

UNITED BY LOVE // DIVIDED BY LAW?

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A publication produced by Joint Council for the Welfare of Immigrants.

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CONSERVATIVE PARTY MANIFESTO

“Strong families are the bedrock of a strong society. They provide the stability and love we need to flourish as human beings, and the relationships they foster are the foundation on which society is built – Britain’s families will get our full backing across all our policies... We need good, strong families to help our society work well. We will support families to stay together.”¹

LIBERAL DEMOCRAT PARTY MANIFESTO

“In Britain today, families come in all shapes and sizes. Liberal Democrats believe that every family should get the support it needs to thrive.”²

LABOUR PARTY MANIFESTO

“Strong families are the bedrock of our society. Secure and stable relationships between parents, their children, grandparents and other family members are the foundation on which strong communities are built.”³

UNIVERSAL DECLARATION ON HUMAN RIGHTS

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”⁴

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”⁵

1 *Invitation to Join the Government of Britain*, The Conservative Manifesto, 2010, p.6 & 41 http://media.conservatives.s3.amazonaws.com/manifesto/cpmanifesto2010_lowres.pdf (accessed 12 May 2012).

2 *Liberal Democrat Manifesto*, 2010, p.49. <http://issuu.com/libdems/docs/manifesto> (accessed 12 May 2012).

3 *A Future Fair for All*, Labour Party Manifesto, 2010, p.6:3. www.labour.org.uk/labours-manifesto-for-a-future-fair-for-all (accessed 12 May 2012).

4 The 1948 Universal Declaration of Human Rights, Article 16 (3).

5 The 1948 Universal Declaration of Human Rights, Article 12.

THE STORY SO FAR...

British citizens and those already with settled status in the UK who wish to bring spouses and other dependants to the UK to reside with them are required to satisfy a series of legal requirements. These requirements are contained in the Immigration Rules.¹

In July 2011 the UK Border Agency published *Family Migration: A Consultation*². This contained a raft of proposals to change the Immigration Rules in so far as they relate to non-EEA national family members. The Government also instructed the Migration Advisory Committee (“MAC”) to make recommendations on new income levels that UK based sponsors should possess in order to sponsor non-EEA family members.

MAC was specifically tasked with ensuring that the figure would ensure that sponsors could support family members without ‘becoming a burden on the State.’ The Government expressed its belief that the relevant level should exceed the amount that it deems appropriate for its nationals to live on and should therefore exceed Income Support levels³. MAC issued its report in November 2011⁴. As MAC notes, it has ‘taken [the Government’s views about the need to exceed Income Support levels] into account when developing policy options...’⁵

MAC’s report is based purely on economic factors. Alarmingly it concludes that if its own recommendations are accepted, **nearly 67%⁶ of sponsors would not have a sufficient gross income to meet the proposed higher threshold. As this figure does not reflect the overall percentage of applicants that would not be able to meet other proposed requirements, the percentage of sponsors overall that are unlikely to satisfy future Immigration Rules is likely to be considerably higher.** The Government is due to issue its formal response to the above Consultation later this year.

1 Part 8 Immigration Rules (HC395)
www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/ (accessed 12 May 2012).

2 *Family Migration A Consultation*, UK Border Agency, July 2011
www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary (accessed 12 May 2012).

3 Review of the minimum income requirement for sponsorship under the family migration route, Migration Advisory Committee, November 2010, p.6, para 1.4.
www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/family-migration-route/family-migration-route.pdf?view=Binary (accessed on 12 May 2012).

4 *Ibid.*

5 *Ibid.*, p.6, para 1.4.

6 *Ibid.* at 6, p.1.

AIMS OF THIS PAMPHLET

This short pamphlet focuses on the position of British citizens and those with settled status who wish to sponsor their non-EEA spouse /civil partner. We focus on this category as it makes up the largest portion of non-EEA familial flows into the UK¹ (we also however touch upon dependent children in our case-studies in the context of the ‘maintenance requirements’)². This pamphlet does not offer an analysis of the family migration proposals. MPs are instead referred to the JCWI consultation response for this. The objective of this publication is instead to clarify and explain, for the purpose of the All Party Parliamentary Group on Migration meeting on 16 May 2012, how three key proposals will practically affect the couples (and in some cases, other dependants) to whom they apply³. It looks at the impact of the following:

- i. the proposed increase, and changes to the maintenance requirements
- ii. the introduction of a new ‘attachment requirement’ and
- iii. the proposed extension to the probationary period for spouses and civil partners from two years to five years.

We approach this task by drawing upon completed family reunification/formation case files that JCWI’s legal team has previously dealt with, together with our discussions with anxious British citizens who have contacted JCWI about their own circumstances, and how some of these proposals might affect them. One of our case studies is also drawn from research by the Red Cross. It should be noted however that these case studies are illustrative only. They do not represent an exhaustive account of the impact of the application of the above proposed changes. Real names have also been changed in order to preserve duties of confidentiality to participants in this study.

Our hope is to provide MPs with a snapshot of the reality of the lives of ordinary British citizens and settled people who want their husbands, wives, civil partners and in some cases children to join them in the UK, whilst also drawing out the serious consequences that future proposals could have for their lives.

MPs are invited to look at why for example Anna, a heavily pregnant British woman, earning £31,000 per annum may have to give up her home, job, flat and friends in the UK and leave the country to move to Yemen at a time when the Foreign Office has advised British nationals not to travel there.

Similarly, Emma, a young indigenous British graduate who works, and is due to complete her journalism course later this year may find herself in a similar situation to Anna. She too may end up giving up her flat, job, family and friends in the UK, and travelling to Syria or an EEA state where she can live with her husband.

1 op. cit., p.35

2 It should however be noted that increased maintenance requirements are to apply across the board to the various familial categories, and are not simply confined to spouses/partners.

3 The pamphlet does not offer an analysis of the family migration proposals. MPs should instead look at JCWI’s consultation response and subsequent analysis, available at www.jcwi.org.uk for this.

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Anna and Emma are joined by the stories of Mark, Mohammed, Ahmed, Claire, Daya and others. In Claire's case though, we see how Claire, an indigenous British citizen may be prevented from returning to the UK with her husband despite having a new gross monthly salary of £4000, in circumstances where her highly educated husband already has a £20,000 job offer waiting for him in London.

Their stories show how ordinary life circumstances - pregnancy, accidents at work, disability, low/average pay, arrival into the labour market by young people, poor currency exchange rates and nationality laws in foreign countries - could penalize them if the proposals crystallise into Immigration Rules.

Finally, Helen's and Adenike's stories of violence and abuse should come as a stark reminder to MPs of how probationary periods disempower their victims and double lock them into cycles of violence and mental abuse.

In short, our aim is to humanize the family migration debate, and to question the extent to which the family migration proposals promote the apparent cross party consensus on the necessity of promotion and protection of family life, not only for individual human flourishing, but for society as a whole.

Finally, our hope is that this pamphlet will also raise some serious questions about the extent to which the responsibilities of the state to its own British citizens – many of whom are, and have been, taxpayers themselves for many years - would continue to be met in the event of implementation of these proposals; specifically, when, if ever, is it acceptable for British citizens to be placed in a position where they are effectively indefinitely exiled from their own countries on account of choosing to have a relationship with a non-EEA national?

CURRENT MARRIAGE / CIVIL PARTNERSHIP REQUIREMENTS

Those subject to immigration control who are married to, or in a civil partnership with a British citizen or a person settled in the UK can apply for permission to come to or remain in the UK.

If the applicant is applying from overseas:

The British citizen or the person settled here (the sponsor) and the migrant (the applicant) must be at least 18 years old and both the sponsor and the applicant must show that:

- They are legally married to each other or have registered a civil partnership;
- They plan to live together permanently as husband and wife, or as civil partners, and the marriage or civil partnership is subsisting
- Adequate maintenance without recourse to public funds will be available to the applicant and any dependants;
- There will be adequate accommodation for them and any dependants which they own or occupy exclusively without public funds.

Applicants must also demonstrate that they can speak and understand a basic level of English (A1 of the Common European Framework of Reference for Languages).

If the application is successful, spouses and civil partners are given permission to live and work in the UK. They will be granted leave for a period of up to 27 months. After a 2-year probationary period they are able to apply for settlement (indefinite leave to remain) as the spouse or civil partner of the British citizen or person settled in the UK subject to meeting broadly the same requirements.

Spouses and civil partners may be eligible for immediate settlement (indefinite leave to enter) in certain circumstances¹.

Children cannot normally come to the UK and settle unless both parents² are settled here or have been given permission to do so. There are however some limited exceptions. All children must demonstrate that they:

- Are not leading an independent life;
- Are not married or in a civil partnership
- Have not formed an independent family unit; and
- Are aged under 18.

Parents must also show that they can maintain and accommodate the dependent child and have adequate accommodation for the whole family without needing public funds.

1 i.e. if they married or formed a civil partnership at least four years ago; they spent those 4 years living together outside the UK; they are both coming to the UK to settle here together; and they have sufficient knowledge of the English language and of life in the UK (unless aged 65 or over or unless they qualify for an exemption on the grounds of disability).

2 The term parent includes the stepfather or stepmother of a child whose father or mother is dead, unmarried parents, and an adoptive parent in certain circumstances.

MAINTENANCE

CURRENT REQUIREMENTS

- 'Adequate maintenance' for spouse/partner/fiancé(e)/dependants without needing public funds.
- In practice must be shown that post-tax income minus housing costs are at/exceed Income Support levels for family of similar size.
- **Post April 2012 Income Support rates¹ which, with the addition of the actual housing costs incurred, enable one adult to sponsor:**

1 adult = £5,795

1 adult + 1 child = £9,030

1 adult + 2 children = £11,720

- In calculating whether post-tax income meets threshold, the following is taken into consideration:
 1. Salary of both parties.
 2. Employment prospects of both parties if they are not in employment.
 3. Job offers.
 4. Savings of both parties whether joint or single.
 5. Support from third parties.
 6. Undertakings from family members to support family/couple until they are able

POSSIBLE REQUIREMENTS IN FUTURE

- New specified maintenance figures yet to be decided upon
- MAC report³ identified three approaches to quantification of maintenance level, by reference to: (i) pay, (ii) benefits, (iii) net fiscal contributions.

- **Rates refer to gross salary.**

For one adult to sponsor:

1 adult = £18,600 - £25,700

1 adult + 1 child = £22,400 - £38,980

1 adult + 2 children = £24,800 - £46,260⁴

- In calculating gross salary it is suggested by the UK Border Agency that the following **will be excluded** from consideration:
 1. Salary of the immigrant applicant.
 2. Savings of the immigrant applicant.
 3. Job prospects and potential earnings of both parties.
 4. Job offers.
 5. Third party support save perhaps for in 'compelling and compassionate circumstances'.
 6. Presumably undertakings of support⁵.

1 These differ from Mac's figures in its report for which see above as they reflect new April 2012 rates.

2 See UKBA internal guidance, MAA44, www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/maa/#header4 (accessed 12 May 2012) and Immigration Directorate Instructions, Section 1, Annexe F, Family Members – Maintenance and Accommodation, www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter8/section1/annexf.pdf?view=Binary.

3 op. cit.

4 Review of Minimum Income Requirement op. cit., p.72, 69, 66

5 See Family Migration A Consultation, op. cit., para 2.21.

PROBATIONARY PERIOD

CURRENT REQUIREMENTS

- Currently non-EEA immigrant spouses and civil partners who have been given a visa to join their UK based British/settled partner on the basis of this relationship are, in general, given a form of temporary leave known as the 'probationary period.' During the probationary period applicants remain subject to immigration control and are prohibited from accessing welfare benefits, and public housing. The probationary period currently lasts for two years.
- No probationary period for spouses married four years ago, who have lived together outside of the UK for four years.
- Settlement at the same time as PBS spouse/partner as long as couple living together for two years.

POSSIBLE REQUIREMENTS IN FUTURE

- Increase in the probationary period for both spouses/civil partners of British/settled people from **two to five years**.
 - Introduction of a five-year probationary period for spouses married four years ago, who have lived together outside of the UK for four years.
 - Introduction of a five year probationary period for spouses and partners.
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ATTACHMENT REQUIREMENT

CURRENT REQUIREMENTS

- Currently spouses and partners must demonstrate that they genuinely intend to live together permanently as husband and wife, or as civil partners. There is no existing requirement to demonstrate a particular attachment to the UK.

POSSIBLE REQUIREMENTS IN FUTURE

- Requirement to show that the 'combined attachment'¹ to the UK of both parties is greater than the 'combined attachment' to any other country.
- Inapplicable to those who have held citizenship, or resided in the country for 28 years.
- In order to meet it sponsors must:
 1. have been resident in UK for 15 years
 2. have been visited by their spouses twice.
- Other factors that could be relevant to this are:
 1. Length parties have lived in UK.
 2. Whether parties' have family or acquaintances here.
 3. Whether parties have custody or visiting rights to a child in the UK.
 4. Completion of educational programmes in UK.
 5. Connections to the UK labour market.
 6. Nature of both parties' ties to other countries.
 7. Presence of family members in other countries.

1. *Family Migration a Consultation* op.cit., para 2.14 - 2.15.

MAINTENANCE REQUIREMENTS

ANNA AND AHMED: PREGNANT WITH TWINS

Anna is a British citizen. She wants to sponsor her husband Ahmed, a national of Yemen. Anna is expecting twins with Ahmed in 8 weeks' time. Ahmed has so far been unable to apply for a spouse visa to join her, as he has not yet been able to pass the necessary English language test.

A broadcasting company employs Anna. She works as an assistant to the senior director, and earns £31,000 per annum (gross). Her husband Ahmed is a graduate. He was previously working as a teacher, and then a headmaster.

Anna's monthly rent with a Housing Association is £388.00 per month. 18 weeks after the birth of Anna's twins, she will receive statutory maternity pay for 21 weeks at a rate of £128.73 per week. She will receive this for five months; thereafter she hopes to take unpaid leave for 8 weeks before she returns to work on a full time basis.

Whilst Anna and her husband are currently likely to meet the current maintenance requirements, there is a real risk that any application would fail under Immigration Rules reflecting the MAC recommended upper and lower thresholds if, for example a decision was made on the visa application (i) at the end of the statutory maternity period, (ii) during the period of unpaid leave or (iii) thereafter for several months given the corresponding lowering of annual income. Depending on how it is implemented, it may also generate difficulty at the time that she is in receipt of statutory maternity pay.

Furthermore, Ahmed's good prospects of securing employment in the UK are unfortunately unlikely to come to Anna's aid given that it is proposed that this be excluded from consideration in perhaps all but 'exceptional circumstances.' JCWI's experience with tests of exceptionality is that they are applied extremely sparingly, and in extreme circumstances.

MOHAMMED, MARIAM AND FATIMA: A SURVIVOR OF THE DARFUR GENOCIDE

Mohammed fled to England from Darfur, Sudan, in 2004, fearing for his life. He left behind his wife Mariam, and his daughter Fatima, who is now eight years old. He had a very strong case for refugee status, however the Home Office erroneously overlooked crucial medical evidence, supplied in support of his claim, and his asylum claim was refused. This was never challenged. JCWI subsequently took the case over and made a fresh claim for asylum on his behalf.

Mohammed's asylum case remained unresolved for six years in total. During this time he was not permitted to apply to bring his family members to the UK to join him. Furthermore, he was not permitted to work, and was forced to rely upon minimal support given to asylum seekers. He therefore has no savings. In January 2010 he was granted indefinite leave to remain in the UK as a 'legacy case'. He subsequently applied for and secured British citizenship.

Since residing in the UK he has taken a number of steps to improve his skills so that he is employable. He was in full time education at City College for several years. Most recently, he was employed as a translator for a food production company. He also managed to secure a private tenancy in a shared house.

Mohammed's wife Mariam has a degree in economics. Her three brothers are employed, and work in Saudi Arabia. They are willing and able to support her financially with her joint visa application with her daughter.

Mohammed's wife and child, Fatima, have been attempting to join him since December 2010. Delays, and then the introduction of English language testing which his wife is struggling to meet (due to lack of availability of language tuition in Medani, Sudan) means that to date, Fatima and Mariam have not been able to join him in the UK.

Mohammed tells us that separation from his daughter and wife for several years became too much for the couple. It was starting to place a strain on the continuation of their relationship. His daughter frequently cries and cannot understand why she cannot be with her father. He tells us that he became preoccupied with thoughts about his family, and could not concentrate at work.

Eventually, following the death of his father, whom he had also not seen for several years, in March of this year he gave up his job and travelled (at some risk to himself) to Medani, Sudan, in order to help his wife learn English so that he could be reunited with his family. Mohammed has returned to the UK and is currently looking for employment.

Were Mariam's application for a visa to be dealt with under the current Rules, third party support available from Mariam's brothers would mean that she would meet the existing maintenance requirement. However, if the new thresholds are implemented, there is a real risk that her application would be refused. This is because even though her brothers are likely to be willing and able to support her financially in her visa application, the proposals assume that only the sponsor's income is relevant.

As such, despite potentially being in a position to meet the requirements in real terms, there is a real risk that Mariam's application would be refused under the Immigration Rules on the basis of Mohammed's income. Even if Mohammed secures work as a translator in the future, his salary is likely to be below the proposed thresholds. This will mean that there is a real risk that Mohammed will remain separated from his wife indefinitely.

KIT AND HER FOUR CHILDREN: BLIND? TOUGH LUCK!

Kit from Zimbabwe¹ was granted indefinite leave to remain in the UK in 2009. She has four children all aged less than 18 years old. Kit is now blind and unable to work. Her husband works as her caregiver. In the light of their circumstances, they would remain in a position in which she would never be able to meet Immigration Rules with maintenance requirements at the proposed levels. She will never be reunited with her children.

1. Family Reunion for Refugees in the UK, Understanding Support Needs, Red Cross, 2011, p.36

MARK AND AISHA: THE REALITY OF CHILD-CARE

Mark is a British citizen. He married a Jordanian national, Aisha in Jordan. They had two children together who are British. His wife and (British) son temporarily remained in Jordan, and he returned to the UK with his British daughter, Carna.

Mark had been attempting to bring his wife and son over to the UK for a few years, but was unable to do because he had problems meeting all of the immigration requirements.

Mark's financial circumstances are that he worked for 18 years as a cab driver, and was earning in the region of £25,000 per annum. He also received Working Families Tax Credit and had limited savings. He had a tenancy of a two bedroom flat.

Following the birth of his daughter, Mark reduced his working hours in order to look after her as there was no one else in the UK that could do so. He began working on a part time basis. It was always intended that Mark would return to full time work once his wife and daughter came to the UK – his wife would assume responsibility for the children and his employers confirmed in writing that they would be happy to re-employ him on a full time basis.

Mark's family was in fact able to join him, on the basis of current maintenance requirements. Were however the proposed income thresholds to have been put in place, it would not have been possible for Mark to have been reunited with his family – this was a family that also included two British children living in separate countries.

JOYCE AND ALAN: AN ORPHANAGE OR A VISA?

Joyce is a British citizen who resides in the UK. She has one son and two daughters. Her son Alan is a Zimbabwean national, and her two daughters are British.

When Joyce approached JCWI for assistance her son Alan was thirteen years old. He had been living with his grandparents in Zimbabwe for several years. His grandmother was primarily responsible for his care. However, her health rapidly deteriorated. Alan's grandfather was disabled and therefore limited in his ability to assist her with household matters, including Alan's care. Alan's grandparents decided they could no longer continue to care for Alan. They took the decision to move in with Alan's great-aunt, Chipo. Chipo offered to care for them, but was unable to accommodate and care for Alan as she also had her own family to care for.

Alan's own father had abandoned him from a young age, and they were not in contact. Joyce subsequently made an application for her thirteen-year-old son to join her in the UK.

Joyce's financial circumstances at the time were that she was the tenant of a two bedroom flat in London. Although Joyce was not working at that time, her sister Gladys was. Gladys was employed as a care worker and was earning in the region of £278.16 net per week. It was agreed that she would be responsible for maintaining Alan. Joyce was consequently successful in securing a visa for her son.

Joyce felt she could not return to Zimbabwe because she had two British daughters living with her in the UK. Although their British father was not living with Joyce any more, he continued to live in the UK, with the children enjoying retained regular contact with him.

If the proposed maintenance figures were applied to a case of this kind, Joyce's application would have been likely to have been refused under the Immigration Rules. This is because third party support could not be taken into consideration. Moreover, even if it were, in the absence of further third party support, Gladys's salary is insufficient to meet the lower or higher proposed rates. In the absence of a visa Alan might have been forced to live alone, or to have gone into an orphanage.

AHMED AND HAWA: ACCIDENTS HAPPEN

Ahmed is from Somalia and was previously granted refugee status. He subsequently naturalized as a British citizen. He lives in the UK with his two children. His first wife with whom he had children died in Somalia. He married his second wife, also a Somali national, who belongs to his native tribe, in Ethiopia.

Ahmed was working for a company as a cleaning operative for 20 hours per week. He was unable to work full time because he had an accident at work in 1997. This had left him with enduring injuries to his back. His gross earnings were £550.00 net per month, and he was in receipt of Work Credit Subsidy and Child and Working Tax Credit, which amounted to approximately £180.00 per week. He was also a secure tenant of a one bedroom council property in London with a weekly rent of £96.37.

It was not possible for Ahmed to relocate to Ethiopia because his wife had no formal immigration status there. Furthermore he had employment and a secure tenancy in the UK. His naturalised British children who had been receiving their education in the UK had also established links here. As things stood, Ahmed met the current maintenance requirements as they applied at the time. Were Ahmed however to have been subject to the proposed thresholds at either the lower or higher thresholds, he would not have been able to meet these, and would therefore have been indefinitely separated from his wife in Ethiopia.

ANNA AND KHALID: A YOUNG GRADUATE

Anna is a 25-year-old British citizen who was born and brought up in the UK. All of her family is here. Anna met her husband Khalid, a Palestinian national, in 2008 when she was studying abroad. The couple married in 2009, when she was a student. Anna returned to the UK in 2009 and Khalid applied for a visa to join her. After 14 months he finally secured this. He came to the UK in 2010.

Anna graduated in 2010. She is currently studying a post-graduate journalism short course and hopes to pursue a career in journalism after completing this. According to Prospect¹, the average starting salary for a journalist is around £15,000. On a local or regional paper it may be as low as £12,000. Anna has debts arising from her studies amounting to £11,000- £12,000. She is a private tenant of a one bedroom flat in London, which she rents on a subsidised basis. She has also sublet part of the flat to make ends meet whilst she studies. Additionally in order to fund herself through her studies she works at the weekend and earns approximately £320.00 per month from her work as an assistant to disabled people.

Khalid works on a construction site. He earns in the region of £700.00 per month gross. His employers pay him below the level of the minimum wage, however he is looking for more lucrative work.

It is unlikely that it would have been possible for Anna to have been reunited with Khalid were the proposed thresholds to have operated at that time. She was at that point a student, and was in receipt of third party support from her grandparents and mother, who is the Chief Executive of a company.

If the MAC lower or upper threshold applies at the point that Khalid comes to apply for settlement, there is a real risk that the application would not succeed under the Immigration Rules. Khalid's income seems likely to be excluded from consideration. There is also a real risk that any support that Anna's mother would be prepared to offer would also be excluded from consideration.

The upshot of the above is that Anna, an indigenous British citizen who has lived in the UK for the entirety of her life, may be forced to travel to another country in order to continue to reside with her husband. So far as Palestine goes, Khalid is a third generation refugee who was born and brought up in Syria and is technically stateless, and therefore has no entitlements to reside in the West Bank or Gaza. Whilst Khalid has residency in Syria, certainly the advice currently appearing on the Foreign Office website is that British citizens should not only abstain from travelling to the country, but should simply not travel there at all because of the current conflict.

Whilst Anna could travel to an EEA country, and through exercising EU treaty rights, secure entry for Khalid, this would be difficult for her given her career choice as a journalist. She has functional French but Khalid, who now speaks English, has no other European languages.

¹ Newspaper journalist, salary and conditions, Prospect
www.prospects.ac.uk/newspaper_journalist_salary.htm

CLAIRE AND HOSSAN: WHEN A JOB OFFER IN THE UK AND A COMBINED SALARY OF £4000 PER MONTH JUST ISN'T ENOUGH

Claire, a 25 year old British citizen, married Hossan in 2011. Hossan is an Egyptian national. They lived together in Egypt until May 2012. After the recent upheavals in Egypt Claire wishes to return to her home country, the UK with her husband.

The combined net salary of the couple in Cairo was 2000.00 Egyptian pounds per month. This amounts to just over £200.00 per month. As of May 2012 the couple moved to Moscow, Russia. They are on temporary business visas, and have just started working as teaching consultants for English Studies. They travelled to Moscow in order to raise visa fees and travel costs to the UK. They each earn £2000.00 gross per month. This amounts to £4000.00 in total.

Hossan has received a job offer in sales and advertising with a London publishing house. His salary will be £20,000 per annum. Hossan is well educated and has a degree in international law from the prestigious Ain Shams University in Cairo. He passed his pre-entry English test with distinction, and has previously worked in Cairo as a teacher and Managing Director of a tourism company.

Whilst Claire does not have a job offer as such, she has a three-year diploma in childcare learning and development and a good employment record. She worked in a nursery, and then as Special Constable for Sussex Police in the UK and subsequently as an English teacher in a nursery while she was in Cairo, Egypt. Claire is confident that with her experience and qualifications she could find a job in the UK.

Claire's parents are willing to let both her and Hossan stay at their three bedroom home rent-free while they find work in the UK. Her parents, along with most of the rest of her family, live in Sussex.

Whilst this couple would satisfy the present maintenance requirements, even though (i) Hossan is now earning £2000.00 (gross) per month (ii) Claire now earns £2000 gross per month (iii) Hossan has a job offer in the UK with a salary of £20,000, (iv) Hossan has good career progression prospects, (v) Claire has a good employment history, and therefore a reasonably good prospect of securing work in the UK, there is real risk that their application will be refused. This is because the UKBA oddly state that only the income of the *UK based sponsor and their savings/joint savings*¹ will be taken into consideration. Assuming that this might be a typographical error, even if Claire's earnings, and any joint savings were taken into consideration to the exclusion of the rest of the above factors, she would not meet the upper limit of £25,700. In relation to the lower limit, given that Claire's income annual income has hitherto, in aggregate, over the last year, been far less than £18,000, it is entirely possible that she would not satisfy this either.

1 *Family Migration*, op. Cit. para. 2..21

DAYA AND CHUMA: THE CASE OF A CARE WORKER AND AN ABUSED SON

Daya is a naturalised British citizen, originally from Zimbabwe. She was recognised as a refugee on grounds of imputed political opinion under the Mugabe regime. She subsequently applied to naturalise as British. She was working as a full time care worker and earning a gross income of £17,000. She had a private tenancy of a two bedroom flat.

Daya has a son, Chuma, who she left behind in Zimbabwe. He was 17 years old at the time she applied to bring him over to the UK. He had been residing with his father since Daya left him. His father was extremely violent towards him, and neglected his caring responsibilities - as a lorry driver he was away from home for long periods of time. Chuma would regularly contact his mother to tell her how unhappy he was.

Daya naturally missed her own family, and was extremely distressed to learn of his treatment. She could not return to Zimbabwe due to the obvious risks to her life. She therefore applied for Chuma to join her in the UK as she met all of the relevant requirements including the maintenance threshold.

Despite undertaking a socially valuable job, paying taxes and working full time the application of the proposed lower or upper maintenance thresholds would mean that Daya would have been indefinitely prevented from bringing Chuma to the UK.

ATTACHMENT REQUIREMENT

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MOHAMMED: THE VICTIM OF THE DARFUR GENOCIDE, AGAIN

Although Mohammed now has British citizenship, he only acquired this recently as he was previously ineligible for citizenship. Prior to this he had indefinite leave to remain. Mohammed fled to England from Darfur, Sudan, in 2004, fearing for his life from the Janjaweed militia. He has lived in the UK for only eight years, and more recently has spent a few months in Sudan.

Mohammed left behind his wife Mariam and his daughter at the time he fled from Sudan. His wife and child have never visited him in the UK because his asylum case remained unresolved for six years, and they had no entitlement to do so. His wife has been attempting to join him through the UK's visa process since December 2010. Mohammed has no other family here.

Although Mohammed had a job, he no longer has one, because the strain of separation from his family for several years compelled him to return to Sudan to assist her with her English language learning which is a prerequisite for a visa. Furthermore, as he was not permitted to work in the UK as an asylum seeker and then a failed asylum seeker, he has spent most of his time in the UK without a job.

Although Mohammed actively took steps to improve his English language skills and speaks very good English, he is not a graduate, and his wife is in the very early stages of learning English. Because of the absence of availability of English tutoring in Medani, Sudan she is learning at a slow pace, and has not yet reached the most basic A1 level. Mohammed's wife has no link with the UK labour market as she does not have a job offer.

If a decision on his wife's application was taken when he had indefinite leave to remain, all of the factors mean, that there is a real risk that an application for a spousal visa would be refused under the Immigration Rules on grounds of failure to meet the 'combined attachment requirement'.

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HIREN AND ARTHI: A UK RESIDENT WIDOWER'S STORY

Hiren is an Indian national with indefinite leave to remain. He came to the UK approximately 10 years ago but regularly visits India. He did not apply for British nationality because India does not permit dual nationality. Although there have been recent developments in this respect to the extent that India issues Overseas Citizenship of India to its nationals when they have another nationality, this does not carry identical citizenship rights such as the right to vote, nor does it entitle holders to an Indian passport as such. As such, hitherto Hiren has not applied for British citizenship. He has no family in the UK. Hiren has employment with a computer technology firm, but he graduated in India.

Hiren's first wife died a few years ago. He recently married Arthi who is an Indian national, and is resident in India. Arthi was introduced to Hiren through family in India. Arthi has no family in the UK, they are all based in India. She is a graduate but her education was in India. Her English abilities are average. Hiren wishes to apply for Arthi to join him in the UK.

Given that Hiren: (i) does not have British nationality, (ii) has not been resident in the UK for 15 years and (iii) does not have family in the UK, and given Arthi's links with India, there is a real risk that this couple would not be able to reunite under the Immigration Rules as they would not be deemed to have a sufficiently strong combined attachment to the UK.

EXTENSION OF THE PROBATIONARY PERIOD

ADENIKE: TRAPPED IN A VIOLENT MARRIAGE

Adenike is a Nigerian national. She married Charles, a British citizen, and had two children with him. Adenike and the children were granted visas to come and live with Charles in the UK. Adenike was given temporary leave or a probationary period of two years. After arrival Adenike subsequently gave birth to two further children.

Charles subjected Adenike to domestic violence. Adenike had previously reported him to the police for having assaulted her. He was also extremely controlling, and ensured that he did not give her any money from his salary or any of the benefits/tax credits that he received. Adenike was not working and was instead responsible for caring for the children. She was not entitled to access benefits in her own capacity because of her probationary period. A total absence of any money causes her extreme hardship. Charles also began an affair with another woman and fathered another child with her.

Despite the domestic violence, Adenike continued to remain with her husband. This was because she wanted to give their relationship a chance, and was not ready to leave. She was also worried that, if she left, she would no longer have legal status. As far as she was aware, she would not meet the relevant criteria for settlement under the Immigration Rules. The effect of this would have been to leave her without financial means of her own upon which to subsist. She also feared that her children would be taken into care given her financial inability to care for them – they were already the subject of child protection plans. Adenike became extremely depressed.

Were it not eventually for a legal referral from a Domestic Violence Unit to JCWI, Adenike would have remained in her relationship. She did not qualify under the Domestic Violence Rule as she did not have recent police evidence of violence, nor had she secured a non-molestation order. It was only as result of complex submissions (based on a recent case law development concerning the removal of children with a non British parent, and Article 8 of the European Convention on Human Rights) that JCWI was able to secure leave for her.

HELEN: TRAPPED IN A VIOLENT RELATIONSHIP WITH NOTHING TO EAT

Helen is a national of St Vincent and Grenadines who married Gary who was settled in the UK. She came to the UK on spouse visa with a two-year probationary period in 2010. A few weeks after her arrival she discovered that Gary was committing adultery. Gary's phone would frequently ring in the middle of the night. One night Helen attempted to answer the phone and Gary snatched the phone from her, tried to twist her right arm and proceeded to strangle her. He also bit her on the right side of the head. She did not report this incident to the police or seek medical attention.

After this incident Gary spent less time at the marital home. He left her with no money. As Helen was unable to find a job and had also given all of her savings, amounting to several thousand pounds to Gary, she could not afford to buy food. Furthermore, Helen was on a 'probationary period' and she was not entitled to access benefits that might have been able to assist her with food purchases. She did however receive some help with food purchases from Gary's niece who took pity on her. As Gary's niece was a student she was limited in the help that she could provide. This went on for some time. Helen withstood this as she loved her husband, and wanted to give their relationship a chance. She was also worried about how she could survive if she left him - she would have no means of accessing support.

Helen subsequently discovered that she was pregnant. She experienced some problems with this. Her baby's amniotic bag was wrapped around her uterus, which was dangerous for the baby. As she was still not receiving any money with which to purchase food (save from the odd donation from Gary's niece) she eventually ended up calling the police who advised her to contact a lawyer. The following day Gary assaulted her – he was contacted by the police, about Helen's complaint. He subsequently took his belongings and left the property.

Helen was admitted to hospital later that year with health problems. Both the hospital and social services were concerned that Helen was malnourished, and that this would affect her baby. Helen had been consuming only 100 calories a day on those days that she had no money. She subsequently received support from social services so that she could afford food.

Although JCWI ultimately successfully assisted Helen her in making her domestic violence application, and although she was subsequently accommodated by the Sojourner Project, the limitations on accessing welfare support during the probationary period meant that there were long periods during which she simply could not afford to eat. Any extension of the probationary period is therefore likely to place victims of domestic violence into similar difficulties, for an extended period.

CONCLUSION

The Migration Advisory Committee has concluded that if its own recommendations in relation to the Government's proposals to increase the maintenance requirement are accepted, **nearly 67%¹ of sponsors would not have a sufficient gross income to meet the proposed higher threshold. As this estimate does not reflect the percentage of people who would fail other requirements such as the attachment requirement, the percentage of British/UK settled sponsors who would not be able to satisfy the Immigration Rules would in fact be considerably higher.**

In using the foregoing 13 case studies, we have attempted to highlight how three of the Government's proposals which entail: (i) increasing the maintenance threshold for sponsorship of spouses, civil partners, children (ii) extending the probationary period for spouses and civil partners from two to five years, and (iii) introducing a combined attachment requirement are likely to affect married couples/partners, and in some cases their dependent children. It should be noted that these case studies are illustrative only, and do not offer an exhaustive account of the impact of the proposed changes. Furthermore, they only relate to one sub-set of the 'family members' category², and do not deal with the other categories.

In relation to the increase in the maintenance threshold, the foregoing case studies provide faces to the nameless 67% MAC refers to in its report.³ They show how pregnancy, low or average pay, accidents, disability, recent entry to the labour market as a graduate, circumstances of victims of human rights abuses and low currency exchange rates all potentially result in applicants failing the proposed maintenance requirements.

The case studies also highlight how problematic the proposed implementation of these measures is. Through exclusion of consideration of third party support, future employment prospects of couples, savings and employment of the immigrant spouse, even more hurdles are placed in the way of applicants. Why on any logical count should these be excluded from consideration when calculating whether maintenance levels are met?

As for the attachment requirement, the two case studies demonstrate the difficulties that those fleeing from human rights abuses are likely to encounter, and how those settled in the UK for over a decade may well in future be prevented from reuniting with their spouses / partners.

Helen's and Adenike's stories of violence and abuse should remind MPs how probationary periods disempower their victims, and double lock them into cycles of violence and mental abuse.

All of these case studies should also raise a question as to how far manifesto commitments to promote and protect family life would in practice be realized in the event of the implementation of such proposals. They should also lead to a question about the extent to which such proposals fall below international consensus (as reflected by international and regional human rights instruments) on basic minimum standards that should be accorded to couples and families.

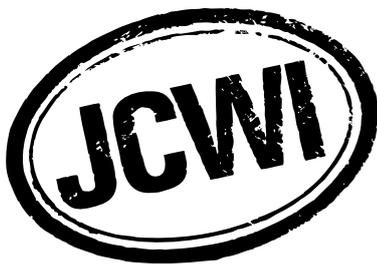
Finally, in those cases where the proposals would result in effectively forcing into exile those British citizens who choose to marry or have civil partnerships with *non-EEA* foreign nationals, it must be questioned as to whether this is acceptable. One effect would be the enjoyment by EEA nationals⁴ bringing their *non-EEA* spouses to the UK of vastly superior sets of family migration entitlements in comparison to those enjoyed by British citizens who seek to do the same thing. Our view is that it is not acceptable, and that the solution lies in levelling up entitlements for British citizens, rather than levelling them down.

1 op. cit., p.1

2 For those covered by the Rules, see Part 8 Immigration Rules (HC395).

3 op. cit.

4 Such restrictions could not apply to non-EEA spouses of EEA nationals because of EU law.



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