis", should cease (Irish Human Rights Commission, 2009).

Table 4.9 supplies information on Third Country Nationals refused entry at the external borders. The total number of refusals has declined in recent years from 5,260 in 2008 to 2,790 in 2010. The main groups refused entry at the border include Chinese, Brazilian and Nigerian nationals.

The checks at the port of entry tend to be on the papers only. If there is a cause for concern telephone checks may be made (for example to check a hotel booking). A person refused permission to land must be given the reasons in writing. This decision may not be appealed but may be judicially reviewed. If a person refused 'leave to land' wishes to apply for asylum they must be allowed to do so on foot of Section 8 of the *Refugee Act 1996*. The refusal of 'leave to land' to visa holders is discussed further in Chapter 5.

If a person granted permission to land in Ireland wishes to stay in Ireland longer than three months, they must register with the local immigration office. This requirement applies to visa-exempt non-EU/EEA nationals such as citizens of the USA, Australia, etc., as well as visa-required non-EU/EEA nationals. This registration is generally renewable annually but can be for longer periods of three to five years. In Dublin registration takes place at the Garda National Immigration Bureau (GNIB), and outside Dublin at the local Garda district headquarters. Exit is not monitored or enforced unless an individual is found to be in contravention of their immigration conditions.

²⁷ Unreported, High Court, Hogan J, 30th June, 2011; [2011] IEHC 256.

Visa-required nationals who enter the State on foot of a short stay visa cannot generally have their permission to remain in the State extended, and they must leave and reapply from outside the State should they wish to return.²⁸ Unusual instances of INIS allowing a short stay visa to be converted into a permission to stay long-term tend to be in response to an emergency, for example in the case of a visa-holder falling seriously ill while in Ireland.

3.2 VISA ISSUANCE FOR THE PURPOSES OF LEGAL IMMIGRATION

As stated earlier, a visa-required non-EU national must secure an Irish visa in order to present at the Irish border. The list of visa-exempt states set out in the *Immigration Act 2004 (Visas) (No. 2) Order 2011* includes states with which Ireland has a particular diplomatic relationship or history.

For visa-required citizens the basic application and examination conditions are the same for each category of visa (employment, education, family, visit, tourist etc.) however the documentary requirements vary greatly. Table 3.2 below supplies detailed information on the documents required for each category of visa. All documentation must be in English or accompanied by a notarised translation. These documents are in addition to the minimum documentation required with all applications (application form etc. discussed in Section 3.1.1.1.).

²⁸ <http://www.inis.gov.ie/en/INIS/Pages/WP07000022>.

Table 3.2 Documents Required For Different Visa Types**A. Documents required for all Transit, Short and Long Stay Visa Applications**

- Completed online application form and fee;
- If resident in a country other than country of origin, evidence of permission to reside in that country (valid for at least three months after your intended departure from Ireland);
- Signed letter from applicant stating intended length of stay and the full details of the reason for visit. The applicant must state that they will observe the conditions of the visa and leave the State on expiry of permission to remain. The letter must provide full details of any family members who are currently in Ireland, or any other EU state;
- If visiting another state prior to travelling to Ireland, the relevant visa for that state must be obtained;
- A detailed bank account statement from applicant covering a six-month period immediately prior to application, and showing sufficient funds to cover costs of stay;
- Evidence of applicant's obligations to return to country of permanent residence;
- Where a child under the age of 18 is travelling alone the consent of both parents/guardians is required. If the child is travelling with one parent the consent of the other parent is required. If only one parent has total custody, a Court Order must be shown;
- Details of any previous applications made for an Irish visa (if refused a visa for any other country, letter issued to applicant by the authorities of that country, should be submitted);
- Details of any family members living in applicant's country of permanent residence.

B. Specific documents required for various visa applications

Visa Type	Period passport to be valid for ²⁹	Other documents required
Short Stay Visit (Family or Tourist)		
Visit family or friends	6 months	<ul style="list-style-type: none"> • Copy of contact/host's passport; • A letter of invitation from applicant's contact/host in Ireland confirming that accommodation will be provided for the duration of visit; • Current utility account bill in name of contact/host; • Details of how applicant is known to contact/host such as birth certificates/marriage certificates; • If contact/host is not an Irish/EEA citizen, evidence of their permission to remain in Ireland; • If applicant is working, a letter is requested from the employer stating the duration of the applicant's employment; • If applicant is a student, a letter from the college.³⁰
Visit as a tourist	6 months	<ul style="list-style-type: none"> • Confirmation of booking from the hotel, hostel or guesthouse; • If applicant is working, a letter is requested from the employer stating the duration of the applicant's employment; • If applicant is a student, a letter from the college.
Visit by Family Member of an Irish Citizen	12 months	<ul style="list-style-type: none"> • Clear copy of spouse's passport, or other documentary evidence, attesting to spouse's Irish citizenship, showing evidence of residency in country applicant is moving from; • Marriage Certificate; • Evidence that applicant will be accompanying Irish spouse e.g. return airline/ferry tickets in both names; • If applicant's Irish spouse is residing in Ireland, and they have not resided together since marriage, a full account of relationship history³¹ must also be submitted; • If, while spouse was residing in Ireland, applicant married by proxy, applicant may wish to seek a declaration as to marital status;³² • Evidence of how applicant/spouse will be supported financially – P60, payslips, bank statement for six months prior to application; • If applicant requires a child (under 18 years) from a previous marriage or relationship to travel, a Court Order bestowing sole custody of this child must be shown.³³

²⁹ In the case of short-term visas this period applies from the date the applicant is due to leave Ireland. In the case of long-term visas the period applies from date of application.

³⁰ Letter must state course applicant is studying, how many years applicant has been a student there, how many years/terms applicant has left at college and that applicant will be returning following visit to Ireland.

³¹ Must include, evidence of when and where applicant and spouse met such as visas and entry/exit stamps on passport.

³² Section 29 of the *Family Law Act 1995* from the Circuit Court.

³³ Where the other parent of this child has some custody or access rights, a sworn affidavit by this parent consenting to the child being removed from their home country is required.

Visit with EU citizen by Family Member	Unspecified	<ul style="list-style-type: none"> • Non-nationals who are family members of a European Union citizen and holders of 'Residence card of a family member of Union citizen' are not subject to an Irish visa requirement; • The applicant must contact issuing authority of the member state to ensure the document comes within the definition of the EC directive.
Non EEA family member accompanying an EU citizen on a visit to Ireland	Unspecified	<ul style="list-style-type: none"> • Application Form; • Marriage Certificate (where applicable); • Documentary evidence to attest the existence and durability of the relationship (where applicable); • Birth Certificate (long form) for children under 21 years, parental consent, national identity card (signed if required).
Short or Long Stay Study, Research or Exam		
Study³⁴	Short Stay- 6 months after intended departure date. Long Stay- 12 months	<ul style="list-style-type: none"> • Letter of acceptance from college detailing proposed course; • Evidence that fees for applicant's course have been paid in full; • Full private medical insurance cover for entire duration of stay; • Evidence of applicant's obligation to return to country of permanent residence.³⁵
Research Visa	Short Stay- 6 months after intended departure date. Long Stay- 12 months	<ul style="list-style-type: none"> • Letter from host college/organisation in Ireland outlining the nature and duration of research programme/project, and annual salary details. If applying to partake in a short-term programme, for which no salary is paid, applicant must provide: <ul style="list-style-type: none"> • Letter from college or organisation outlining the nature and duration of research programme; • Evidence of sufficient funds to meet the cost of living for duration of the intended stay including travel, accommodation and living expenses; • Evidence of obligation to return to country of permanent residence.³⁶
Exam Visa	Short Stay- 6 months after intended departure date. Long Stay- 12 months	<ul style="list-style-type: none"> • Letter of acceptance of registration for exam from the school/college, confirming the nature and dates of examination; • Proof that the requisite fees have been paid to the college; • Qualification certificates; • Evidence of applicant's obligation to return to country of permanent residence.³⁷
Short and Long Term Employment Training or Van der Elst		
Employment or intra-company transfer	Short Stay- 6 months after intended departure date. Long Stay- 12 months	<ul style="list-style-type: none"> • Valid Work Permit or Intra-Company Transfer Permit; • Employment contract; • Letter from employer in Ireland confirming applicants role and salary • Full private medical insurance for duration of stay; • Evidence of qualifications and previous work experience in area.
Training	Short Stay- 6 months after intended departure date. Long Stay- 12 months	<ul style="list-style-type: none"> • A letter from applicant's employer stating reasons for, and duration of training, details of where the training will take place, full contact details for company, and contact details in host company; • A letter from Irish company confirming the nature, dates and duration of training; • Evidence from both companies of who will be responsible for costs; • If all costs are not provided by company, applicant must submit bank accounts and evidence of personal finance.

³⁴ More details of requirements available on INIS website
<http://www.inis.gov.ie/en/INIS/Pages/Study,%20Research%20or%20Exam>.

³⁵ Letter from employer/college giving details of applicant's employment/studies. Marriage certificate and birth certificate for children if applicable, details of who will provide care for these minors if applicable.

³⁶ Letter from employer/college giving details of applicant's employment/studies, confirming the research project applicant is carrying out in Ireland, and that applicant will be returning to work/study on completion of this research programme.

³⁷ Letter from employer confirming employment status, and date expected to return to work.

Van der Elst³⁸	Short Stay- 6 months after intended departure date. Long Stay- 12 months	<ul style="list-style-type: none"> Evidence of applicant's right to reside and work in the EU Member State applicant is coming from, and evidence of applicant's permission to return there following the termination of the contract in Ireland; Declaration from employer confirming the applicant is lawfully employed and is undertaking the visit to provide services on the company's behalf, the name and contact details for the company in Ireland, and that the applicant will be returning to employment in the other EU Member State; Full private medical insurance for duration of stay.
Short Stay Business, Conference or Performance		
Business Visa	6 months after intended departure date	<ul style="list-style-type: none"> Declaration from employer confirming the applicant is undertaking trip on the company's behalf, the purpose of the visit, dates, and outlining who will be responsible for costs of trip,³⁹ and that the applicant will be returning to employment; Declaration from Irish company confirming the visit, dates, reasons for visit, details of who will meet costs of trip, accommodation details and full contact details.
Conference Visa	6 months after intended departure date	<ul style="list-style-type: none"> Letter from conference host confirming applicant's attendance, details of the nature, dates, place and duration of conference; Evidence that registration fees (where applicable) have been paid; Letter from applicant's employer or association confirming attendance and outlining relevance of conference to applicant's employment; Evidence from employer and conference host showing who is responsible for all costs.⁴⁰
Performance Visas	6 months after intended departure date	<ul style="list-style-type: none"> Letter from hosts in Ireland confirming details of the festival/event, applicant's participation and schedule of dates and performances; Letter from applicant's employer/organisation in their home country or country of permanent residence confirming attendance at this event, and giving evidence about their group/act, including evidence of past performances; Evidence of previous travel history to similar events; Evidence of applicant's obligations to return to their country of permanent residence; Evidence of how trip will be funded.
Short and Long Stay Medical Treatment, Religious, Lay Volunteer		
Medical Treatment⁴¹	6 months after intended departure date	<ul style="list-style-type: none"> A detailed letter from hospital in country of permanent residence; A detailed letter from private hospital in Ireland; Evidence of sufficient funds to cover cost and stay; If another person is funding treatment evidence of their finances;⁴² Full private medical insurance for the duration of the stay; Evidence of obligation to return to home country.
Ministers of Religion and Religious Volunteers	6 months after intended departure date	<ul style="list-style-type: none"> An original letter of sponsorship, on headed paper, from the religious institution/order/church explaining why applicant is coming to state, confirming the position. The letter also needs to confirm expenses will be covered, and is obliged to indicate the size and location of the congregation in Ireland; Full private medical insurance for the duration of stay.
Lay Volunteer	6 months after intended departure date	<ul style="list-style-type: none"> An original letter of sponsorship, on headed paper, from the sponsoring organisation, confirming that there is a position available, the person is supported by the organisation, and the role is the sole purpose of the applicant's stay

³⁸ Holders of a Van der Elst Visa do not require a work permit to work in Ireland. To qualify for such a visa the applicant must be employed in another EU Member State and coming to Ireland to provide services on behalf of the applicant's employer.

³⁹ Bank account statements and explanation must be provided if applicant is personally responsible for cost.

⁴⁰ Bank account statements and explanation must be provided if applicant is personally responsible for cost.

⁴¹ More details of requirements available on INIS website

<http://www.inis.gov.ie/en/INIS/Pages/Short%20Stay%20Medical,%20Religious,%20Lay%20Volunteer>

⁴² Also need to provide evidence of relationship to applicant and why they are funding the trip.

Join Family		
Both applicant and Irish spouse legally resident in another country and both wish to move to Ireland	12 months	<ul style="list-style-type: none"> • Clear copy of spouse's passport, showing evidence of residency in country applicant is moving from; • Letter of application; • Marriage Certificate; • If children (under 18 years) do not hold Irish passports, and therefore require a visa, a separate application must be submitted, along with a birth certificate, for each child; • If child from a previous marriage/relationship travelling with applicant, evidence of full custody and access rights to child (Court Order)⁴³ must be supplied.
Accompanying an Irish spouse on a visit to Ireland (both returning to country of residence after visit)	12 months	<ul style="list-style-type: none"> • Documents listed above; • Evidence that applicant will be accompanying spouse e.g. return airline/ferry tickets in both names.
Partner of Irish Citizen/Work Permit Holder/Green Card Holder and Persons Granted Long Term Residence⁴⁴	12 months	<ul style="list-style-type: none"> • Evidence that applicant is lawfully resident in a country other than Ireland; • Documentary evidence to support the existence and durability of the relationship, as above; • A full account of relationship history – when and where parties met, evidence of this, such as visas, entry/exit stamps on the passport of citizen; • Evidence of sufficient financial support for applicant – e.g. P60, payslips, bank statement for 6 months prior to application; • Private medical insurance for duration of stay.
Family Member/partner/spouse of EU Citizen (other family members – parents and in-laws)	Unspecified	<ul style="list-style-type: none"> • Family member must be a dependant of the EU Citizen or the qualifying dependant of the spouse of the EU Citizen; member of the household of the EU Citizen or a person requiring the personal care of the EU Citizen, on the basis of serious health grounds; • Evidence of relationship to the EU Citizen; • Evidence of dependency on the EU Citizen, where applicable; • Evidence that applicant is a member of the household of the EU Citizen, where applicable; • Evidence that applicant requires the personal care of the EU Citizen on serious health grounds, where applicable; • Evidence that the EU Citizen spouse is exercising their EU Treaty Rights by being employed, in training, or has sufficient financial resources and comprehensive insurance cover.⁴⁵
Other		
Transit⁴⁶	6 months	<ul style="list-style-type: none"> • Proof of travel itinerary and tickets

Source: <http://www.inis.gov.ie/>.

⁴³ Where the other parent of this child has some custody or access rights, a sworn affidavit by this parent consenting to the child being removed from their home country is required.

⁴⁴ If the applicant has children (under 18 years) who do not hold Irish passports and therefore require a visa, a separate application must be submitted, along with a birth certificate, for each child. If the applicant wishes a child (under 18 years) from a previous marriage or relationship to travel with them, evidence that they have been given full custody and access rights to this child must be shown (Court Order). Where the other parent of this child has some custody or access rights, a sworn affidavit by this parent consenting to the child being removed from their home country is required.

⁴⁵ EU citizen has a period of three months to exercise EU Treaty Rights.

⁴⁶ Nationals of the following states require transit visas:- Afghanistan, Albania, Cuba, Democratic Republic of Congo, Eritrea, Ethiopia, Ghana, Iran, Iraq, Lebanon, Moldova, Montenegro, Nigeria, Serbia, Somalia, Sri Lanka, Zimbabwe.

3.2.1 Challenges and Successes for Facilitating Legal Migration

No formal evaluations of the Irish visa system have taken place. Visa officials consulted for the current study noted that the Irish visa system is self-financing, attracting €6.9 million in fees in 2010. The revenue generated through the re-entry visa system is significant in ensuring this is the case (see Section 3.3.1.3).

Visas are the first step in the Irish immigration system for visa-required nationals, and the interests of such would-be migrants and their representatives (NGOs, business groups, family members) can often be at odds with the priorities of those tasked with enforcing immigration controls. It was stated by the visa officials interviewed that the work of the visa-deciding officer is complex and often poorly understood by external parties. The requirements imposed on visa applicants are frequently viewed as unnecessarily onerous by applicants and external interest groups, while Departmental officials state that the rigorous nature of the requirements act to deter fraudulent applications.

Media reports indicate that groups such as Tourism Ireland, the Coach, Tourism and Transport Council and Enterprise Ireland have lobbied the State for a more convenient visa system.⁴⁷ Reports draw attention to the impact of ‘frustrating delays’ on applicants for re-entry visas in particular.⁴⁸ Representative body, the Irish Commission for Overseas Students (ICOS), note that while improvements have been made to visa processing, the immigration service generally is under resourced “...leading to unacceptable levels of customer frustration and many complaints”. It is stated that in order to grow the international education sector “transparent and efficient visa and residency rules and procedures” are important (Irish Council for Overseas Students, 2008).

In 2009 an inter-departmental group on international education was convened comprising representatives from INIS, the Department of Jobs, Enterprise and Innovation, Tourism Ireland and Education Ireland. The group was tasked with bringing forward recommendations on a new immigration regime for non-EEA students (discussed further in Section 4.2.4.1). During the public consultation period in advance of the publication of the new immigration regime, large numbers of negative experiences were reported to INIS in relation to student visas, especially regarding transparency of procedures, refusal rates and turnaround times (INIS, 2010a). Following the end of the consultation process INIS published a “Supplementary Paper on Irish Student Visas” (INIS, 2010b) in conjunction with the new student immigration regime. Among the proposals made in the supplementary paper is that training is provided for reputable agents through Enterprise Ireland or Fáilte Ireland in association with the Irish colleges/representative bodies. INIS also states the value of working with trusted

⁴⁷ The Irish Times, 15th February, 2010. “*Visa rules causing problems for tourism*”.

The Irish Times, 2nd January, 2009. “*State asked to ‘pre-clear’ VIPs at immigration*”.

⁴⁸ The Irish Times, 1st July, 2010. “*Crisis at immigrant visa office ‘over’*”.

agents in resolving problems which may arise with visa applications, for example contacting them to seek missing information. The creation of a system of approved agents is also suggested with priority given to those applications lodged by agents with a track record of ethical and efficient operation. Furthermore, it is suggested that a feedback mechanism is incorporated into this process so that the immigration compliance of the students when they come to Ireland should be linked with the agent who recruited them.

Visa officers in Dublin meet with various representative bodies bilaterally to gather information on current issues. Examples of such contacts include regular meetings with MEI,⁴⁹ a representative body for English language colleges in Ireland, and quarterly collective meetings with NGOs and advocacy groups. Officials from the Dublin Visa Section also stated that they work with Irish education suppliers and diplomatic representatives of non-EEA countries to design programmes which facilitate the access of certain groups to the State. The recently approved pilot programme for English language tuition for Turkish juniors aged 12-18 is one example in this regard.

Experience of the visa-issuing process from the perspective of officials, applicants and other interested bodies, varies depending on the type of visa issued and where the applicant is based. Officials consulted indicated that short-term visit visas tend to be less complicated and are issued more quickly. Family-related applications and applications from students take a longer time to process. As discussed in Section 3.1.3 the refusal of permission to enter the State ('leave to land') to visa holders is a source of much case law and media attention.⁵⁰

3.3 VISA ISSUANCE FOR THE PURPOSES OF PREVENTING IRREGULAR MIGRATION

In addition to the document and immigration history checks described in Section 3.1.2 Visa Officers also receive information from, and supply information to, an Investigations and International Liaison Unit (IILU), located in Dublin. The IILU is tasked with investigating instances of potential fraud and abuse. The Unit also has a role in inspecting the premises of colleges that wish to be included on the Internationalisation Register and to attract international students. Visa Officers may identify unusual patterns in visa applications and supply this information to the Unit. The IILU has recently been subsumed into the larger INIS-wide Investigations Team.

The Irish Visa Section in Dublin, through the IILU, works closely with its UK counterpart liaising daily on various operational levels. The UK Border Agency (UKBA) regularly shares information with INIS on potentially fraudulent practices. On the consular level, Irish and UK Embassies also work closely together. A

⁴⁹ <http://www.mei.ie>.

⁵⁰ The Irish Times, 22nd April, 2008. "Firm seeks advice after Chinese staff denied entry to State".

The Irish Times, 2nd January, 2009. "State asked to 'pre-clear' VIPs at immigration".

The Irish Times, 23rd January 2009. "Watchdog calls for review of immigration law".

Memorandum of Understanding was recently signed regarding the sharing of information on Nigerian visa applicants between UK and Irish Visa Offices. Irish Visa Office staff overseas also participate in various anti-fraud groups which meet locally.

In reference to the decision to open six visa processing offices in Abuja, Abu Dhabi, Beijing, London, Moscow and New Delhi, INIS stressed the importance of local knowledge in putting practices in place to deter fraudulent visa applications and the potential for over-staying should a visa be granted.

3.3.1 Challenges and Successes in Preventing Illegal Migration

3.3.1.1 Common Travel Area with UK

The Common Travel Area (CTA) between Ireland and the UK (including the Channel Islands and the Isle of Man) has been existence since 1952.⁵¹ The first formal legal recognition of the Ireland/UK Common Travel Area is contained in the Treaty of Amsterdam (International Organization for Migration, 2009). In practice the CTA means that there are no passport or visa controls in operation for Irish and UK citizens travelling between the two States, although travellers must carry an acceptable form of photo-identification which shows their nationality. Although the CTA only applies to Irish and UK citizens there are increased opportunities for other nationality groups to evade immigration controls if they have reason to do so.⁵²

Ireland and the UK have recently significantly escalated the extent of data sharing in relation to visa applications. The sharing of such data began on a local level, for example between the Irish and UK embassies. In 2008 the Irish Visa Office and the UKBA Risk Assessment Unit in Nigeria conducted analysis regarding 'shopping' for Irish visas, following the completion of the UK biometric project and prior to the introduction of Irish biometric data gathering. The Irish Visa Office supplied the UKBA with data on a selection of cases in which a passport had been issued very recently or else displayed a lack of travel activity that was deemed suspicious. Just over 6,300 cases were referred to UKBA of which 1,209 (19 per cent) resulted in a positive or probable match of identity, based on biographical data only (names, dates etc.) in UKBA's records. INIS stated that almost all 1,209 cases had been refused visas by the UK.

INIS Visa Section and UKBA conducted a joint investigation on a group of applicants in 2008. Applicant names were checked against visa and immigration/asylum records in both countries. Of the 1,314 of cases investigated, 216 (16 per cent) of applicants were found to appear in both Irish and UK databases.

⁵¹ Dáil Debates. Volume 321. 3rd June 1980. Written Answers "Immigration control".

⁵² The Irish Times, 11th July, 2011. "Concerns on UK-Ireland travel rules exploitation".

In mid November 2011 Ireland and the UK will sign a Memorandum of Understanding which will have the effect that visa application data, from nine specified countries, will be automatically shared between INIS and UKBA. The countries concerned are: Bangladesh; China; Ghana; India; Iran; United Kingdom; Nigeria; Pakistan; Sri Lanka.

3.3.1.2 Biometrics

As discussed in Section 4.1.4 Ireland introduced biometric data collection as part of the visa application procedure in Nigeria in March 2010. Visa officials stated that the fact that biometric testing is being introduced by other countries of destination, and at EU level through the Visa Information System (VIS), means that Ireland needs to 'keep up' in order to avoid visa 'shopping' by fraudulent applicants. Of particular interest to Ireland in this regard is the completion of the rolling out of the UK biometric programme, which means that the fingerprints of all visa applicants to the UK are being taken worldwide, checked and stored centrally since early 2008. The UK Nigerian checks went live in June 2007; between 2006 and 2009 applications for Irish visas from Nigerian nationals more than doubled (see Table 4.7).

In January 2011 the then Minister for Justice and Equality stated that the introduction of biometric checks, as part of the visa application procedure in Pakistan, would be investigated as "a matter of urgency". This move would increase the traceability of the movement of Pakistani migrants and was prompted by the high instance of marriages between Pakistani nationals and EU partners from the Baltic States. Non-EEA spouses of non-Irish EU citizens resident in the State may apply for residence based on their marriage to an EU national under S.I. No. 656 of 2006 as amended by S.I. 310 of 2008. In 2010 nearly 1,900 such applications for residency were made, with Pakistani nationals representing nearly 20 per cent of all applications (Department of Justice and Equality, January 2011). The introduction of biometric testing beyond Nigeria has currently been suspended due to financial constraints.

3.3.1.3 Re-entry Visas

Re-entry visas are unusual in a European context. They are a source of inconvenience and expense to visa-required nationals resident in Ireland who wish to leave the State for a short period. INIS officials stated that in the absence of exit controls to the State, the re-entry visa regime provides a useful layer of immigration control, particularly in regard to children. Unlike all other non-EEA nationals, children under the age of 16 years are not currently required to register their presence in the State with the GNIB therefore data records on such children are very poor. (The draft *Immigration, Residence and Protection Bill 2010* includes provision for the introduction of registration of children). Re-entry visa checks can uncover anomalies regarding the residence or movement of children

in and out of the State. It was also observed that checking during the processing of re-entry visa applications has revealed instances of social welfare fraud, often related to the payment of child benefit.

Re-entry visas are also an important source of revenue for INIS, which helps to fund visa offices overseas. Target processing time for these visa applications is four working days. The majority of applications are processed immediately on presentation at INIS, Dublin where between 240-300 re-entry visas are processed per day. INIS officials stated that processing is faster because the examination is limited to showing legal residence in the State and a compliant immigration history.

Chapter 4

Co-operation with Third Countries: Case Studies on Nigeria and China

4.1 THE PREVENTION OF IRREGULAR MIGRATION: NIGERIA

4.1.1 Rationale for Case Study Selection

Nigeria is a significant country of origin of migration to Ireland. Although annual flow data are not disaggregated by individual country of origin it is known that Nigerian nationals are a dominant group in asylum application data and much less so in employment permit data. Nigerian nationals are also overrepresented among persons refused leave to enter the State, persons issued with deportation orders and persons returned from Ireland. The Irish government has undertaken several initiatives to manage the flow of Nigerian nationals into the State, as will be discussed below, the introduction of biometric data to support visa applications is one such approach.

4.1.2 Historical Overview of Ireland's Relations with Nigeria

During the 1960s Nigeria was the 'showpiece of Ireland's religious empire'. The greatest concentration of Irish Catholic missionaries in the world were located in Nigeria and of the latter's 850 Catholic priests, more than 500 were Irish. The Irish Catholic church ran almost 2,500 schools which were attended by two thirds of Nigerian school-going children. The 47 religious-run hospitals catered for half of the country's patients (Staunton, 1999).

These once-strong religious linkages have influenced migration patterns between the two countries today. Table 4.1 shows Census data from 2002 and 2006. Nigerian nationals accounted for 4 per cent of the non-Irish population in both Census years, although the overall size of the group almost doubled in the period to 16,000. Nigerian nationals are strongly dominant among all African nationals, accounting for 43 per cent in 2002 rising to 46 per cent in 2006. In 2006 more than one quarter of the Nigerian population in Ireland was aged under 15.

Table 4.1 Nigerian Nationals By Gender in Total Population 2002, 2006

Population	2002			2006		
	Persons	Males	Females	Persons	Males	Females
Total Irish	3,584,975	1,778,590	1,806,385	3,610,498	1,790,160	1,820,338
Non-Irish	224,261	112,593	111,668	413,223	220,144	193,079
Africa	20,981	11,039	9,942	34,564	17,147	17,417
Nigeria	8,969	4,271	4,698	15,974	7,212	8,762
Nigerian as per cent African	42.7%	38.7%	47.3%	46.2%	42.1%	50.3%
Nigerian as per cent Non-Irish	4.0%	3.8%	4.2%	3.9%	3.3%	4.5%

Source: Census 2002; 2006.

Table 4.2 Nigerian Nationals by Age in Total Population 2002, 2006

Age group	2002				2006			
	Nigerian	Non-Irish	Irish	Total	Nigerian	Non-Irish	Irish	Total
0-14 years	1,906	34,131	775,603	823,879	4,151	52,500	797,281	860,496
15-24 years	1,184	34,443	588,738	629,360	1,626	75,687	536,777	618,465
25-44 years	5,700	108,267	1,038,486	1,157,718	9,929	219,281	1,089,238	1,320,551
45-64 years	166	36,084	772,129	817,632	564	57,181	845,160	912,301
65 years and over	13	11,336	410,019	429,906	30	15,084	438,227	460,200
Total	8,969	224,261	3,584,975	3,858,495	16,300	419,733	3,706,683	4,172,013
% under 15	21.3%	15.2%	21.6%	21.4%	25.5%	12.5%	21.5%	20.6%

Source: Census 2002; 2006.

Reliable immigration flow data are unfortunately not available to individual country-level disaggregation. Asylum applications data show that since the early 2000s Nigerian nationals have accounted for the largest number of asylum applications lodged per year. Table 4.3 shows that the Nigerian share of asylum applicants has fallen from a peak of 39 per cent in 2003, to 20 per cent in 2010. Nigerian asylum applicants have a particularly low recognition rate compared to other national groups (see Table 4.4). (Note that certain tables within this section contain data on Chinese nationals in order to inform the discussion in 4.2). Joyce and Quinn, 2009 show that Nigeria was the top nationality of unaccompanied minors referred to HSE Dublin Social Work Team for Separated Children each year between 2004-2008, followed by Romania and, in the later years, China.

Table 4.3 Asylum Applications from Nigerian Nationals 2008 - 2010

Year of Application	Nigerian national	Total	Nigerian nationals as % of total applicants
2001	3,459	10,325	33.5%
2002	4,049	11,634	34.8%
2003	3,110	7,900	39.4%
2004	1,778	4,766	37.3%
2005	1,280	4,323	29.6%
2006	1,040	4,314	24.1%
2007	1,028	3,985	25.8%
2008	1,009	3,866	26.1%
2009	570	2,689	21.2%
2010	387	1,939	20.0%

Source: Office of the Refugee Applications Commissioner (www.orac.ie).

Table 4.4 Refugee Recognition Rate at First Instance

	Nigeria %	China %	Overall %
2007	0.8	1.8	9.9
2008	0.5	0.0	7.5
2009	0.2	1.4	3.0
2010	0.0	1.4	1.1

Note: Rate calculated as cases in which a recommendation that the applicant be granted refugee status is made at % of total cases finalised in the reference year.

Source: Office of the Refugee Applications Commissioner.

Certain policy measures have been introduced to expedite the processing of Nigerian asylum applications. The Office of the Refugee Applications Commissioner (ORAC) have stated that this is desirable from the perspective of both Member States and asylum applicants and noted that Member States may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards contained in the *Asylum Procedures Directive*.⁵³ Under Section 12(1) of the *Refugee Act 1996* (as amended), the Minister for Justice and Equality may give a direction to give priority to certain classes of applications. In response to high numbers of asylum applications from Nigerian nationals, on 11 December 2003 the Minister directed ORAC and the Refugee Appeals Tribunal (RAT) to accord priority to such asylum applications. With effect from March 2010 this direction was revoked and Nigerian nationals are no longer accorded priority in the processing of asylum applications.⁵⁴

In January 2005 there were very significant changes in relation to non-Irish nationals and Irish citizenship, which impacted on all non-Irish groups in Ireland, including Nigerian nationals. Prior to the enactment of the Irish Nationality and Citizenship Act, 2004 which commenced in 2005, Ireland granted citizenship to everyone born on the island of Ireland. As an exceptional humanitarian measure non-Irish parents of Irish-born children could apply for residency based on the Irish citizenship of their child up to January 2003 when the processing of such claims was suspended. This provision led to concerns that immigrants were travelling to Ireland and having children in order to gain residency in Ireland.

After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted which mean that any person born in Ireland after 1 January 2005 to non-Irish parents are not automatically entitled to be an Irish citizen unless one of the parents was lawfully resident in Ireland for

⁵³ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

⁵⁴ In *HID and BA v. Refugee Applications Commissioner and Others [2011] IEHC 33*, the Applicants brought an application for judicial review to seek, inter alia, a declaration that that the Minister's direction to accord priority to asylum applications made by Nigerian nationals was in breach of EU law. The High Court granted leave in the matter, but refused the substantive application. The High Court then made a preliminary reference to the Court of Justice, asking "Is a Member State precluded ... from adopting administrative measures which require that a class of asylum applications defined on the basis of the nationality or country of origin of the asylum applicant be examined and determined according to an accelerated or prioritised procedure?" The case is now before the Court of Justice of the European Union.

at least three out of the four years preceding the child's birth. In January 2005 the families of Irish-born children were invited to apply for permission to remain in Ireland under the Irish Born Child 2005 Scheme (IBC/05). Almost 18,000 applications were submitted under the Scheme. Of these almost 16,700 were approved of which 37 per cent were in respect of Nigerian nationals. Over 90 per cent of applications made by Nigerian nationals under the IBC/05 scheme were approved.

In a development relevant to people refused residency in Ireland under the IBC/05 (or renewals of that scheme), and made subject of a deportation order, the Department for Justice and Equality has recently signalled that it will review the position on whether or not to allow the non-Irish parents of children with Irish citizenship to live and work in Ireland. This follows the European Court of Justice ruling in the Zambrano case as discussed in Chapter 5.⁵⁵

4.1.3 Existence of Migration-related Agreements with Nigeria

A bilateral agreement on immigration matters, including readmission, was concluded in 2001 between the government of Ireland and the government of Nigeria. While the agreement has not yet been formally ratified by the Nigerian government, in 2009 it was stated by the then Minister for Justice, Equality and Law Reform that both sides are "...operating in the spirit of the agreement, particularly in the area of repatriation".⁵⁶ Table 4.5 shows that 7 per cent of people refused entry at the Irish border in 2010 were Nigerian nationals while Table 4.6 shows that 30 per cent of Third Country Nationals issued with deportation orders in 2010 were Nigerian. Enforcement of deportation orders remains challenging: 1,034 deportation orders were issued in 2010 while 343 were effected (Department of Justice and Equality, 2011).⁵⁷

⁵⁵ Case C-34/09 - Gerardo Ruiz Zambrano v Office National de l'Emploi.

⁵⁶ Written Answers - International Agreements. Wednesday, 22 April 2009 Dáil Éireann Debate. Vol. 680 No. 3.

⁵⁷ This figure includes 51 persons who removed themselves from the State on foot of a Deportation Order. The Orders effected may have been issued in years prior to 2010.

Table 4.5 Third Country Nationals Refused Entry at the External Borders by Country of Citizenship

2008		2009		2010	
Brazil	1,015	Brazil	470	China (incl. HK)	380
Nigeria	505	China (incl. HK)	385	Brazil	350
China (incl. HK)	385	Nigeria	285	Nigeria	195
S. Africa	365	South Africa	215	South Africa	140
Malaysia	195	US	160	Bolivia	115
Bolivia	170	Malaysia	135	Malaysia	115
US	150	Egypt	105	US	100
Unknown	130	Mauritius	100	Pakistan	85
Mauritius	115	Bolivia	100	Afghanistan	80
India	105	Pakistan	95	India	80
Others	2,125	Others	1,510	Others	1,150
Total	5,260	Total	3,560	Total	2,790
% Nigerian	9.6%		8.0%		6.9%
% Chinese	7.3%		10.8%		13.6%

Source: Eurostat.

Table 4.6 Third Country Nationals Ordered to Leave Ireland

2008		2009		2010	
Nigeria	400	Nigeria	725	Nigeria	445
Brazil	375	Brazil	200	Georgia	135
Moldova	135	Moldova	140	Brazil	120
China (incl. HK)	90	South Africa	110	Moldova	105
Mauritius	25	Georgia	45	South Africa	105
South Africa	20	China (incl. HK)	30	Pakistan	65
Pakistan	20	Ghana	25	Cameroon	50
Malaysia	20	Pakistan	20	China (incl. HK)	40
Georgia	15	Russia	20	Mauritius	35
Ukraine	15	Mauritius	15	Somalia	30
Other	170	Other	285	Other	365
Total	1,285	Total	1,615	Total	1,495
% Nigerian	31.1%		44.9%		29.8%
% Chinese	7.0%		1.9%		2.7%

Source: Eurostat.

4.1.4 Other Measures: Introduction of Biometric Testing in Visa Applications

As Table 4.7 shows the number of visa applications made in Nigeria almost doubled between 2007 and 2008. The number of visas applied for in Nigeria increased to almost 11,400 in 2008 or 13 per cent of total applications lodged, up from 5-6 per cent each year in the period 2005-2007. The decline in the approval rate in the period 2007-2008 demonstrates that many of the applications were low-quality. The Irish embassy in Nigeria adopted a “zero-tolerance” policy of disallowing appeals in cases shown to have involved fraud as well as barring such applicants from applying for a visa again for five years. In addition, if an application deemed to be fraudulent is part of a group of applications, the entire

group is refused with no scope for appeal.⁵⁸ This policy has been criticised by the NGO Alliance Against Racism (2011) who argue that in light of the seriousness of the allegation of fraud, an administrative appeal should be allowed.

INIS linked the steep increase in applications to the introduction of biometric testing by UKBA and concluded that Ireland had become the target of 'visa shopping'. It was suspected that some applicants had the intention to enter the CTA between Ireland and the UK. The results of a small-scale pilot project of cross checking UK and Irish data undertaken at this time were interpreted by INIS as evidence of such movements (discussed in Section 3.3.1.1).

In March 2010 Ireland introduced biometric data collection as part of the visa application procedure in Nigeria, a project known as e-Visa. The collection of (ten) fingerprints per applicant aged six and older was introduced as a six month pilot initially. The pilot was deemed by INIS to be very successful and this is now a permanent feature of visa applications made in Nigeria. The cost of the pilot was expected to be €1.39 million including VAT. The pilot was an extension to the Automatic Fingerprint Information System (AFIS) and the project was managed internally by INIS. The AFIS system was developed by a consortium led by Accenture (Software Development and Project Management) also involving Motorola (Hardware) and Daon (Biometric Engine). Accenture has developed a range of ICT systems for the Department of Justice and Equality, mainly in the Garda area.

Visa applications from Nigeria are processed by INIS staff seconded to the Department of Foreign Affairs and Trade located in the Irish Embassy in Abuja (the federal capital).⁵⁹ At the same time as the pilot began Ireland engaged a commercial partner, Visa Facilitation Services (VFS), to operate Visa Application Centres (VACs) in Lagos and Abuja. The equipment for taking fingerprint data is owned by the Irish government. This equipment was set up in VFS premises and the data are collected by staff employed by VFS. It was stressed by INIS officials that VFS staff have no knowledge of the fingerprint check outcome or the outcome of the visa application.

In order to transmit the data a secure Virtual Private Network was established between the VFS facilities and the Irish visa office in Abuja and the INIS office in Dublin. The initial set-up also involved building secure links with the national AFIS and it is in this database that the data are held. AFIS is run by An Garda Síochána and part-funded by INIS. Records including fingerprints are held indefinitely on previous visa applicants, asylum applicants, and registered non-EEA nationals who stayed longer than 90 days. In advance of the introduction of e-Visa a change was made to the wording of the visa application declaration to the effect that fingerprint information, like all other information provided by the applicant, may

⁵⁸ <http://www.embassyofireland.org.ng/home/index.aspx?id=51314>.

⁵⁹ Applications from Ghana, Liberia, Sierra Leone, Senegal and Chad are also processed though Abuja but these applicants are not required to give fingerprints.

be shared by the immigration service with other Irish State agencies including specifically An Garda Síochána as well as with the relevant authorities of other states for the purposes of establishing immigration and/or other relevant histories.

The collection of biometric data is not practiced by Ireland in connection with visa applications from any other countries, although INIS has signalled that it would like to roll the system out to other states, notably Pakistan.

After fingerprints are checked against those in the system a 'Hit or no Hit' report is generated which is used to support decisions on visa applications in Abuja. INIS officials stated that a previously compliant visa record would strongly support the applicant's case while a record of previous asylum claims or non-matching ID would almost certainly result in refusal and the placing of the applicant on a 'watch list'.

Table 4.7 Visa Applications 2003-2010

Year	2003	2004	2005	2006	2007	2008	2009	2010
Total applications made in Nigeria	4,208	4,520	4,122	4,801	5,844	11,376	7,729	5,125
Monthly Average Nigeria	351	377	344	400	487	948	644	427
Approval rate**	na	na	na	na	53%	41%	44%	52%
Total global applications	na	na	75,026	102,396	91,165	86,098	76,554	77,940
% global applications that are made in Nigeria*	na	na	5.5%	4.7%	6.4%	13.2%	10.1%	6.6%

Source: Irish Naturalisation and Immigration Service.

*Including those sent from Ghana, Liberia, Sierra Leone, Senegal and Chad.

**Calculated as: total net approvals (at first instance plus appeal) as a percentage of net refusals (first instance refusals minus refusals overturned on appeal) plus approvals.

Table 4.8 indicates that Nigerian nationals accounted for 6 per cent of visas issued in 2010. A breakdown of the nationality of the traveller by the purpose of visa is also supplied. Unfortunately these data cannot be comprehensively broken down into short and long-term visas but in general we can assume that business/visit/conference/event visas tend to be shorter stays while education/employment/training and family visas represent longer stays.

Over three quarters of visas issued to Nigerian nationals in 2010 were for visits, probably short-term. This is a higher proportion than for any of the other top ten countries of origin. Table 4.9 shows that in 2009 and 2010, 45 per cent and 36 per cent respectively of new residence permits issued to Nigerian nationals were categorised under the reason 'other'. Residence permits are issued to non-EEA nationals who wish to remain in Ireland for over 90 days.

Table 4.8 Total Visas Issued in 2010 by Reason and Main Ten Countries of Citizenship (Extra EU – 27)*

Country of citizenship (Descending order)	Total	Business	Visit	Conference	Event / performance	Education	Employment	Training	Family	Other reasons
India	13,622	28.4%	44.5%	4.9%	0.5%	1.7%	3.3%	4.4%	7.5%	4.9%
Russian Federation	9,397	18.3%	40.2%	5.3%	16.2%	11.5%	0.2%	1.2%	1.2%	5.9%
People's Republic of China	8,066	33.4%	35.1%	7.4%	1.1%	14.4%	0.3%	2.1%	1.7%	4.6%
Nigeria	4,295	4.7%	76.0%	5.9%	0.3%	2.3%	0.1%	0.8%	3.0%	6.8%
Turkey	3,052	35.0%	34.3%	11.8%	0.2%	2.8%	1.0%	6.3%	1.9%	6.8%
Saudi Arabia	2,700	3.8%	29.9%	1.9%	0.0%	40.0%	0.2%	3.2%	9.5%	11.6%
Philippines	2,625	12.3%	57.0%	2.5%	1.9%	0.5%	1.4%	1.6%	15.1%	7.7%
Belarus**	2,403	3.4%	25.5%	1.3%	0.2%	0.3%	0.6%	0.5%	1.5%	66.6%
Pakistan	2,027	9.9%	62.4%	2.6%	0.2%	2.4%	0.8%	1.3%	8.3%	12.1%
Ukraine	1,926	17.8%	53.2%	5.0%	5.5%	3.2%	1.8%	2.0%	5.3%	6.3%
Other nationalities	18,992	14.6%	48.3%	8.0%	1.9%	6.6%	0.5%	5.0%	5.3%	9.8%
Total	69,105	19.4%	45.4%	6.0%	3.2%	7.4%	1.0%	3.3%	4.9%	9.3%

Source: Irish Naturalisation and Immigration Service.

* Includes applications made by non-EU nationals within the EU.

**In the case of Belarus nationals, the majority of the 'Other' category are Chernobyl-related short-stay visas.

Note: Actual numbers provided in Table A.1 in Annex 3.

Table 4.9 First Residence Permit by Reason and Ten Main Countries of Citizenship (Extra EU – 27), 2009 and 2010

Position of the country	2009						2010					
	Country	Total	Education	Employment	Family	Other reasons	Country	Total	Education	Employment	Family	Other reasons
1st main	US	3,963	63.5%	13.9%	8.8%	13.8%	Brazil	4,177	93.7%	0.8%	2.3%	3.1%
2nd main	Brazil	2,787	83.8%	3.4%	3.9%	9.0%	United States	3,984	72.9%	11.0%	6.6%	9.6%
3rd main	India	1,950	26.5%	31.2%	1.8%	40.4%	China (incl. HK)	1,452	72.7%	15.0%	3.6%	8.7%
4th main	China (incl. HK)	1,943	74.5%	12.5%	3.1%	9.9%	India	1,258	21.9%	36.0%	3.4%	38.7%
5th main	Nigeria	1,221	28.3%	9.7%	17.3%	44.7%	Nigeria	974	35.6%	10.7%	17.4%	36.3%
6th main	Canada	914	29.5%	58.8%	4.9%	6.8%	South Korea	863	83.3%	13.2%	1.3%	2.2%
7th main	Australia	903	7.9%	73.6%	10.9%	7.6%	Canada	798	37.3%	49.1%	5.1%	8.4%
8th main	Mauritius	802	95.4%	0.7%	1.7%	2.1%	Saudi Arabia	678	88.8%	0.0%	0.3%	10.9%
9th main	Philippines	801	21.5%	33.5%	8.2%	36.8%	Australia	632	12.3%	65.8%	13.6%	8.2%
10th main	Pakistan	762	29.0%	12.9%	18.1%	40.0%	Malaysia	611	81.0%	5.9%	2.5%	10.6%

Note: Actual numbers provided in Table A.2 in Annex 4.

4.1.5 Other Relevant Statistics

Nigerian nationals are over-represented among Third Country Nationals found to be illegally present in Ireland. The proportion of Nigerian nationals among this group has fallen from 31 per cent in 2008 to 22 per cent in 2010 (see Table 4.10).

Table 4.10 Third Country Nationals Found to be Illegally Present by Ten Main Countries of Citizenship

	2008		2009		2010	
1 st main	Nigeria	995	Nigeria	1150	Nigeria	930
2 nd main	China (incl. HK)	225	China (incl. HK)	375	China (incl. HK)	395
3 rd main	Moldova	150	Pakistan	315	Pakistan	385
4 th main	Georgia	145	Georgia	250	DR Congo	155
5 th main	Sudan	125	Moldova	180	Somalia	140
6 th main	DR Congo	105	DR Congo	180	Zimbabwe	140
7 th main	Pakistan	95	Brazil	160	Ghana	135
8 th main	S. Africa	80	Zimbabwe	135	Georgia	120
9 th main	Ghana	75	Ghana	120	Sudan	115
10 th main	Iraq	75	S. Africa	115	Brazil	110
	Total	3185	Total	5035	Total	4325
% Nigerian		31.2%		22.8%		21.5%
% Chinese		7.1%		7.4%		9.1%

Source: Eurostat.

4.1.6 Resulting Developments

INIS officials consulted for this study and all internal evaluation documents reviewed, conclude that the e-Visa project involving capturing biometric data from Nigerian visa applications has been a success in terms of reducing the number of poor quality visa applications, some of which are considered by INIS to be disingenuous. It was stated that biometric checks in relation to visa applications act first as a deterrent to fraudulent applications, as well as assisting in detection. Furthermore, it was observed that in the context of biometric checks becoming more common internationally, the absence of such checks could lead to disingenuous applicants targeting Ireland. Although the decrease in numbers began before the e-Visa pilot was fully live, officials interviewed believe that knowledge that such a regime was coming acted as a deterrent to poor quality applications even before e-Visa was operational.

Table 4.7 shows that the numbers of visa applications have fallen by 55 per cent in the period 2008-2010. Unpublished figures for the first half of 2011 show that visa applications in Nigeria are down 11 per cent on same period in 2010. Perhaps a stronger indicator of the success of the project is that the average annual approval level of applications⁶⁰ made in Nigeria has risen from 41 per cent in 2008, just before the introduction of e-Visa, to 52 per cent in 2010. These figures suggest that poor quality visa applications are indeed being deterred while higher quality applications are continuing to result in visas.

Aside from facilitating the examination of visa applications in Nigeria, INIS has pointed to related developments in Ireland as positive 'spin-offs'. The e-visa pilot provided new functionality in two areas:

⁶⁰ Number of applications approved as a percentage of all decisions made.

- A check is enabled whereby an Irish immigration officer at the port of entry is able to quickly verify by way of fingerprint data that the visa holder seeking to enter the State is actually the same person who applied for the visa. This functionality has currently been rolled out to Dublin airport only.
- It is possible for ORAC to detect whether an asylum seeker, including undocumented persons or those attempting to conceal or distort their true identity, ever applied for an Irish visa. This information may assist in determining the identity of asylum applicants. It is also possible to crosscheck visa fingerprint records with those who have had their fingerprints taken in connection with GNIB registration, or in a criminal context.

The visa officials consulted indicated that most ‘hits’ generated through this type of cross-checking verified the applicants’ story thereby increasing processing efficiency. INIS officials consulted for the study indicated that data gathered under e-Visa could usefully be shared with other countries, notably the UK. UKBA have indicated their willingness to explore this possibility. It was stressed that the methods developed in Nigeria could be rolled out to other countries with relative ease and with no further software development. However, given budgetary constraints extensive expansion is unlikely during 2011-12. Additional development of the system such as integration with AVATS and deeper integration with Garda National Immigration Bureau Information System (GNIB-IS) are also deemed to be objectives.

4.2 THE PREVENTION OF IRREGULAR MIGRATION AND FACILITATION OF LEGAL MIGRATION: CHINA

4.2.1 *Rationale for Case Study Selection*

China is also a significant source country of migrants in Ireland and the size of this population is growing. As was the case for Nigerian nationals, discussed in Section 4.1, information on the exact number of Chinese nationals migrating to Ireland is not available and the last Census data are now out of date (2006). In 2010 12 per cent of total Irish visas issued were to Chinese nationals and 33 per cent of these were for business visas. Data in Table 4.9 show that 73 per cent of first residence permits issued to Chinese nationals in 2010 were for education-related reasons. The current case study focuses on Ireland’s attempts to attract Chinese students to Ireland while tackling the problem of migrants using the student visa to access the Irish labour market. This problem has been a feature of the English as a Foreign Language (EFL) educational sector in particular.

4.2.2 Historical Overview of Ireland's Relations with China

Table 4.11 shows that the Chinese population in Ireland grew from just under 6,000 to almost 11,000 between 2002 and 2006. The majority of the Chinese population (92 per cent in 2006) was aged 15-44 and 40 per cent was aged 15-24.

Table 4.11 Chinese Nationals by Gender in Total Population 2002, 2006

Population	2002			2006		
	Persons	Males	Females	Persons	Males	Females
Total Irish	3,584,975	1,778,590	1,806,385	3,610,498	1,790,160	1,820,338
Non-Irish	224,261	112,593	111,668	413,223	220,144	193,079
Asia	21,779	12,014	9,765	46,064	24,120	21,944
China	5,842	3,424	2,418	10,967	5,920	5,047
Chinese as per cent Asia	26.8%	28.5%	24.8%	23.8%	24.5%	23.0%
Chinese as per cent Non-Irish	2.6%	3.0%	2.2%	2.7%	2.7%	2.6%

Source: Census 2002; 2006.

Table 4.12 Chinese Nationals by Age in Total Population 2002, 2006

Age group	2002				2006			
	Chinese	Non-Irish	Irish	Total	Chinese	Non-Irish	Irish	Total
0-14 years	154	34,131	775,603	823,879	412	52,500	797,281	860,496
15-24 years	3,620	34,443	588,738	629,360	4,515	75,687	536,777	618,465
25-44 years	1,822	108,267	1,038,486	1,157,718	5,745	219,281	1,089,238	1,320,551
45-64 years	194	36,084	772,129	817,632	415	57,181	845,160	912,301
65 years and over	52	11,336	410,019	429,906	74	15,084	438,227	460,200
Total	5,842	224,261	3,584,975	3,858,495	11,161	419,733	3,706,683	4,172,013
% 15 – 44	93.2%	63.6%	45.4%	46.3%	91.9%	70.3%	43.9%	46.5%

Source: Census 2002; 2006.

Ireland has sought to develop links with China in recent decades. Following a State visit by the Irish Taoiseach to China in 1998, a group of experts, drawn from the private and public sectors, was convened to recommend a strategy for improving Ireland's economic relations with East Asia. The group made a range of recommendations designed to improve contact between Ireland and Asian countries at official level, to strengthen Ireland's representation in the region, and to raise mutual awareness and understanding.⁶¹

The following countries were identified as 'priority countries' under the Strategy: China, Japan, Korea, Singapore, India, Malaysia, Indonesia and Vietnam. The Strategy ran from 1999 to 2004 and saw the opening of new Irish missions in Shanghai, Singapore and Sydney, as well as an increase in staff in the Beijing and Tokyo Irish embassies (see below for further discussion). There was a marked increase in high-level political and trade-related visits to and from China and the other states. An awareness campaign was funded to improve understanding in

⁶¹ <http://www.dfa.ie/>. Recommendations from the Asia Strategy Group were contained in a report entitled, 'A Strategy for Long-Term Development of Foreign Earnings in Asia'.

Ireland of Asian business culture and to raise Ireland's profile in Asia. The Strategy focussed on linking Ireland with Asia through education, research and vocational exchange; internationalisation of Irish education services; developing tourism trade; developing agricultural trade; exporting seafood and attracting enterprise, trade and investment.

The Strategy recommended focussing on China in terms of marketing Irish educational services abroad. Chinese nationals represented 12 per cent of total first residence permits, issued for education reasons, in 2009 and 8 per cent in 2010. China was the third-ranked country of nationality in this regard in both years.

4.2.3 Existence of Migration-related Agreements with China

Ireland does not have any specific migration-related agreements with China. Ireland has opted into Council Decision of 17 December 2003 concerning the conclusion of the Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, OJ. L 17, 24 January 2004.

4.2.4 Other Measures: Initiatives Developed for Deterring Fraud in Student Visa Applications

4.2.4.1 Irish Policy Context Regarding International Students

International students represent a substantial and growing group of migrants in Ireland. During 2010 just over 22,200 first-time residence permits were issued to non-EEA nationals resident in Ireland, of which 61 per cent were registered under education (14 per cent employment; 9 per cent family and 15 per cent other). Data in Table A2 show that education was the only category of new residence permits to have increased in the period 2009 – 2010.

International students are recognised as an important source of revenue for the State. Since 2001 non-EEA students may work in the Irish labour market for up to 20 hours per week during term and full-time during vacation periods.⁶² The stated intention of this policy move was to allow students to support themselves while studying, while also broadening their experience of Ireland. It was hoped that the move would increase the attractiveness of Ireland as a country of destination for international students. However there has been concern among policymakers that some non-EEA students may in fact have been coming to Ireland to work, while bypassing employment permit requirements, and that they may have been spending considerable periods of time in the State (Department of Education and

⁶² The labour market access of international students is currently under review.

Science, 2004; Irish Naturalisation and Immigration Service, 2009). As a result, a number of policy changes have been introduced in recent years.

Since 2005, in order to work, students must be pursuing a full-time course of at least one-year duration leading to a qualification recognised by the Minister for Education and Science. In September 2009, the Minister for Justice and Equality announced a review of non-EEA student immigration and in September 2010 a New Immigration Regime for Full Time non-EEA Students was launched (Irish Naturalisation and Immigration Service, 2010a). One of the main objectives of the new regime is to cap the amount of time a non-EEA national may spend in Ireland as a student at any one academic level. The new regime involves closer alignment of immigration rules with specific educational courses with an intention to fast track visa applications for high level courses. Specific schemes for the different levels of students were subsequently introduced in January 2011 (Irish Naturalisation and Immigration Service, 2011a-f).

Students on short-term English language courses (<90 days) are now viewed as 'educational tourists' and are not required to fulfil standard student immigration conditions for entry but they may not work. Longer-term English language students may stay for a maximum of one year per language course up to three years in total. Such students may access the labour market for 20 hours per week during term time and full time during vacations provided that their course is on the Internationalisation Register, which is administered by the National Qualifications Authority of Ireland (NQAI). Prior to 2011 English language students could stay indefinitely, as long as they continued to attend an approved college.

Visa-required students, who intend to stay in Ireland for more than six months are required to show they have access to €7,000 before they may be issued with a visa. From 1 April 2011 such students must have access to €3,000 at first registration with the GNIB.

Further policy development is planned regarding non-EEA students including a strengthened immigration and visa regime, part of which will mean that visas for degree programmes will be fast tracked. The introduction of a 'Quality Mark' is also planned, to be awarded to courses that comply with a Code of Practice which will set out standards on marketing and recruitment, enrolment, fees, information, accommodation, academic matters, support services, protection for learners and complaints procedures (INIS, January 2011f). Such efforts are intended to enhance the Irish 'brand' abroad and to enable closer regulation of courses in Ireland.⁶³

⁶³ Draft legislation is expected soon which will establish the Code of Practice and Quality Mark. These will be administered by an amalgamated qualifications and quality assurance body also set up under the proposed legislation. In preparation for this role, the National Qualifications Authority of Ireland (NQAI) has been tasked with regulating international education programmes by maintaining an Internationalisation Register of approved courses. From no later than one year after the introduction of the Quality Mark, students will not be able to receive immigration

4.2.4.2 Student Visa Applications in China

Table 4.8 shows that China was the third largest country of citizenship among (long and short-term) visa recipients in 2010 and that 14 per cent of total visas issued were for educational reasons. Of the top ten countries of citizenship listed only Saudi Arabia had a higher proportion of educational visas issued (40 per cent). Table 4.13 shows first time residence permits issued for education-related reasons, by nationality in 2010: 73 per cent of new residence permits were issued for education-related reasons. Chinese nationals had the third highest representation among this group of new residence permit holders in 2010.

Table 4.13 First Time Residence Permits Issued for Education-Related Reasons in 2010. Top Ten Nationalities

	Education reasons	Total
Total	13,653	22,235
Brazil	3,913	4,177
United States	2,903	3,984
China (incl.HK)	1,056	1,452
South Korea	719	863
Saudi Arabia	602	678
Malaysia	495	611
Mexico	348	396
Nigeria	347	974
Canada	298	798

Source: Eurostat.

In May 2002, four visa officers from INIS were posted in the Irish Embassy in Beijing to run a visa office with full power of decision in all types of visa applications. Prior to that date embassy staff were fully processing only the most straightforward and short-term visa applications, while sending the remainder to Dublin for processing at INIS head office. A large backlog of applications, which had not yet been sorted according to whether they should be processed in Beijing or Dublin (in the region of 13-14,000), had also accumulated.

The opening of the dedicated visa office was deemed by INIS officials to be a significant move for a country of Ireland's size and resources, made necessary by the backlog and the apparent abuses of the student visa regime. Visa officers were tasked with ensuring that applicants for student visas had a genuine wish to study in Ireland. This was deemed necessary to protect the quality of the Irish education 'brand' abroad; to maintain proper immigration controls; and to support the Irish policy that international students should work to support themselves in their studies only.

In China it is common practice for potential language students and Irish language schools to make contact via agents, usually located in China. Such agents might

supply information on suitable education providers, translation of documents, advice on visa requirements etc. At the time of the establishment of the Beijing visa office in 2002 there were indications that some of these agents were offering a service to secure Irish visas by fraudulent means, rather than to facilitate access to Irish education. For example visa officers found:

- Bank certificates for sizeable deposits, which were issued by the same sub-branch of the same bank, attached to applications made by students from different locations, a long distance from the bank in question. The suspicion was that agents in China were providing clients with temporary funds for the purposes of making visa applications.
- Many applications contained identical study plans: "I will study English and then attend university to study IT or Business or Finance".
- Different visa applications, made over a period of time and from applicants from different regions of China, shared common information such as phone numbers supplied for the employer of the applicant students' parents.
- Fraudulent documents, procured for the applicant by intermediaries for the purposes of the visa application.
- Although the advertised backlog was 18 months agents were still willing to lodge applications. This was considered to be suspicious in the context of applications for study visas.

There is also evidence to suggest that the immigration status of some Chinese nationals may become irregular sometime after the migrant enters the State. Table 4.10 shows that this nationality group is ranked second among those found to be illegally present within the State in each year 2008, 2009 and 2010. Research into the irregular population in Ireland, conducted by the Migrant Rights Centre Ireland (2007), found that of the nine Chinese nationals interviewed all but one arrived on a student visa, organised through an agency at a cost of between €700 and €10,000. The interviewees all studied at private language schools. One interviewee argued that it was difficult to obtain visas to leave China and that a student visa was the easiest to get, while another stated that it was hard for Chinese people to get work permits and that the only way to enter Ireland legally was with a student visa. Chinese nationals were the group most often refused entry at the Irish border in 2010, accounting for 14 per cent of refusals (11 per cent in 2009 and 7 per cent in 2008).

Following the setting up of the Beijing visa office INIS initiated a new administrative procedure for dealing with new applications submitted. From 1 March 2003 the following approach was taken:

- The agent was asked to verify all new applications and certify that documents were genuine. A full study plan was required. Priority was given to such new applications;
- Batches of applications were taken from the backlog, oldest first, which the relevant agents were asked to re-check. If he or she had checked the documents and was willing to stand over the applications these cases were dealt with next;
- S/he had to submit a detailed account of the checks carried out and the attempts made to verify the documents. A new study plan was also required;
- The agent was required to identify applications which contained fraudulent documents. Cases identified by the agent as fraudulent or suspicious were refused without checking;
- Those certified as genuine were checked thoroughly and if fraudulent documents were found, the entire batch would be refused and future applications made by those agents would not be accorded priority;
- Remaining applications from the backlog would be dealt with in chronological order;
- New applications from discredited agents or applications withdrawn from the backlog and re-lodged would be accorded lowest priority.

In 2004 a 'privileged status' list of provinces in China was advertised, from which provinces applicants could make applications without first having to pay the fees. Once the application was approved in principal the proof of transfer, and proof of receipt of fees could be provided and the visa issued. This move was intended to allow Irish education providers to compete more favourably in new markets. In addition the visa officers had identified two 'black spots' in terms of problem applications: Fuqing in Fujian Province and Shenyang city in Liaoning Province, from which the majority of applications for Irish visas were originating. In contrast relatively few applications were coming from more affluent areas such as Beijing, Hangzhou and Shanghai.

In 2005 the Irish Visa Office in Beijing signed an agreement with one of the Chinese banks which meant that they would guarantee the fees and living expenses of prospective students, and that they would transfer the fees directly to the college for the entire duration of the study plan. This move allowed the emerging Chinese middle class to apply to the banks for partial study loans and for the bank to assess their ability to pay rather than a visa officer. These practices are still in place.

4.2.5 Other Relevant Statistics

It was stated by officials consulted for the study that some nationalities, in particular Chinese nationals, may use Irish visas to travel to Ireland but present to the immigration officer at the border without documents. These migrants may then claim asylum with the Gardaí but abscond before making a full application. The very high rate of Chinese nationals who are deemed to have been withdrawn due to lack of co-operation from the asylum system is cited as evidence of such a pattern (see Table 4.15).

Table 4.14 Rates* of Withdrawal from the Asylum System (First Instance Only)**

	2007	2008	2009	2010
China	72.2	71.2	67.9	80.6
Nigeria	6.8	7.4	9.7	15.4
Total	21.3	17.7	17.0	25.4

Note: *Persons withdrawn, or deemed to be withdrawn through non-participation, as a proportion of total applications. These include cases withdrawn, or deemed to have been withdrawn under Section 13(2) of the Refugee Act.

**Nigerian nationals represent much larger overall numbers of applicants in each year than Chinese nationals.

Source: Office of the Refugee Applications Commissioner.

4.2.6 Resulting Developments

Following the opening of the visa office in Beijing there was an increase in overall study visa approvals over the period 2005-2008, with most of the increase seen at higher educational levels. The total visas approved for third level, further education and general education increased by 67.5 per cent in this period. INIS officials interviewed for the current study stressed the importance for personal interaction between visa officers and agents as well as the importance of information sharing with other embassies in the region.

Table 4.15 Study Visa Approvals at INIS Beijing Office

	2005	2006	2007	2008	2009	2010
Universities and Institutes of Technology	292	364	535	921	na	na
Other Third Level colleges	149	88	187	98	na	na
Further Education colleges, secondary schools and uncategorised	282	214	334	192	na	na
<i>Total approved for Third Level, Further Education and General Education</i>	<i>723</i>	<i>666</i>	<i>1,056</i>	<i>1,211</i>	<i>na</i>	<i>na</i>
All ACELS*-approved English language Schools (non-Third level)	227	137	225	169	na	na
Other English language schools (not currently Acels-approved)	36	2	0	0	na	na
<i>Total approved for non-Third Level English Language Schools</i>	<i>263</i>	<i>139</i>	<i>225</i>	<i>169</i>	<i>na</i>	<i>na</i>
<i>Total study visas approved</i>	<i>986</i>	<i>805</i>	<i>1,281</i>	<i>1,380</i>	<i>1,229</i>	<i>1,141</i>

Source: Irish Naturalisation and Immigration Service.

*ACELS (Accreditation and Co-ordination of English Language Services). As of January 2010, ACELS is now part of the National Qualifications Authority of Ireland.

The case study highlights some of the conflicts between attracting business to Ireland while practicing effective immigration controls, also discussed in Section 3.2.1. It is likely that the experience gained in China informed some of the

suggested changes in the recent Supplementary Paper on Irish Student Visas (INIS, 2010b), for example the suggested creation of a system of approved agents with priority in applications given to those with a track record of ethical and efficient operation, as well as the recommendation for a feedback mechanism whereby the immigration compliance of the students should be linked with the agent who recruited them.

Chapter 5

Effect of EU Policy and Legislation

While Ireland lies outside the Schengen zone and therefore visa policy is a national competence, EU policy and legislation impact on Irish visa policy substantially. The *Free Movement Directive*,⁶⁴ transposed into Irish law by the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006)*, as amended by the *European Communities (Free Movement of Persons) Regulations 2008 (S.I. 310 of 2008)*, is particularly important in this regard. Also relevant are Articles 20 and 21 of *The Treaty on the Functioning of the European Union (TFEU)*.

As discussed above, certain groups of migrants are exempt under EU law from the requirement to hold an Irish visa. Article 5(1) of *Directive 2004/38* provides that:

Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport.

No entry visa or equivalent formality may be imposed on Union Citizens.

Under Article 5(2) of the same Directive, a Third Country family member of an EU citizen in possession of an EU residence card is exempt from visa requirements:

Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law. For the purposes of this Directive, possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement.

Member States shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.

Furthermore, under Article 5(4) a Third Country family member not in possession of residence card or visa, who presents at the border, must be given the

⁶⁴ *Directive 2004/38/EC* on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

opportunity to obtain a visa before being refused 'leave to land'. Recent case law has further clarified these provisions. In the judgment handed down in *Raducan v Minister for Justice, Equality and Law Reform and Ors*, the High Court stated that as the holder of a "residence card of a family member of a Union citizen", as referred to in Article 10 of *Directive 2004/38/EC*, Ms Raducan should not have been refused permission to land in the State as a result of not having a visa. It was also held that she should have been able to obtain a visa at Dublin Airport but that the procedures in place there were deficient in this regard. It was noted in the judgment that an immigration officer involved stated that he did not know what a "residence card of a family member" was.

The *Metock* case⁶⁵ involved asylum seekers in Ireland who were also married to EU citizens resident in Ireland exercising their EU Treaty right of free movement. In this case the European Court of Justice (ECJ) found that free movement rights of entry and residence apply to non-EU/EEA national spouses and family members of EU citizens, irrespective of when a marriage took place, or how a foreign national family member joined his EU spouse. The Court held that *Directive 2004/38/EC* precludes legislation of a Member State which requires a Third Country National spouse of a Union citizen, residing in that Member State but not possessing its nationality, to have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the provisions of that Directive. It was found that such spouses benefit from the provisions of that Directive, irrespective of when and where their marriage took place and of how the Third Country National entered the host Member State.

The judgment had an impact on Irish visa policy in that certain Third Country National family members of EU citizens who, prior to the judgment, were either refused a visa, residency, or the right to work in the State, thereafter had to be facilitated with a visa and had to be granted residency and given the right to work.

In the case of *Zambrano*⁶⁶ the Court of Justice found that under certain circumstances Article 20 of the TFEU precludes a Member State from refusing a Third Country National, upon whom his EU citizen, minor children are dependent, a right of residence in the Member State of residence and nationality of those children. The Member State is also precluded from refusing to grant a work permit to that Third Country National. Such decisions must deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.

⁶⁵ Case C-127/08.

⁶⁶ Case C-34/09.

Ireland has been particularly impacted by this decision because certain parents of Irish citizen children,⁶⁷ had been issued with deportation orders, and/or deported from the State. Following the handing down of the Zambrano judgment, parents of Irish citizen children to whom deportation orders had been issued, but who had not been deported, had their deportation orders revoked, and were subsequently granted residence. It is understood that some of those who had already been deported have sought to revoke their deportation orders, and have sought visas to re-enter the State to have their case of residency reviewed. INIS officials consulted for this study expressed the view that the 'dependency' referred to in the Zambrano judgment should be evidenced by an existing relationship with the child in question, as well as residence in the same State as the child.

Ireland does not participate in the Visa Code or the gradual roll-out of the VIS.⁶⁸ Ireland participates in the Council of Ministers Visa Working Party. The working party examines the proposed legal instruments aimed at improving the conditions for implementing the common visa policy therefore discussions rarely directly involve Ireland.

⁶⁷ Prior to the enactment of the Irish Nationality and Citizenship Act, 2004 which commenced in 2005, Ireland granted citizenship to everyone born on the territory, regardless of the nationality of their parents. After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted, which mean that any person born in Ireland after 1 January 2005 to non-Irish parents is not entitled to be an Irish citizen unless one of the parents was lawfully resident in Ireland for at least three out of the four years preceding the child's birth.

⁶⁸ On foot of the European Court of Justice (ECJ) judgment C-482/08.

Chapter 6

Conclusions

The Department of Justice and Equality has stated that “Visa and pre-entry clearance systems are a crucial element of ... immigration controls and allow States to apply such controls in advance of a person arriving at the borders of a State to seek entry” (Department of Justice and Equality, 2005). Irish visas are viewed by immigration authorities as the first defence, in the immigration system, against migrants who are unwelcome in the State. This study has shown that the emphasis in the Irish visa system lies on deterring irregular migration, although that function cannot be easily divorced from the facilitation of legal migration. As a system of pre-entry clearance only, the Irish national visa system is more limited in scope than those in operation in Schengen states, where short-term visas at least carry with them an expectation to enter, to reside and to move between Member States. In Ireland, visa policy tends to follow and support overall migration policy.

Irish visa policy and practice have changed substantially in recent years. Unfortunately data do not exist to track the numbers of visa applications and visas granted, as Ireland moved from being a country of emigration to one of high net immigration, over the last two decades. However, certain policy changes appear to reflect increased demand, for example the placing of INIS visa officers in six high-volume visa processing offices in Irish embassies in Abuja, Abu Dhabi, Beijing, London, Moscow and New Delhi. New targeted approaches have also been adopted towards applications deemed by visa officers as disingenuous, as described in the case studies of Nigeria and China. The introduction of biometric data gathering from visa applicants in Nigeria in 2010 is a significant new development, as is the engagement of commercial partners in Sri Lanka, India, Nepal, Ghana and Nigeria to manage VACs.

It has been shown that EU law has impacted significantly on Irish visa policy in recent years, with the effect that Irish visa issuing can no longer be viewed as a purely national competence. As discussed, there are now new instances in which Ireland may not require a visa from a non-EU national or must provide facilities to access visas on entry to certain non-EU nationals.

It can be assumed that the Irish visa system will continue to change. Ireland has entered a new phase of declining immigration. This may have been expected to result in decreasing visa applications, but such a trend is not discernible so far.

Regional shifts in the balance of applications may be detected: some caused by international factors, others by policy changes, such as the introduction of the Short-term Visa Waiver Programme. Visa officials consulted for the study indicated that the economic downturn, currently being experienced in Ireland, underlined the need to ensure that visa applicants who would become a burden on the Irish State should not receive a visa. As discussed, the further rolling-out of biometric data gathering as part of visa applications has already been signalled, budget permitting. In terms of anticipated legislative change, if enacted, the draft *Immigration, Residence and Protection Bill 2010* will put the visa issuing system on a statutory footing for the first time. It is expected that emerging EU jurisprudence will also continue to impact on Irish visa policy.

Annex 1 - Countries of Which Citizens are Required to be in Possession of a Valid Irish Visa

Andorra	Guatemala	Poland
Antigua & Barbuda	Guyana	Portugal
Argentina	Honduras	Romania
Australia	Hong Kong (Special Admin. Region)	Saint Kitts & Nevis
Austria	Hungary	Saint Lucia
Bahamas	Iceland	Saint Vincent & the Grenadines
Barbados	Israel	Samoa
Belgium	Italy	San Marino
Belize	Japan	Seychelles
Bolivia	Kiribati	Singapore
Botswana	Latvia	Slovak Republic
Brazil	Lesotho	Slovenia
Brunei	Liechtenstein	Solomon Islands
Bulgaria	Lithuania	South Africa
Canada	Luxembourg	South Korea
Chile	Macau (Special Admin. Region)	Spain
Costa Rica	Malawi	Swaziland
Croatia	Malaysia	Sweden
Cyprus	Maldives	Switzerland
Czech Republic	Malta	Taiwan
Denmark	Mauritius (until 31/12/2009)	Tonga
Dominica	Mexico	Trinidad & Tobago
El Salvador	Monaco	Tuvalu
Estonia	Nauru	UK & Colonies
Fiji	Netherlands	United States of America
Finland	New Zealand	Uruguay
France	Nicaragua	Vanuatu
Germany	Norway	Vatican City
Greece	Panama	Venezuela
Grenada	Paraguay	

Source: The Immigration Act 2004 (Visas) (No. 2) Order 2011 (S.I. no. 345 of 2011).

Annex 2 - List of Countries to Which the Visa Waiver Programme Applies

Nationals from Eastern Europe
Belarus
Montenegro
Russian Federation
Serbia
Turkey
Ukraine
Middle East
Bahrain
Kuwait
Oman
Qatar
Saudi Arabia
United Arab Emirates
Other Asian Countries
India
Kazakhstan
People's Republic of China
Uzbekistan

Source: Irish Naturalisation and Immigration Service (2011g).

Annex 3 - Explanation of Reasons for Refusal of Visa

ID	<p>Insufficient documentation submitted in support of the application. Please see website link to 'Documentation to Accompany a Visa Application' at www.inis.gov.ie</p> <ul style="list-style-type: none"> • Application form incomplete or unsigned; • Documents provided not translated.
F	<p>Finances e.g.</p> <ul style="list-style-type: none"> • No evidence of finances shown or • Evidence provided is deemed insufficient or incomplete (e.g. no contact details for bank, poor quality documents) or • Finances shown have been deemed insufficient.
PF	The granting of the visa may result in a cost to public funds.
PR	The granting of the visa may result in a cost to public resources.
R	<ul style="list-style-type: none"> • No reference in Ireland or • No clear link to reference has been shown or • No letter of invitation submitted with the visa application form or • Letter of invitation no longer valid - dates for event/course have passed or • No confirmation of hotel booking for duration of stay.
RH	<p>Relationship History – have not shown evidence of a relationship being in existence prior to visa application/marriage. <i>Note:</i> For immigration purposes it is not sufficient for a relationship to have developed over the internet or by telephone/SMS. A relationship must include a number of face to face meetings (excluding webcam) between the parties. You must satisfy the visa officer that the relationship is bona-fide.</p>
IS	<p>Immigration status of the reference in Ireland e.g.</p> <ul style="list-style-type: none"> • Evidence of this has not been provided - Copy of GNIB card, copy of passport of reference or • Reference has no right of residence in the State
IH	Immigration history of applicant.
GP	<p>Contrary to General Policy</p> <ul style="list-style-type: none"> • It is not general policy to permit any person, whether related or not, to join any persons who have been granted residency in the State under the IBC/05 scheme. Your case has been fully examined, and you have not shown any compelling grounds as to why an exception to this policy should be made in your case • It is not general policy to permit any person, whether related or not, to join or visit any person who is in the State on a study visa. Your case has been fully examined, and you have not shown any compelling grounds as to why an exception to this policy should be made in your case. • It is not general policy to grant a visa to dependent family members over the age of 18 to join or visit persons granted residency in the State. Your case has been fully examined, and you have not shown any compelling grounds as to why an exception to this policy should be made in your case. • It is not general policy to grant a visa to dependent family members over the age of 18. Your case has been fully examined, and you have not shown any compelling grounds as to why an exception to this policy should be made in your case.
WP	Work permit required.
1YR	1 year rule – Work Permit holder not in State 12 months with work permit renewed for a further 12 months.
SCSTP	Not the general policy to allow spouse or children visas to accompany or join spouse or parent on short term business/training trips.
P	<p>Passport e.g.</p> <ul style="list-style-type: none"> • Passport expires within 6 months of end of visit, or 12 months if you are applying to work or study; • Passport has not been signed.
VR	Previous Visa refusal(s).
ST	Visit is not short-term in nature – exceeds 90 days.
INCO	Inconsistencies e.g. contradictions in the information supplied e.g. dates/residence/occupation/finances.
SP	<p>Student Profile e.g.</p> <ul style="list-style-type: none"> • Insufficient recognised level of English shown (e.g. IELTS*) or • Relevance of English to employment (for English language students) or • Previous educational or employment background is at odds with course applied for or • Gaps in education or employment not accounted for. <p>* <i>International English Language Testing System (IELTS)</i></p>

CP	<p>Course Profile e.g.</p> <ul style="list-style-type: none"> • Need to undertake the course in this State not demonstrated or warranted; • Course does not meet Student Visa requirements.
SCH	Profile of School/Visas not currently being issued for this school.
OB	<p>Obligation to return to home country not shown e.g.</p> <ul style="list-style-type: none"> • No social, economic or professional ties in home country shown or • Obligations shown have not been deemed sufficient.
OC	<p>Observe the conditions of the visa - the visa sought is for a specific purpose and duration, and the applicant has not satisfied the visa officer that such conditions would be observed e.g.</p> <ul style="list-style-type: none"> • The applicant may overstay following his/her proposed visit, or • Work illegally in the State, or • Branch into the common travel area • The potential cost of this trip is high in comparison to the applicant's means, and given that no compelling reasons for the trip have been displayed, the visa officer is not satisfied of your intentions to leave the State following your visit.
FM	Minor child not a family member.

Source: <http://www.inis.gov.ie/en/INIS/RefusalExplainJuly08.pdf/Files/RefusalExplainJuly08.pdf>.

Annex 4 - Additional Statistical Data

Table A.1 Total Visas Issued by Reason and Ten Main Countries of Citizenship, 2010

Country of citizenship (in descending order)	Total	Business	Visit	Conf-erence	Event/performance	Education	Employment	Train-ing	Family	Other reasons
India	13,622	3,868	6,057	661	64	237	444	604	1,017	670
Russian Federation	9,397	1,716	3,780	499	1,527	1,081	19	109	113	553
People's Republic of China	8,066	2,693	2,829	593	90	1,159	27	166	140	369
Nigeria	4,295	204	3,266	255	13	97	5	36	129	290
Turkey	3,052	1,069	1,046	360	5	84	31	193	57	207
Saudi Arabia	2,700	102	806	51	1	1,079	5	87	256	313
Philippines	2,625	324	1,497	66	49	13	36	43	396	201
Belarus*	2,403	82	613	32	6	7	15	12	35	1,601
Pakistan	2,027	201	1,265	52	5	48	17	26	168	245
Ukraine	1,926	343	1,024	97	106	61	34	38	102	121
Other nationalities	18,992	2,779	9,173	1,514	370	1,257	88	949	999	1,863
Total	69,105	13,381	31,356	4,180	2,236	5,123	721	2,263	3,412	6,433

Notes: The breakdown provided is for TOTAL visas issued. Estimated breakdowns between C and D visas cannot be supplied to this level of disaggregation. This breakdown is not available for years prior to 2010.

*In the case of Belarus nationals, the majority of the 'Other' category are Chernobyl-related short-stay visas.

Source: Visa Section, Irish Naturalisation and Immigration Service

Table A.2 First Residence Permit by Reason and Ten Main Countries of Citizenship (Extra EU - 27)

2008						
Position of the country	Name of the country	Total	Education	Employment	Family	Other reasons: Total
1st main	Brazil	3,787	3,207	181	154	245
2nd main	United States	3,664	2,015	619	383	647
3rd main	India	2,673	642	853	86	1,092
4th main	China (incl. HK)	1,533	1,094	187	76	176
5th main	Australia	1,521	67	1,208	115	131
6th main	Nigeria	1,515	307	53	368	787
7th main	Mauritius	1,188	1,133	8	12	35
8th main	South Korea	1,171	1,078	24	11	58
9th main	Canada	1,072	208	663	64	137
10th main	South Africa	793	183	164	187	259
Other		10,009	2,604	1,848	1,953	3,604
Total		28,926	12,538	5,808	3,409	7,171
2009						
Position of the country	Name of the country	Total	Education	Employment	Family	Other reasons: Total
1st main	United States	3,963	2,518	550	350	545
2nd main	Brazil	2,787	2,335	94	108	250
3rd main	India	1,950	517	609	36	788
4th main	China (incl. HK)	1,943	1,448	242	61	192
5th main	Nigeria	1,221	346	118	211	546
6th main	Canada	914	270	537	45	62
7th main	Australia	903	71	665	98	69
8th main	Mauritius	802	765	6	14	17
9th main	Philippines	801	172	268	66	295
10th main	Pakistan	762	221	98	138	305
Other		9,463	3,600	1,640	1,481	2,742
Total		25,509	12,263	4,827	2,608	5,811

2010						
Position of the country	Name of the country	Total	Education	Employment	Family	Other reasons: Total
1st main	Brazil	4,177	3,913	35	98	131
2nd main	United States	3,984	2,903	438	262	381
3rd main	China (incl. HK)	1,452	1,056	218	52	126
4th main	India	1,258	275	453	43	487
5th main	Nigeria	974	347	104	169	354
6th main	South Korea	863	719	114	11	19
7th main	Canada	798	298	392	41	67
8th main	Saudi Arabia	678	602	0	2	74
9th main	Australia	632	78	416	86	52
10th main	Malaysia	611	495	36	15	65
Other		6,808	2,967	1,002	1,251	1,588
Total		22,235	13,653	3,208	2,030	3,344

Note: Data unavailable prior to 2008.
First permits only.

Source: Eurostat.

Table A.3 Total Visas Issued by Reason and Ten Main Countries of Consular Posts 2010 (Extra EU)

Country of consular post (in descending order)	Total	Business	Visit	Conference	Event/performance	Education	Employment	Training	Family	Other reasons
Russia (Note 3)	11,072	1,680	3,864	486	1,520	1,111	29	171	115	2,096
India (Note 4)	10,149	2,558	4,531	410	58	291	408	560	1,054	279
People's Republic of China (Note 5)	7,143	2,396	2,424	502	71	1,142	28	141	146	293
Saudi Arabia (Note 6)	4,891	325	2,012	118	2	1,361	15	140	313	605
Egypt (Note 7)	2,716	523	927	279	95	64	20	371	165	272
Turkey	2,693	985	829	339	2	75	28	204	58	173
Nigeria (Note 8)	2,618	163	1,796	254	10	80	4	46	107	158
United Arab Emirates	2,123	361	1,132	66	3	335	10	43	34	139
USA	2,024	655	1,034	147	46	11	14	17	30	70
Philippines	1,782	219	906	51	46	3	29	38	374	116
Other country of post	21,894	3,516	11,901	1,528	383	650	136	532	1,016	2,232
Total*	69,105	13,381	31,356	4,180	2,236	5,123	721	2,263	3,412	6,433

Note 1 The breakdown provided is for TOTAL visas issued. Estimated breakdowns between C and D visas cannot be supplied to this level of disaggregation.

Note 2 This breakdown is not available for years prior to 2010.

Note 3 Russia - the Irish visa office in Moscow receives and processes visa applications from Russia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan, and may include some applications from Ukraine.

Note 4 India - the Irish visa office in New Delhi receives and processes visa applications from India, Nepal, Sri Lanka and Bangladesh.

Note 5 People's Republic of China - the Irish visa office in Beijing receives and processes visa applications from the People's Republic of China, Macau, Hong Kong and Mongolia.

Note 6 Saudi Arabia - during 2010 the Irish embassy in Riyadh received and processed visa applications from Saudi Arabia, Kuwait, and Qatar.

Note 7 Egypt - during 2010 the Irish embassy in Cairo received and processed visa applications from Egypt, Sudan, Morocco, Algeria, Tunisia, Libya, Lebanon, Syria, Jordan.

Note 8 Nigeria - the Irish visa office in Abuja receives and processes visa applications from Nigeria, Ghana, Liberia, Senegal and Sierra Leone.

Source: Visa Section, Irish Naturalisation and Immigration Service

* Includes visas issued within the EU.

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