

Migrants Rights Network: Briefing for Spousal Visas Adjourment Debate 9 September 2013

Migrants Rights Network

The Migrants' Rights Network (MRN) is a registered charity set up in 2006 to strengthen civil society campaigns and advocacy work in support of a progressive, rights-based approach to immigration. MRN is now a leading UK network on migrants' rights issues, regularly contributing our perspective to public debate through the media and other policy fora.

MRN supports evidence-based parliamentary debate on migration through our role as secretariat of the All Party Parliamentary Group on Migration, including providing support to the recent inquiry of the APPG on Migration into the new family migration rules. The inquiry particularly looked at the introduction of a new £18,600 p.a. minimum income requirement in order to sponsor a non-EU partner or spouse on 9th July 2012. Since the change in the rules, MRN has been contacted by over 200 individual families affected by the minimum income requirement across the UK.

Since July 2012, MRN has argued that the introduction of the minimum income requirement is undermining the right to family life for a wide range of British citizens and settled people in the UK. We endorse the findings of the APPG on Migration inquiry, which in June 2013 called for the family migration rules to be substantially reworked and presented evidence suggesting that they had had '*what must be ... unintended consequences*' in dividing families seeking to meet the rules¹. We also welcomed the High Court judgment, issued on 5 July 2013 in the case of *MM & Ors v Secretary of State for the Home Department*, which found the rules around the minimum income requirement to be '*so onerous in effect as to be an unjustified and disproportionate interference with a genuine spousal relationship*'².

This briefing aims to highlight emerging issues relating to the minimum income requirement since the release of the APPG on Migration inquiry report in June 2013. It is informed by ongoing contact with affected families as well as by contact with lawyers and wider legal associations on this matter. All case studies are drawn from families who have directly contacted MRN regarding their situation, although key details have been changed.

Family migration minimum income requirement - key issues

1. Ongoing issues

Migrants Rights Network (MRN) is regularly contacted by families affected by the minimum income requirement who are attempting to resolve their situation. From the accounts we have received it seems that, in line with the APPG on Migration inquiry findings, people from outside London, women, ethnic minorities and young people are experiencing particular difficulties in meeting the minimum income requirement. There have been negative impacts on those children whose parents' inability to meet the minimum income requirement has led to separation of children from family members – an issue recently highlighted by the four UK Children's Commissioners in a briefing on this topic³.

¹ Baroness Sally Hamwee and Virendra Sharma MP, in All Party Parliamentary Group on Migration, Report of the Inquiry into new family migration rules, June 2013. Available online at:

<http://www.appgmigration.org.uk/family-inquiry>

² High Court judgment in the case of *MM & Ors vs Secretary of State for the Home Department*, 5 July 2013. Available online at: <http://www.bailii.org/ew/cases/EWHC/Admin/2013/1900.html>

³ The UK Children's Commissioners' briefing on the All-Party Parliamentary Group on Migration: "Report of the Inquiry into the New Family Migration Rules" June 2013. Available online at: http://www.childrenscommissioner.gov.uk/content/publications/content_671

In our view, the families affected by the rules have resorted to a variety of strategies to cope with their situation. These include:

- Indefinitely postponing plans to reunite. In cases with children this often involves the child living away from one of its parents for extended periods of time.
- Trying to reach the threshold by increasing income levels. This often involves taking on extra jobs to reach the threshold or re-locating to areas with higher salaries, even if this implies higher outgoings and therefore lower quality of life
- Relocating to a country outside the EU, generally the country of the non-EU partner.
- Relocating to an EU country in order to exercise EU rights and bring their families to join them there.

In addition, the complex nature of the rules and the evidential requirements has compounded the difficulties for many families seeking to meet the rules. The evidential requirements to prove that people can sustain their family members and that attempt to prevent abuse mean that some wealthy families whose circumstances do not fit the evidential criteria do not meet the income requirement. This has particularly affected families where the non-EEA partner is the main earner, or with investments which cannot be made liquid in order to meet the rules under the cash savings requirement.

In some cases the rules appear to have increased the use of public funds by some families. We have heard from a number of people who have been unable to return to the UK, as a result of the minimum income requirement, in order to care for a family member based here. Some UK-based mothers have had to rely on benefits because their partner who could generate income or assist with childcare has not been allowed into the country.

2. Hold on decision-making for some family migration applications since July 2013

Since July 2013, the issues for some families affected by the minimum income requirement have been exacerbated by the Home Office decision to suspend decision-making for some spouse/partner and child settlement visa and leave to remain applications. MRN is concerned that the Home Office decision to temporarily suspend decision-making on some spouse/partner applications is both creating a new backlog and creating additional uncertainty for affected families.

The suspension of decision-making follows the 5 July High Court judgment in the case of *MM & Ors*, which the Home Office is currently in the process of appealing, and will last '*until the case is finally determined by the Courts*⁴. Although the Home Office has requested that the Court of Appeal expedite its appeal, it anticipates that this process will take "*several months at least*"⁵. Non-EEA spouse/partner applications which would be refused by the Home Office solely because the minimum income requirement has not been met will not receive a final decision in the meantime.

The Home Office has not made clear how many applications are being affected by the suspension of decision-making, and what resources will be made available in order to clear the backlog in due course. ONS data for 2012 shows that the refusal rate for non-EEA partner entry clearance applications rose significantly in 2012, from 19% in Q1 to 46% in Q4⁶. In Q4 of 2012, 5,758 non-EEA partner entry clearance applications were refused - approximately 480 refusals per week. In our view the introduction of the minimum income requirement in July 2012 is likely to have been a key factor in the rise in refusals of entry clearance applications, and it is possible that significant numbers of families are being affected by the hold on decision-making in such cases.

Since July 2013, MRN has been contacted by at least five families who been informed by the Home Office that their application 'falls to be refused' but that that they will not receive a

⁴ Home Office UK Border Agency website, Minimum income threshold for family migrants, 26 July 2013. Available online at: <http://www.ukba.homeoffice.gov.uk/sitecontent/newsfragments/88-min-income-update>

⁵ Home Office UKBA website, *ibid*.

⁶ Information provided by Immigration Minister Mark Harper, 7 March 2013. Available online at: http://www.publications.parliament.uk/pa/cm201213/cmhansard/cm130307/text/130307w0003.htm#130307w0003.htm_wqn20

decision on a partner/spouse visa application for several months due to the suspension in decision-making. Applicants who receive such a letter have limited options – they may withdraw their application, await a response, or submit further evidence if available, although they are not informed as to the reasons for refusal or the fresh evidence that could support the application.

The hold on decision-making for these applications is problematic for the families concerned. They have not received a decision on their application and are therefore left in limbo during which period they cannot appeal against a refusal of their application by the Home Office.

Case study a

Theresa, a British citizen, married Amat, a Congolese national in February 2012. Amat made an entry clearance partner application in May 2013, but in August 2013 he received a letter from the Home Office stating the following: *‘Your application falls to be refused solely because you do not meet the income threshold requirement under Appendix FM and/or the related evidential requirements under Appendix FM/SE. A decision on your application has therefore been put on hold until the Courts have decided the outcome of the Secretary of State’s appeal in a legal challenge to the income threshold requirement... Your application will be reviewed and a decision taken on it once the outcome of the legal challenge is known. This may be several months at least.’*

Although Amat would be permitted to submit further evidence in support of his application while it remains on hold, he has not been told why his application fell to be refused and what further evidence could be provided. Amat cannot lodge an appeal for the time being because, although he understands his application will be refused, he is unlikely to receive a final decision from the Home Office for *‘several months at least’*.

3. Refusal of visitor visa applications

MRN has been contacted by at least ten families within which a non-EEA partner has been unable to secure a visitor visa for the UK. In some cases this has followed refusal of an application for entry clearance visa as a spouse/partner. It seems likely that visitor visa applications made by non-EEA partners have been refused because the presence of their close family members in the UK is considered to make them at high risk of overstaying their visa. However, for the families concerned, the non-EEA partner’s inability to secure a visitor visa to the UK prolongs the period of separation – particularly problematic where there are children involved.

Case study b

Lucy, a British citizen, is married to Juan, a doctor from Ecuador. They lived together overseas for over four years before deciding to return to the UK after the birth of their daughter.

Juan’s entry clearance application was submitted in November 2012 but was refused as the couple failed to meet the minimum income requirement. Lucy and her daughter returned to the UK alone in February 2013. However, since then Juan has also been unable to secure a visitor visa to the UK as he has been told that his previous entry clearance application suggests he has ‘shown intent to stay’ here.

Lucy and her daughter visited Juan in the summer of 2013 but the cost of flights means that they will be unable to do so again for at least a year. Lucy and Juan will remain separated in the meantime, or until they can secure the means to meet the minimum income requirement.

For more information on the issues in this briefing, contact:

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