

In July 2012, the UK government introduced the economically discriminatory minimum income requirement (MIR), imposing on British citizens and settled persons wishing to sponsor their foreign spouse and/or non-British children to come live with them in the UK.

In its impact assessment of the rules, the government stated that its objective was to “contribute to reducing net migration.”¹ It estimated “significant costs for lower income sponsors who will not be able to use the family route to bring their spouses and/or dependents to the UK.”² The Home Office also forecasted a reduction in family route visa grants of between 13,700-18,500 per annum as a direct result of the new set of rules with the minimum income requirement being the major factor.³

The MIR is higher than the full-time minimum wage and disproportionately affects women, ethnic minorities, people living outside the city of London, people with lower educational attainment and people under the age of 30.⁴ Further highlighting the unfairness of the MIR is the fact that it is tailored in preference of the middle class whilst creating an impenetrable barrier for a majority of people from working class backgrounds. Those who are underemployed, in education, new mothers, pensioners and couples moving back from overseas are hit the hardest by the MIR due to their low income.

The financial prejudice lies not just in the required £18,600 annual salary, as the policy allows other permitted sources. The applicant can compensate for their lack of income with savings of £62,500, a pension or rent that amounts to £18,600 a year, thus meeting the eligibility requirements to sponsor their partner. It allows those who belong to the middle class meet the financial requirement, but sponsors from the working class backgrounds do not have that kind of money saved nor are able to receive that much money from rent or pension.

As a result, thousands of families have been forced to maintain a family life “over modern means of communication,” a phenomenon which has become notoriously known as “Skype families.” Many British citizens and settled persons affected by the MIR have very compelling reasons to stay in or return to the UK. For example due to having sick parents or children or being unable to obtain a legal residence in their partner’s country.

Antony Furze, a British citizen, has been married to a Pakistani national for thirty years and had been living in Pakistan. He had to return to the UK at the end of his work contract. Antony was unable to obtain a Pakistani citizenship that would give him the independent right to work because the Pakistani law does not have citizenship provisions for male foreign spouses. He is unable to meet the MIR and has been separated from his wife for two years.

In February 2017, the UK Supreme court deemed having a MIR lawful in principle. However, this does not mean that the *application* of that policy on an individual case(s) is always lawful. It also declared the rules unlawful based on how some children are negatively affected by the HO decisions.⁵ It recommended that the HO expand the number of permitted sources of income to

¹ Home Office, Impact Assessment on Changes to Family Migration Rules, IA no: HO0065 (London, 2012) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257357/fam-impact-state.pdf>, p. 10

² Ibid, p. 46

³ Ibid, p. 4

⁴ Madeleine Sumption and Carlos Vargas-Silva, ‘Report: The Minimum Income Requirement for Non-EEA Family Members in the UK’, The Migration Observatory at the University of Oxford. (27 Jan. Oxford, 2016) <https://migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Report-Minimum_Family_Income.pdf>, p. 12

⁵ Hilary Term, ‘Judgment (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

ensure that the decisions made are consistent with the Human Rights Act.⁶ Following the court order the rules were slightly tweaked by the HO, but their compatibility with human rights law have not been examined by a court since. The instructions for caseworkers now give more weight to the best interests of the children involved and, in exceptional circumstances, permit the use of additional income sources.

However, the fact that the child is separated from a parent due to harsh immigration rules itself does not constitute a breach of the “best interests” principle, nor does it give rise to exceptional circumstances. Those without children have to prove that they cannot reside in any other country, which effectively means they have to meet the eligibility requirements similar to those applied to asylum seekers.⁷

The reality is even worse than the rules. Wrong refusals occur on a regular basis. Shockingly, the HO case workers often go against their own guidelines. In 2018, Benj Salda, a Filipino national, was refused a settlement visa to join his British wife Vicky Cheal Salda, with whom he has two young children, one of whom was being assessed for autism and required ongoing medical attention in the UK.⁸ The refusal letter stated that there were no exceptional circumstances in their case and that the best interests of the children involved had been considered. This refusal clearly went against the guidelines, which state that “Examples of circumstances in which the refusal of the application might result in ‘unjustifiably harsh consequences’ might include: The applicant and their partner have a child in the UK with serious mental health or learning difficulties, and independent medical evidence establishes that good treatment and learning support are in place for the child here which would not be available in the country where the applicant resides.”⁹ Vicky staying in the UK without her husband was forced to rely on benefits as she was unable to leave their children alone to go to work, and her husband could not come to the UK - nor support her because his wages in the Philippines were insufficient.

Couples go on living separately for at least seven months in different countries while the sponsor is trying to demonstrate the ability to meet the MIR as required by the UK government. If the sponsor is employed, they must provide six months of evidence to prove that they can adequately meet the financial requirement; if there has been a job change, the applicant must show one year’s worth of evidence, and if the sponsor is self-employed, they must display one financial year’s worth of evidence. Even before the start of the qualification period, the British or settled sponsor usually spends months or even years finding a full-time job that meets the MIR, which is higher than the current full-time minimum wage. After the qualification period is served the foreign spouse can apply for a visa and then the family has to wait for the visa processing time to pass, which normally takes at least twelve weeks if the application is labeled “straightforward.” If the application is deemed to be “not straightforward,” it will take indefinitely longer; this category comprises of over 20% of all settlement visa applications in the first quarter of 2018.¹⁰ An appeal against refusal can

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)', [2017] UKSC 10, On appeals from: [2014] EWCA Civ 985 and [2015] EWCA Civ 387 (London, 2017) <<https://www.supremecourt.uk/cases/docs/uksc-2015-0011-judgment.pdf>>, p. 39

⁶ Ibid, p. 37

⁷ Home Office, Immigration Directorate Instruction Family Migration: Appendix FM Section 1.0a - Family Life (as a Partner or Parent): 5-Year Routes (London, 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701273/Appendix-FM-Section-1.0a-Family-Life-as-a-Partner-or-Parent-5-year-rou....doc.pdf>, p. 60

⁸ Vicky Salda, 'My husband's UK Settlement Visa was wrongly refused. Please help me overturn this decision', change.org, 2018 <<https://www.change.org/p/home-office-please-overturn-the-wrong-refusal-on-my-husbands-settlement-visa>>

⁹ Home Office, Immigration Directorate, p. 64

¹⁰ Home Office, International operations transparency data: May 2018, (London, 2018) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/708851/UKVI_Int_Ops_Q1_20>

easily take a further six months to a year. If an appeal is successful, decision-makers can take anywhere between several weeks to several months to issue a visa.¹¹

Richard Bagshaw, a British citizen married to a Russian national with whom he has two children was forced to leave his wife and daughter behind and relocate from Russia to the UK with their son. In November 2017, he discovered his UK based father displayed symptoms of severe dementia. In December the same year, his work permit in Russia was cancelled meaning he could no longer legally reside in the country. Richard was unable to obtain a residence permit due to having minor criminal convictions in the past. The family has been split since then having managed to arrange only one visit. Richard secured a job that meets the MIR a few months after having moved to the UK with his son but on his fifth month into the qualification period he lost his job and is now looking for a new one that would meet the MIR. The family do not know when will they be able to reunite.

The minimum income requirement does not only discriminate against the less well-off British citizens and settled persons but also forces them further into poverty. New mothers are unable to work and effectively become single parents, having no choice but to rely on welfare to survive. Separated partners experience mental health issues related to separation which preclude them from working and force them into financial turmoil.¹² Couples who are forced to live separately have to spend considerable amounts on international flights to arrange visits. Wrong refusals motivated by the net migration target cost cross-border couple's enormous legal fees to challenge. The sheer cost of the visa application fees and the path to settlement,¹³ which some couples are barely able to scrape together, amount to just below £5000 over five years, which the HO heavily profits from¹⁴, draining and impoverishing families.

One of the most significant human rights violations suffered by those families who are unable to meet the MIR or families who undergo separation during the qualification period experience is the disregard of the "best interests of the child" principle of Article 3 of the UNCRC. The "best interests of the child principle" is incorporated into UK law and should form part of any decision made under Article 8 of the ECHR.¹⁵ What makes it easier for the HO to violate children's rights is the fact that UK law does not take into account the full UNCRC, particularly Article 9 regarding the separation from a parent and Article 10 regarding family reunification.

When the financial requirement is not met, it is common practice for the HO to refuse even visit visas to the applicants, which goes against Article 10 of the UNCRC.¹⁶ Rebecca Darmon was forced to give birth in the UK alone as she did not meet the financial requirement and because her Moroccan fiancé and the father of the child was refused a visit visa. Their daughter was born ill and doctors advised Becky against taking her on the plane to Morocco. Rebecca cannot go to work

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¹¹ Children's Commissioner for England, Family Friendly? The impact on children of the Family Migration Rules: A review of the financial requirements (London, 2015) <<https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/CCO-Family-Friendly-Report-090915.pdf>>, p. 86

¹² Julia Rampen, "He is the only person I have": how a single payslip nearly ruined an engagement, 2018 <<https://www.newstatesman.com/politics/uk/2018/07/he-only-person-i-have-how-single-payslip-nearly-ruined-engagement>>

¹³ UK Visas and Immigration, Home Office Immigration & Nationality Charges 2018: March 2018, (London, 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697987/Gov_uk_fees_revision_2018.pdf>

¹⁴ Home Office, Table with details of fees and unit costs – 2018 (London, 2018)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691200/Fees_Unit_Cost_Table_-_April_2018.pdf>

¹⁵ Children's commissioner, p. 83

¹⁶ Ibid, p. 86

as she fears to leave the sick child with a stranger.¹⁷

Emily Sharp Thakur, a British citizen, is married to an Indian national and they had a daughter together in 2014. They initially planned to live in India but due to their daughter being born prematurely with lung and heart problems whilst Emily was in the UK on holiday, she had no choice but stay. She cannot meet the MIR and her daughter Bella cannot live in the Himalayas where her father is based. The family were able to reunite only three times since 2014 during visits to third countries.

The 2014 Immigration Act canceling the legal aid for immigration cases also negatively contributed to the ability to access justice for those deemed too poor to be with their foreign partner and/or parent.

The Children's Commissioner for England Report estimated that in 2015 there were 15,000 children separated from a parent as a result of the inability of their British or settled parent to meet the minimum income requirement.¹⁸ The real number at the current time is unknown. Since the implementation of the minimum income requirement, the UK has been described as having the least family friendly immigration policy in the developed world.¹⁹ By the UK government's own estimates over the six years there have been between 82,200 and 111,000 families unable to meet the MIR. There have been tens of thousands more who were able to meet it by sacrificing their family life and living apart in different countries for seven months or longer.

Works cited

Children's Commissioner for England, Family Friendly? The impact on children of the Family Migration Rules: A review of the financial requirements (London, 2015)
<<https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/CCO-Family-Friendly-Report-090915.pdf>>

Doward, Jamie Families torn apart as visa misery hits foreign spouses, 2018
<<https://www.theguardian.com/uk-news/2018/aug/18/visa-britons-foreign-spouses-families-split-hostile-environment>>

Home Office, Immigration Directorate Instruction Family Migration: Appendix FM Section 1.0a - Family Life (as a Partner or Parent): 5-Year Routes (London, 2017)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701273/Appendix-FM-Section-1.0a-Family-Life-as-a-Partner-or-Parent-5-year-rou....doc.pdf>

Home Office, Impact Assessment on Changes to Family Migration Rules, IA no: HO0065 (London, 2012)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257357/fam-impact-state.pdf>

Home Office, International operations transparency data: May 2018, (London, 2018)
<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/708851/UKVI_Int_Ops_Q1_2018_Published.ods>

Home Office, Table with details of fees and unit costs – 2018 (London, 2018)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data

¹⁷ Doward, Jamie Families torn apart as visa misery hits foreign spouses, 2018
<<https://www.theguardian.com/uk-news/2018/aug/18/visa-britons-foreign-spouses-families-split-hostile-environment>>

¹⁸ Children's commissioner, p. 114

¹⁹ Migrant Integration Policy Index, Family Reunion, 2015 <<http://www.mipex.eu/united-kingdom>>

[/file/691200/Fees_Unit_Cost_Table_-_April_2018.pdf](#)>

Migrant Integration Policy Index, Family Reunion, 2015 <<http://www.mipex.eu/united-kingdom>>

Rampen, Julia "He is the only person I have": how a single payslip nearly ruined an engagement, 2018 <<https://www.newstatesman.com/politics/uk/2018/07/he-only-person-i-have-how-single-payslip-nearly-ruined-engagement>>

Salda, Vicky, 'My husband's UK Settlement Visa was wrongly refused. Please help me overturn this decision', change.org, 2018 <<https://www.change.org/p/home-office-please-overturn-the-wrong-refusal-on-my-husbands-settlement-visa>>

Sumption, Madeleine, and Vargas-Silva, Carlos, 'Report: The Minimum Income Requirement for Non-EEA Family Members in the UK', The Migration Observatory at the University of Oxford. (Oxford, 2016)
<https://migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Report-Minimum_Family_Income.pdf>

Term, Hilary, 'Judgment (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)', [2017] UKSC 10, On appeals from: [2014] EWCA Civ 985 and [2015] EWCA Civ 387 (London, 2017)
<<https://www.supremecourt.uk/cases/docs/uksc-2015-0011-judgment.pdf>>

UK Visas and Immigration, Home Office Immigration & Nationality Charges 2018: March 2018, (London, 2018)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697987/Gov_uk_fees_revision_2018.pdf>