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Case study

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Mr. Hawke is an US citizen. He travelled crossing different internal borders of several EU Member States on a Eurail pass in the summer of 1995 for a duration of less than three months, under the visa exception regime for tourist purposes applicable at the time to US citizens. At the end of his journey, Mr. Hawke met Ms. Delpy, a French national residing in Vienna for the purposes of her studies.

Mr. Hawke decided to stay longer in Europe, pursuing several short-term jobs and eventually visiting Ms. Delpy in Vienna. Ms. Delpy finished her studies in Austria and later became shop assistant in that Member State. Mr. Hawke and Ms. Delpy got engaged in 2005. Before the marriage could be celebrated, they became parents of twin girls, who have, as their mother, French nationality. The family lived together in Vienna until 2017, when Ms. Delpy left for Lichtenstein since she had got a better job there. Mr. Hawke and their two daughters remained in Vienna, and remained economically supported by Ms. Delpy, who regularly commutes back to Vienna to visit her family on the weekends.

In May 2019, Mr. Hawke asked for a jobseekers allowance. The competent authorities rejected the allowance as this was reserved for Austrian nationals, EU citizens and members of their families, single permit holders and long-term residents. He fell within neither of those categories. Therefore, the competent authorities rejected the allowance on the basis that Mr. Hawke had no right of residence on the Austrian territory.

Mr. Hawke has brought an action before the referring court in order to contest that decision. He claims that he is the family member of three EU citizens that he has been living in the EU and in Austria for more than 20 years and that he should be entitled to equal treatment.

The referring court must decide on the validity of the administrative decision on the allocation of the jobseekers allowance, and implicitly, on the right of residence of Mr. Hawke.

- **Right of residence:** Does Mr. Hawke have any legal right of residence under EU law? On which basis?
- **Equal treatment:** does Mr. Hawke have the right to a jobseekers allowance? On which basis ?
- Which 2/3 **preliminary questions** would you formulate for a preliminary ruling?