

Case C-434/09 McCarthy [2011] ECR I-03375

Facts: The applicant was a UK national who had Irish nationality too. She married a Jamaican national who lacked leave to remain in the United Kingdom under the Immigration Rules of the UK. Mrs. McCarthy and her husband applied to the Secretary of State for a residence permit and residence document under European Union law as, respectively, a Union citizen and the spouse of a Union citizen. As Mrs. McCarthy was not a 'qualified person', her husband could not be considered to be such either, so their applications were both refused. The question was whether this was wholly internal, and if not, whether the husband had derivative rights.

Held: As stated in previous cases, the situation of a Union citizen who had not made use of the right to freedom of movement cannot, for that reason alone, be assimilated to a purely internal situation. As a national of at least one Member State, a person enjoys the status of a Union citizen under Article 20(1) TFEU and may therefore rely on the rights pertaining to that status, including against his Member State of origin, in particular the right conferred by Article 21 TFEU to move and reside freely within the territory of the Member States. On the facts, even though there had been a failure by the authorities to account for a citizen's other nationality, this did not have the effect of depriving her of the genuine enjoyment of the substance of the rights afforded to her, unlike C-34/09 *Ruiz Zambrano* [2011] ECR I-0000.