RESTRICTIONS ON FAMILY MIGRATION – SPOUSAL VISAS

August 2017

EXECUTIVE SUMMARY

Since 2012, the government has imposed an £18,600 income requirement threshold for British citizens and others living in the UK who want to bring their spouses and partners here to live with them. The threshold rises further if children also need to be brought over. The government has also in recent years imposed crippling fee rises for visa applications in addition to introducing the health surcharge for immigrants. It has also offered wealthier applicants the opportunity to pay even more for a faster processing service. Taken together, these measures have produced a new form of wealth inequality in Britain – between those who can afford to live with their foreign spouse, and those who are priced out of enjoying a basic human right.

The high costs are indicative of a system designed to deter, rather than control, immigration applications in line with the government's commitment to reduce net migration to the tens of thousands. In this briefing, we argue that this approach has resulted in the loss of a family life for many thousands of people, and should be replaced with a fair and humane approach based on recognising the inherent value, rights, and dignity of people seeking to live with their loved ones.

LCHR's Recommendations:

We recommend that Labour:

- Push for the abolition of the spousal income requirement.

Or, if this cannot be achieved:

- Push for less stringent rules regarding alternative funding sources to prove sufficient financial means.

And:

- Argue to reduce settlement visa fees to at least below £1,000, inclusive of the immigration health surcharge, and remove the requirement to renew the visas after 2.5 years.
- Push to abolish the priority/non-priority visa routes and replace with one route that provides the same service for everyone, and for the same cost.

BACKGROUND

The United Kingdom, as a founding member of the Council of Europe, is a signatory to the European Convention on Human Rights. Article 8 of the Convention guarantees the "right to respect for private and family life."[1] Herein, "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."[2]

Further, Article 14 guarantees the "prohibition of discrimination," where "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."[3] These same principles are also codified in the UK's Human Rights Act of 1998.

Similarly, Article 3.1 of the UN Convention on the Rights of the Child, entered into force in 1990 and signed by the UK, states that, "in all actions concerning children, whether undertaken by public or private

[1] *European Convention on Human Rights*, article 8.
[2] Ibid.
[3] *European Convention on Human Rights* article 14.

social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."[4]

Theresa May, as Home Secretary, amended the immigration rules by specifying minimum income requirements (MIR) for non-EEA partners to resettle in the UK with their British families. These can be found in Appendix FM, implemented in July 2012. These are currently set to £18,600 gross annual income, with an additional £3,800 for the first child and £2,400 for each additional child.[5] Prior to the MIR, "the Immigration Rules required broadly that the parties would be able to maintain and accommodate themselves and any dependents "adequately in the UK without recourse to public funds", which included social housing and most welfare benefits but not the NHS, education and social care."[6] Today, this is only true for those receiving benefits based on disability. Notably, the MIR only takes into account the sponsor's annual gross income or level of savings, neglecting the future earnings potential of their partner once resettled in the UK.

In a recent case challenging the income requirement, the Supreme Court noted the compelling case of one of the appellants in particular, called MM. From Lebanon, MM earns approximately £15,600 annually, which does not meet the MIR. His wife, still in Lebanon, speaks English fluently, has a BSc in nutrition and is employed as a pharmacist. However, her good job prospects in the UK are nevertheless excluded from the Home Office's considerations. Further, "the total costs for a single application to move from application to settlement are likely to exceed £6,000."[7] The financial impact of the application process itself, even disregarding the MIR, heavily burdens families attempting to reunite in the UK.

I['ve] searched and searched for jobs. There were no suitable teaching posts coming up so I was searching for anything but I could not find any job in Plymouth that I was qualified to do that reached the £18,600. Most jobs fell into the £15-16k bracket. Plymouth in the South West of England does not earn salaries equivalent to London salaries.

Unfortunately…the rules do not consider my husband's ability to find work when he is here. He's got a degree in English and is a teacher. His English is of a good level, he is hard working and will work doing anything to support his family.

The rules also do not consider that we are currently living with my Mum who is supporting us as a family until we can get back on our feet here.

We have been separated now for 8 months, and we are still not anywhere nearer meeting the requirements. It's heart-breaking that my husband is missing out so much on our daughter's life and our lives have been put on hold.

Jane Yilmaz

[4] *United Nations Convention on the Rights of the Child* (1989), 3.1 .
[5] https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members, E-ECP.3.1 (a) i.-iii.
[6] "JUDGMENT R (on the application of MM (Lebanon)) (Appellant) v Secretary of State for the Home Department (Respondent); R (on the application of Abdul Majid (Pakistan)) (Appellant) v Secretary of State for the Home Department (Respondent); R (on the application of Master AF) (Appellant) v Secretary of State for the Home Department (Respondent); R (on the application of Shabana Javed (Pakistan)) (Appellant) v Secretary of State for the Home Department (Respondent); SS (Congo) (Appellant) v Entry Clearance Officer, Nairobi (Respondent)," *UK Supreme Court* (22 Feb 2017), p. 4 para 4.
[7] "Family Friendly? The impact on children of the Family Migration Rules: A review of the financial requirements," *Children's Commissioner for England from Middlesex University* and *The Joint Council for the Welfare of Immigrants* (August 2015), p. 18.

The Supreme Court concluded that the MIR is satisfactory. However, they also urged revision in some places, arguing the rules should be amended to ensure that decisions made by entry clearance officers "are consistent with their duties under the HRA."[8] This would thus require a reconsideration of regulations regarding alternative sources of funding.[9]

I moved to Canada in 2005, more as an adventure and desire to experience living in a different country, than for any negative reasons associated with life in the UK. Prior to that, I [was] working as a registered Occupational Therapist for the NHS and was a commissioned officer (J branch) with the Royal Air Force.

I met my Canadian husband in 2008 and we married in 2011; we have one son, born in 2013. My husband comes from a distinguished family, his father having been a 4-term Federal MP, holding various seats in cabinet at the Canadian Parliament during that time. My husband is currently a full-time employee of the Federal Government of Canada and also has an owner-operator business in the entertainment industry, earning an above-average income.

When our son was born, we made the decision that I would cease working as an Occupational Therapist in order to become a stay-at-home parent - we made this decision on the basis of a number of factors: financial, family welfare, moral.

Now that I have been in Canada for over 11 years, I am ready for a return to my homeland. I miss the cultural and social landscape of the UK and want to bring my son up within a British context.

The current Family Migration Rules, however, have made this impossible - given that the visa financial requirement is based upon my income as the British citizen, the door has been well and truly slammed in our faces as my income as a stay-at-home parent is £0. No consideration is given to the fact that my husband earns well above the average Canadian wage and is sufficiently educated (to degree standard) and experienced to contribute economically to the UK and support a family.

Trish Pagtakhan

MINIMUM INCOME REQUIREMENT AS DISCRIMINATORY

In addition to arguably being a violation of the right to a family life, the MIR could be viewed as discriminatory against women, "and in particular British Asian women, who suffer from significantly lower rates of pay and employment than others."[10] Across the board, women earn 15.5% less than their male counterparts.[11] Nearly half of the UK population would not meet the MIR based on their annual gross incomes.[12] In regard to ethnic disparities, over 40% of the Bangladeshi and Pakistani communities earn only £14,500 per annum.[13]

The MIR is a permanent impediment to family reunification and wellbeing. 51% of non-white employees, 57% of women, and 76% of people with no academic qualifications in the UK would not meet the MIR, according to Oxford's Migration Observatory.[14]

[8] UKSC Judgment, p. 37, para 101.
[9] Ibid.
[10] UKSC Judgment, p. 12, para 32.
[11] "Government changes to the family migration rules MRN e-briefing," *Migrants Rights Network* (June 2012), http://www.migrantsrights.org.uk/files/MRN_Family_migration-briefing-June_2012_0.pdf, p. 2.
[12] Ibid.
[13] Ibid.
[14] Ibid.

The current rules do not adequately take into account the welfare of children, let alone the family unit as a whole. With Theresa May as prime minister, immigration policy is at risk of becoming even more restrictive.

Labour must not allow the exacerbation or continuation of hostile immigration policies. The MIR appears to have been implemented with the purpose of curbing immigration from non-EEA spouses. This income requirement is set far too high and disproportionately targets lower-income migrant communities in an ill-conceived effort to reduce migration without considering the larger systemic processes that drive low-income migration in the first place. The immigration policies of Theresa May's government will only serve to splinter already vulnerable communities who disproportionately work in low-wage, unstable jobs.

The UK, according to the Migrant Integration Policy Index, scored a 33 out of 100 on family reunion in 2014: "Separated families now face the least 'family-friendly' immigration policies in the developed world: the longest delays and the highest income, language and fee levels, one of the few countries with language test abroad and restricted access to benefits."[15] In 2010, over 40,000 spousal or partner visas were issued, but with the MIR and other immigration reforms, it is estimated that family route visas will be reduced by 16,100 per year and net migration by 9,000.[16] Despite the Supreme Court's acknowledgement that the hardship is unduly shouldered by applicants and their sponsors, the UK continues to impose unreasonably harsh immigration policies not reflected elsewhere in Europe and with little evidence of its effectiveness regarding national security, economic growth, or overall community integration.

SPOUSAL VISA FEES

In what might be viewed as a further attempt to discourage applications, the government has imposed crippling rises in spousal visa fees over the last few years. It now costs £1,464 to apply for a spousal visa, increased from £1,195 in 2016. The table[17] below lists the fee increases over the last four years.

Year	Cost of visa
2017	£1,464
2016	£1,195
2015	£956
2014	£885

This is in addition to the £600 health surcharge that a typical applicant would be expected to pay. These fees are far beyond the means of people on low wages, and they are particularly egregious considering that the Home Office estimates it costs only £182 to process settlement visa applications.[18]

Moreover, couples will also have to effectively renew their applications after 2.5 years, paying £993 for further leave to remain, in addition to a final sum of £2,297 for indefinite leave to remain after five years. For many people, saving up for such sums is impossible.

[15] "Key Findings: United Kingdom," *Migrant Integration Policy Index* 2015, http://www.mipex.eu/united-kingdom, n.p.
[16] UKSC Judgment, p. 7, para 16.
[17] http://britcits.blogspot.co.uk/2016/07/british-citizens-forced-to-pay-719829.html; http://britcits.blogspot.co.uk/2015/04/british-citizens-forced-to-pay-501229.html; http://britcits.blogspot.co.uk/2014/05/british-citizens-forced-to-pay-338110.html
[18] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299617/HO_perm_and_temp_migration_applications_-_Annual_Data.pdf

PRIORITY AND NON-PRIORITY APPLICATIONS

The government has created further inequality in the visa application system by creating two tiers of applications, so-called 'non-priority' applicants and 'priority' applicants. The additional cost of a priority application is £551, taking the total visa cost to around £2,000 plus the health surcharge. In exchange, applicants have their applications placed at the front of the queue, and will often receive an answer within a matter of days, compared to several weeks for non-priority applicants.

This system works for no one. It raises the cost of visas for people who can afford to pay for a priority service, often exploiting the anxiety of families desperate for confirmation that they can live together, while exacerbating the long waiting times for non-priority applicants. It also creates an unequal system where access is based on nothing more than the ability to pay. LCHR believes this approach is fundamentally at odds with the egalitarian ethos we expect from our public services, and should be scrapped.

THE IMPACT OF BREXIT

One contentious issue arising from Brexit is that EU nationals living in the UK currently have the right to bring over their spouse without having to meet the income requirement. However, this right is now under threat as the UK prepares to leave the EU, and EU migrants could soon find themselves subject to the same strict requirements as British citizens and non-EEA migrants.

However, the Brexit negotiations might present an opportunity in this regard. The EU is unlikely to give ground on rules for family migration affecting its citizens, so rather than having a two-tiered system continue after Brexit, there is an argument for reforming the rules completely so that neither UK citizens, non-EEA migrants, or EU migrants have to meet an income requirement. In this way, the unfairness of the UK system, as highlighted by the controversy of bringing EU nationals into it, could be remedied by leveraging the Brexit negotiations and the EU's bargaining power against it.

RECOMMENDATIONS

While Theresa May as Home Secretary couched many of her arguments regarding the MIR in economic terms, this does a disservice to all the other contingent factors of family reunification in particular and non-EEA settlement in general. If Labour, too, chooses to base their opposition on economic efficacy, they can appeal to the fact that sponsors during the application process sometimes must resort to public assistance due to the high costs; this would be unnecessary if their partners were not refused entry or if their partners' future earnings were included in the MIR.[19] In addition, to refuse entry to applicants is to lose future tax revenue.[20] That is, "in principle, there is a strong case for" taking into account the future earnings of the applicant "because it is total household earnings that will determine whether the household is a burden on the state, rather than simply the sponsor's earnings."[21]

Economic arguments do not account for the more pressing moral considerations at hand. The Tories' relentless drive to cut down immigration numbers has produced unfair, discriminatory policies that have caused misery for thousands of people. The right to live with the person you love should be sacrosanct, and with the new parliamentary arithmetic following the 2017 general election, Labour may have an opportunity to ensure that it is finally properly reflected in law.

[19] Gower and McGuinness, "Financial," p. 19.
[20] Ibid., p. 20.
[21] "Review of the minimum income requirement for sponsorship under the family migration route," *Migration Advisory Committee* (Nov 2011), 4.20.

With this in mind, we recommend that Labour:

- Push for the abolition of the spousal income requirement.

Or, if this cannot be achieved:

- Push for less stringent rules regarding alternative funding sources to prove sufficient financial means.

And:

- Argue to reduce settlement visa fees to at least below £1,000, inclusive of the immigration health surcharge, and remove the requirement to renew the visas after 2.5 years.
- Push to abolish the priority/non-priority visa routes and replace them with one route that provides the same service for everyone, and for the same cost.