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<Commission>{PETI}Committee on Petitions</Commission>

<Date>{14/11/2022}14.11.2022</Date>

<TitreType>NOTICE TO MEMBERS</TitreType>

Subject: <TITRE>Petition No 0496/2022 by Emanuel Zammit (Maltese) on Ireland not accepting his documents as a proof of language proficiency to work as a nurse</TITRE>

1. Summary of petition

The petitioner refers to his personal case, stating that the Nursing Midwifery Board Ireland (NMBI) is not accepting the documents he has presented as proof of language proficiency. The petitioner is a Maltese senior staff nurse with 15 years of nursing experience in Malta. Since he is interested to work as a nurse in Ireland, for the last 2 years he has been trying to register with NMBI without success. The petitioner states that, due to the fact that he had completed his nursing education in Malta in 2006, his nursing qualification was recognised by NMBI as category G1 which is automatic recognition as per Directive 2005/36/EC. The petitioner explains that, in order to prove his English language proficiency, he submitted an official letter from the University of Malta (UOM) stating that all textbooks used are in English, the language of instruction at the UOM is English, and all the subjects studied are taught and assessed in English. He also has a Diploma and a Batchelor’s Degree with Honours in Nursing from the Faculty of Health Sciences and a Master of Arts from the Faculty of Theology, all from the UOM. Later on, he also presented the English language Secondary Education Certificate (SEC) issued by UOM which is one of the requirements to enrol in a UOM degree. Despite providing this evidence to the NMBI, he was still asked to present an English Language test. Moreover, English is one of the recognised languages in Malta together with Maltese and, according to the petitioner, the NMBI does not seem to acknowledge this fact.

2. Admissibility

Declared admissible on 29 August 2022. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 14 November 2022

Following information from SOLVIT on alleged administrative practices of the Irish regulatory body for nursing and midwifery (NMBI)[[1]](#footnote-1) concerning excessive language requirements for foreign graduates who wish to practise in Ireland, the Commission services contacted the Irish authorities in March 2022.

At that time, there were the following possibilities for applicants to satisfy the language requirements listed on the NMBI’s website: trained in one of five listed English speaking countries, practised in one of five listed English speaking countries, or - must pass the International English Language Testing System (IELTS) or the Occupational English Test (OET).

The Commission services provided the following clarifications on the applicable EU rules to the Irish authorities:

Under Article 53(1) of Directive 2005/36/EC[[2]](#footnote-2), as amended[[3]](#footnote-3), professionals benefiting from the recognition of professional qualifications shall have the knowledge of languages necessary for practicing the profession in the host Member State. Article 53(4) of Directive 2005/36/EC provides that any language controls shall be proportionate to the activity to be pursued.

In the Haim judgement[[4]](#footnote-4), the Court of Justice of the EU (CJEU) indicated that the “*reliability of a dental practitioner’s communication with his patient and with administrative authorities and professional bodies constitutes an overriding reason of general interest*”. However, the CJEU underlined that the relevant language requirements must not go beyond what is necessary to attain that objective.

The proportionality principle entails that the linguistic knowledge required has to be at the appropriate level in the light of the professional activities to be carried out and that migrating professionals can attest their language knowledge through any means of proof. Language tests or certificates of language knowledge delivered by recognised institutions at national level should also be considered as an appropriate means of proving language knowledge. The principle of proportionality leads to the conclusion that language tests can neither be used systematically or in a standardised form to the exclusion of other valid forms of proof.

The CJEU held in Angonese[[5]](#footnote-5) that “*even though requiring an applicant for a post to have a certain level of linguistic knowledge may be legitimate and possession of a diploma such as the Certificate may constitute a criterion for assessing that knowledge, the fact that it is impossible to submit proof of the required linguistic knowledge by any other means, in particular by equivalent qualifications obtained in other Member States, must be considered disproportionate in relation to the aim in view*.”

The administrative practise as presented on the website of the Nursing and Midwifery Board of Ireland and as confirmed by complaints that were brought to Commission’s attention, seemed disproportionately restrictive. NMBI did not provide the possibility for the migrant to attest the language knowledge by any other means than study/professional practice in five specifically listed English speaking countries or by passing one of the specifically listed examinations. It should be noted that although the examination centres for the tests listed on the NMBI website were also located outside Ireland, passing a specific test against a relatively high fee represents a disproportionate requirement having in mind that the applicants might already be in possession of other proofs of language knowledge that could be sufficient to attest their level necessary for practicing the profession in Ireland.

As a result of these exchanges, in September 2022, the Irish authorities informed the Commission services that they are willing to change the rules to ensure the language requirements are proportionate and to include “*exemptions from the language test for any applicant that has taken an undergraduate programme, in line with the EU Directive, where the theory and placement have been conducted principally through English, in a country that recognises English as a primary language*”. The Commission understands that the exact new terms and conditions with regard to language requirements are currently being elaborated by NMBI.

Conclusion

The Commission services remain in contact with Ireland to ensure that the new Irish rules comply with EU law.

1. <https://www.nmbi.ie/Home> [↑](#footnote-ref-1)
2. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance),OJ L 255, 30.9.2005, p. 22–142. [↑](#footnote-ref-2)
3. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02005L0036-20211210> [↑](#footnote-ref-3)
4. Judgment of 4 July 2000, *Haim*, C-424/97, EU:C:2000:357, paragraphs 59-60. [↑](#footnote-ref-4)
5. Judgment of 6 June 2000, *Angonese*, in case C-281/98, EU:C:2000:296 paragraph 44. [↑](#footnote-ref-5)