



## **Joint Council for the Welfare of Immigrants**

Campaigning for justice in immigration, nationality & asylum law & policy since 1967

# What Next for Family Migration in the New Parliament?

*11 July 2017*



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## About JCWI

JCWI is an independent national charity established in 1967. Its mission is to promote justice, fairness and equality in immigration and asylum law and policy. It provides direct legal advice and assistance to those affected by UK immigration control and has built up expertise over decades fighting for justice for those who are vulnerable, with particular experience of dealing with complex immigration issues. This expertise informs JCWI’s policy and campaigns work. JCWI has campaigned against the Family Migration Rules since their introduction in 2012. JCWI’s policy team has published a report examining the [Adult Dependent Relative Route](#)<sup>1</sup> and researched and co-wrote a report in collaboration with academics from Middlesex University on the impact of the [financial requirements](#) for spouse and partner visas on families with children, on behalf of the Children’s Commissioner’s Office.<sup>2</sup> JCWI together with the Office of the Children’s Commissioner for England, intervened in the Supreme Court case of *MM & Ors v SSHD*.

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<sup>1</sup> JCWI (2014) ‘Harsh, Unjust, Unnecessary: Report on the Impact of the Adult Dependent Relative Rules on Families & Children’ available at: <http://www.jcwi.org.uk/sites/default/files/adr%20report.pdf>

<sup>2</sup> Children’s Commissioner’s Office (2015) by JCWI & Middlesex University ‘Family Friendly: The impact on children of the family migration rules’ available at: <http://jcwi.org.uk/sites/default/files/documets/CCO-Family-Friendly-Report-090915.pdf>



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## Summary

Five years ago, on 9 July 2012, new Immigration Rules came into force that severely restricted the ability of British citizens and settled UK residents to sponsor family from outside the European Economic Area (EEA) to come and live with them in the UK.<sup>3</sup> These changes were intended to make it more difficult for non-EEA nationals to come to live in the UK with their British or settled family, as part of the Government's attempt to meet their net migration target of 'tens of thousands'.<sup>4</sup>

Among the most significant and harmful changes were:

- A requirement for British citizens and settled UK residents to earn a minimum of £18,600 per annum (pa) before being eligible to sponsor a non-EEA partner/spouse to live with them in the UK (the Minimum Income Requirement (MIR)). This amount rises to £22,400 pa for those wishing to also sponsor a non-EEA national child, with an additional £2,400 for each further non-EEA child included in an application. In addition, there are prescriptive requirements for how that income must be evidenced.
- A requirement for British citizens and settled UK residents who wish to sponsor an adult relative who is dependent on them (Adult Dependent Relative) to demonstrate that their relative, "as a result of age, illness or disability, requires long-term personal care to perform everyday tasks (such as washing, dressing and cooking)" and that they are unable to obtain the required level of care in the country where they are living.

Since coming into force, these Rules have resulted in the division, enforced separation or exile of thousands of British and settled families, as well as causing devastating psychological and

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<sup>3</sup> In this briefing, we use the term 'EEA nationals' to include nationals of a member state of the European Union (EU) other than the UK, as well as nationals of Iceland, Liechtenstein, Norway or Switzerland, currently subject to freedom of movement legislation. Non-EEA nationals refers to those of other countries, not including the UK.

<sup>4</sup> The specific policy objectives of the changes to the family migration rules in 2012 were to reduce the burden on taxpayers, 'promote integration' and 'prevent and tackle abuse' of the family migration route.



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emotional impacts for some children.<sup>5</sup> The UK has since been described as having the least family friendly immigration policies in the developed world.<sup>6</sup>

In February 2017, a landmark legal judgment relating to the minimum income requirement (MIR) was handed down by the Supreme Court in the case of *MM & Ors v SSHD*. Whilst the court did not strike down the income requirement itself, its judgment requires the Government to amend the Rules with respect to how the 'best interests' of children is considered when deciding applications. The judgment also recommended that new guidance be issued to Home Office decision-makers regarding how alternative sources of income (other than earnings) should be taken into account, and even suggested that it might be better to alter the Rules themselves to reflect this.

To date there has been no action on the part of the Government to implement the Supreme Court's ruling. Outstanding cases that would be refused due to an inability to meet the MIR, as well as cases that fall for refusal but where a child is set to be impacted by the decision, have been put on hold. The Home Office is unable to say how many cases have been affected to date.<sup>7</sup>

Further uncertainty has been generated by the June 2017 General Election resulting in a hung parliament. The 2017 Conservative Manifesto stated that the party wished to increase the level of the MIR if elected. It is not yet clear whether or how any changes to the Family Migration Rules will be made by the Government.

The Immigration Rules for family migration also have relevance to wider debates on Brexit and future immigration policy. After the UK ceases to be a member of the European Union (EU), EEA nationals coming to the UK will be brought under domestic immigration control. Over the coming

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<sup>5</sup> For example, see:

All-Party Parliamentary Group on Migration (2013) "REPORT OF THE INQUIRY INTO NEW FAMILY MIGRATION RULES": [http://www.appgmigration.org.uk/sites/default/files/APPG\\_family\\_migration\\_inquiry\\_report-Jun-2013.pdf](http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf);

BritCits (2013) "Adverse Impact of UK's Immigration Rules: Portfolio of divided families of British citizens and residents due to UK's family immigration rules." <https://www.scribd.com/document/171712768/BritCits-Current>;

JCWI (2014) 'Harsh, Unjust, Unnecessary: Report on the Impact of the Adult Dependent Relative Rules on Families & Children' available at: <http://www.jcwi.org.uk/sites/default/files/adr%20report.pdf>;

Children's Commissioner's Office (2015) by JCWI & Middlesex University 'Family Friendly: The impact on children of the family migration rules' available at: <http://jcwi.org.uk/sites/default/files/documets/CCO-Family-Friendly-Report-090915.pdf>;

<sup>6</sup> From the Migration Integration Policy Index (MIPEX) assessment, an independent comparative study of the integration of migrants in 38 developed countries. MIPEX (2015) Key Findings, United Kingdom, 2014 <http://www.mipex.eu/united-kingdom>

<sup>7</sup> Home Office response to Freedom of Information request, June 2017 <https://www.whatdotheyknow.com/request/407999/response/989025/attach/html/3/FOI%2044030.pdf.html>



period, it will become clearer whether EEA nationals who settle in the UK will be required to meet the existing UK Family Migration Rules in order to bring a spouse or dependent relative here to live with them. However, Brexit could also provide an opportunity for wider reform of the immigration system, with family reunion rights ‘levelled up’ in pursuit of a fairer and more humane system for all.<sup>8</sup>

This briefing outlines the impact the Family Migration Rules have had so far, the likely future impact if these Rules are not amended, and the need and opportunity for wider reform.

## Overview of the Family Migration Rules

The current Family Migration Rules apply to British citizens and settled UK residents who wish to sponsor the entry of non-EEA national family members, including spouses, partners, children and adult dependent relatives. The same rules also apply to people with refugee status who wish to sponsor family members where the relationship began after their status was granted (different Rules apply to refugees wishing to sponsor non-EEA family members where the relationship was formed before the grant of refugee status). UK migrants on time-limited visas (such as skilled workers and international students), must satisfy different rules in order to be accompanied or joined by dependent relatives.

### The Rules for Spouses and Partners

Prior to July 2012, British citizens and settled UK residents wishing to sponsor a spouse or partner had to show that they could adequately maintain them without recourse to public funds (other than those already received). The foreign spouse/partner’s prospective earnings could be taken into account, as could undertakings from family members to support the family, and offers of free or low cost accommodation.

As of 9 July 2012, British or settled sponsors must show that they earn at least £18,600 pa, rising to £22,400 if a non-EEA child is included in the application and rising by £2,400 for each additional non-EEA child sponsored in the application. There are also prescriptive requirements for how income is evidenced. Income must have been earned by the sponsor in the same job for at least six months, or different jobs over the past year. Sponsors in self-employment must show that they met the threshold over the past financial year, or on average over the past two financial years. If

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<sup>8</sup> JCWI (2017) ‘Post-Brexit Immigration Policy: the Opportunity for Wider Reform’: <https://www.jcwi.org.uk/news-and-policy/post-brexit-immigration-policy-paper>



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applying from outside the UK, earnings must equal the MIR, or the sponsor must have a job offer in the UK that meets the MIR.

The non-EEA spouse/partner's income is only taken into account in limited circumstances and their prospective earnings are never taken into account. Undertakings of support or accommodation are not considered. Where there is a shortfall in the sponsor's income, savings can be considered, but only above £16,000 and subject to a 2.5 multiplier (e.g. to make up a £1,000 deficit in income, £16,000 plus £2,500 i.e. £18,500 is needed). Savings cannot be used to supplement income from self-employment. People without income can qualify only if they have cash savings of at least £62,500.

It is necessary for couples to show that they meet the MIR when applying for the spouse/partner to enter the UK, when applying to extend the visa in the UK and when applying for settlement. When applying to extend or settle, the non-EEA spouse's earnings in the UK can be taken into account.

## The Rules for Adult Dependent Relatives

Before the Family Migration Rules changed in July 2012, parents or grandparents of British citizens or settled UK residents who were over 65 years old and financially dependent on their UK relative with no other family abroad were able to apply for settlement in the UK. A parent or grandparent under the age of 65, and other adult dependent relatives of any age, could apply to settle permanently in the UK if there were exceptional compassionate circumstances. This was subject to the provision by the sponsor of a five-year undertaking that they could maintain and accommodate their relative without access to public funds (not including access to the National Health Service). Applications could be made from abroad or from within the UK.

Under the new rules, Adult Dependent Relatives must now demonstrate that they, as a result of:

*"...age, illness or disability, require long-term personal care to perform everyday tasks e.g. washing, dressing and cooking... [and are] ... unable even with the practical and financial help of a sponsor to obtain a required level of care in the country where they are living..."<sup>9</sup>*

Applications can now only be made from abroad. Fit and healthy parents and grandparents are ineligible to apply, regardless of their ability to financially support themselves in the UK.

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<sup>9</sup> Immigration Directorate Instructions, Appendix FM, Adult Dependent Relatives, Dec 2012



In 2013, the All-Party Parliamentary Group (APPG) on Migration stated that this visa category has “in effect been closed”.<sup>10</sup>

## Who is Affected by the Family Migration Rules?

### Who is Unable to Meet the Income Requirement?

- The MIR for spouse/partner visas has been found to be the highest in the world in relative terms and the second highest in absolute terms.<sup>11</sup>
- It cannot be met by almost half of adult British citizens, including many in full-time work and has been found to disproportionately affect the young, the retired, women, ethnic minorities and those living outside London and the South East.<sup>12</sup>
- The exact number of people prevented from coming to the UK due to the MIR is not known, although in 2012 the government projected this figure would be between 13,600 and 17,800 per year.<sup>13</sup>
- It was estimated in 2015 that at least 15,000 children had already been impacted by these Rules – a number that has only increased subsequently. Most children affected by the Rules are British.<sup>14</sup>

### Adult Dependent Relatives: “a Ban Masquerading as a Rule”

- The route for Adult Dependent Relatives of British citizens and UK settled residents to settle in the UK has been described in Parliament as “a ban masquerading as a rule”.<sup>15</sup>

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<sup>10</sup> All-Party Parliamentary Group on Migration (2013) “REPORT OF THE INQUIRY INTO NEW FAMILY MIGRATION RULES”: [http://www.appgmigration.org.uk/sites/default/files/APPG\\_family\\_migration\\_inquiry\\_report-Jun-2013.pdf](http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf)

<sup>11</sup> Children’s Commissioner’s Office (2015) by JCWI & Middlesex University ‘Family Friendly: The impact on children of the family migration rules’ available at: <http://jcwi.org.uk/sites/default/files/documets/CCO-Family-Friendly-Report-090915.pdf>

<sup>12</sup> Migration Observatory (2016) *The Minimum Income Requirement for Non-EEA Family Members in the UK*, <http://www.migrationobservatory.ox.ac.uk/resources/reports/the-minimum-income-requirement-for-non-eea-family-members-in-the-uk-2/>

<sup>13</sup> Home Office (2012) “Impact Assessment: Changes to Family Migration Rules.” [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257357/fam-impact-state.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257357/fam-impact-state.pdf)

<sup>14</sup> See footnote 11 above

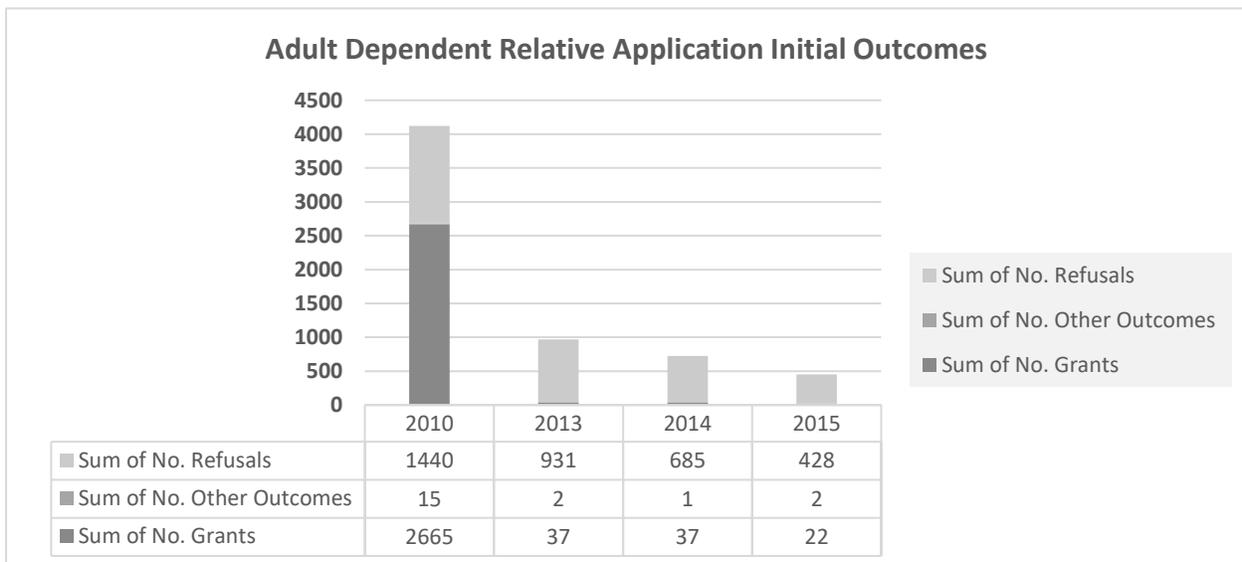
<sup>15</sup> Hansard 19 June 2013, vol 564, col 261 WH



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- An internal review of Home Office data on grants and refusals shows that just 37 applications a year were granted to adult dependent relatives in 2013 and 2014, compared to 2665 grants in 2010, before the rules came into force.<sup>16</sup> This is a drop of 99%.
- The refusal rate has also increased. In 2010, before the new rules, 65% of applications were granted. In 2013, the year after the new rules, 96% of applications were initially refused.
- The cost of applications is also prohibitive. An application for immediate settlement for an Adult Dependent Relative currently costs £3,250.<sup>17</sup>
- More applications have been successful on review and appeal, with 152 applications granted on appeal in 2013 and 98 in 2014.<sup>18</sup> This indicates that these applications are being incorrectly determined by the Home Office, although there is no data available on how many applicants appeal a refusal. The associated cost of paying for a solicitor and representation at appeal is prohibitive for many.
- Many families are considering leaving the UK as a result of the Rules. In 2014, the British Medical Association received evidence from 29 doctors who had either left the UK or were considering leaving due to an inability to care for their elderly relative in the UK.<sup>19</sup>



<sup>16</sup> UKVI (2016) “Adult dependent relatives: review” <https://www.gov.uk/government/publications/adult-dependent-relatives-review>

<sup>17</sup> Table with fees and unit costs 2017  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606616/Unit\\_cost\\_table\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606616/Unit_cost_table_2017.pdf)

<sup>18</sup> Ibid footnote 16

<sup>19</sup> British Medical Association (2014) <https://www.bma.org.uk/news/2014/august/bma-q-and-a-fighting-family-migration-rule-changes>



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## Brexit & EEA Nationals

Currently, European Economic Area (EEA) nationals living in or moving to the UK (as well as some British citizens returning to the UK after exercising free movement rights in another EU member state) have the right to be joined by family members under European legislation and therefore do not have to meet the strict requirements of UK domestic legislation. Freedom of movement also means that there is no restriction on British citizens being joined by EEA national family members.

However, the terms of any future Brexit deal may change this, by bringing EEA nationals under domestic immigration control. This would affect the rights of EEA national migrants currently living in the UK, and future EEA nationals moving to the UK, to be joined by non-British family members. It would also impact on the rights of British citizens living in or returning to the UK to be accompanied or joined by EEA national family members.

The recent proposal offered by the UK Government would enable family members of EEA nationals living in the UK and those who arrive before a 'cut-off date' (to be set at some point from the end of March 2017 to the day the UK leaves the European Union in March 2019) to be given the opportunity to settle in the UK through acquiring five years continuous residence.<sup>20</sup> Anyone who wishes to join a settled EEA family member after this date would be subject to the same immigration laws that apply to British citizens and settled residents as exist at that time, unless a different status is negotiated. Negotiations between the UK Government and EU member states on this issue are ongoing and as yet no agreement has been reached.

There is uncertainty regarding the post-Brexit immigration framework, including whether and how the current Family Migration Rules would apply to EEA migrants moving to the UK after this date. Any new rules would also be likely to limit the ability of British citizens to return to the UK with non-EEA family members after Brexit under what is currently known as the 'Surinder Singh' route.

If the existing UK Family Migration Rules were extended to cover all EEA nationals entering the UK after the relevant Brexit cut-off date, a significant number of families would be affected. Over the past decade, an average of 25,849 family permits have been granted to non-EEA family members of EEA nationals every year.<sup>21</sup> However, this figure does not capture EEA family migrants coming here, meaning that the total level of EU family migration to the UK is likely to be much higher.

This means that, if the current Family Migration Rules are applied to EEA nationals after Brexit,

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<sup>20</sup> UK government publishes proposals on rights of EU citizens, June 2017:

<https://www.gov.uk/government/news/uk-government-publishes-proposals-on-rights-of-eu-citizens>

<sup>21</sup> Home Office (2016) 'Immigration Statistics October to December 2016', *Visas table vi 01 q (Visas volume 1)*



thousands more families could face separation into the future.

## The Impact on British and UK Families

Over the past five years, the Family Migration Rules have had a severe detrimental impact on the thousands of families, including children, who are unable to meet the requirements. British citizens and settled UK residents have been separated from partners, parents and grandparents as a result, often indefinitely.

### The Impact on Children

Children face separation from non-EEA parents unable to enter the UK, British or settled parents who move to the UK to try to satisfy the Rules while their partner and children remain abroad, and grandparents who are barred from joining British or settled family and benefitting from their care.

A 2015 report by the Children's Commissioner for England, written and researched by JCWI and academics at Middlesex University, documents the short- and long-term negative effects of these Rules on children whose parents are unable to satisfy the financial requirements for spouse/partner visas.<sup>22</sup> Parents reported a range of behavioural and psychological problems, including: separation anxiety; anger; aggression; depression and guilt; disrupted sleep; bed wetting; social problems with peers; and changing eating patterns.

These effects stem from the enforced separation of children from a parent and/or other family members as a result of Government immigration policy, as well as the communication of parental stress and anxiety on to children. Unresolved immigration cases are also extremely stressful for parents, and anxiety, stress and deteriorating mental health among parents can have a direct impact on their children. High levels of parental stress has been linked to separation anxiety, attention deficits and depression in children. Literature on separation and child attachment theory demonstrates that children benefit from stable relationships with parents and caregivers and separation from either parent can be harmful. Security of early attachments has been shown to be particularly vital for young children's long-term wellbeing.

The following quotes from parents, taken from the report, outline the suffering caused to children:

*"He struggles, completely, he really struggles, it's horrible. He has got anxiety... he gets knots in his tummy and he worries, yeah. We had him at the doctor a few times about stomach*

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<sup>22</sup> Children's Commissioner's Office (2015) by JCWI & Middlesex University 'Family Friendly: The impact on children of the family migration rules' available at: <http://jcwi.org.uk/sites/default/files/documets/CCO-Family-Friendly-Report-090915.pdf>



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*ache and the doctor said it was anxiety. Just not knowing, no stability, not knowing what's happening... And seeing a child crying all the time because they are anxious, that's horrendous. He is seven, he should never feel that way, he should be a child, and they are taking that away."*

**British mother of a 7-year-old British son, separated from father**

*"He said things like the 'world is horrible, I don't want to' ...not that I don't want to live but almost that, and he found it very difficult to socialise."*

**British father of a 10-year-old British son, separated from mother for two years**

*"I recently had to go to his school because he went through a period of anger which partly...I understand he's coming up to teenage years, but ... he had a few anger issues and [talked] about wanting to smash things and not really hurting himself but wanting to break and smash stuff. He did also mention not wanting to live anymore and he did go through a period of 'why am I even bothering anymore?' The doctor talked about the situation and asked him why he thought he was having those feelings and he said to her, 'it's because of my dad, because I can't see my dad'"*

**British mother, 12-year-old British son, separated from father**

### Elderly Parents and Grandparents Barred from Joining Family

JCWI's 2014 report examining the Rules governing the entry of Adult Dependent Relatives found that these Rules are unnecessarily harsh, cause families suffering and anxiety, and have effectively closed off this visa category for the majority of families.<sup>23</sup>

Children are significantly impacted as a direct result, with particular detriment to children from a migrant background, who are prevented from spending time with their grandparents. An expert report by the Tavistock and Portman NHS Foundation Trust,<sup>24</sup> commissioned for the report, shows how vital grandparents are in the lives of grandchildren, assisting them in attaining the goals expressed in Every Child Matters.<sup>25</sup>

With no possibility of caring for elderly relatives in the UK, JCWI's research also found that many families are considering relocating to a country in which they can live with and look after their elderly parents, despite this signifying a severe disruption to their lives, careers and children's education. Many of the individuals considering relocating were found to be doctors and healthcare

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<sup>23</sup> JCWI (2014) 'Harsh, Unjust, Unnecessary: Report on the Impact of the Adult Dependent Relative Rules on Families & Children' available at: <http://www.icwi.org.uk/sites/default/files/adr%20report.pdf>

<sup>24</sup> The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust (2014), For full report see Annex 1

<sup>25</sup> Every Child Matters: Change for Children, Department for Education and Skills (2004) <http://webarchive.nationalarchives.gov.uk/20130401151715/http://www.education.gov.uk/publications/eOrderingDownload/DFES10812004.pdf>



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professionals, highlighting an unintended consequence: the potential loss an already understaffed and overburdened NHS, as well as to the exchequer and British society.

## Opportunities for Change Following Supreme Court Case Judgment

### The Case of *MM & Ors vs Secretary of State for the Home Department*

On Wednesday, 22 February 2017 the Supreme Court handed down the long-awaited judgment in the case of *MM & Ors v SSHD*, a challenge to the minimum income requirement (MIR) for spouse/partner visas. The challenge concerned three linked cases of families who could not meet the Rules. Two of the sponsors in the case were British citizens, while the third had been granted refugee status in the UK. All have non-EEA spouses who they wanted to sponsor to live with them in the UK.

Together, the cases argued that the MIR is incompatible with the rights of the claimants and their families under Articles 8 (right to private and family life); Article 12 (the right to marry and the right to form a family); and Article 14 (the right to non-discrimination) of the European Convention of Human Rights (ECHR), enshrined in domestic law through the Human Rights Act 1998. Additionally, the cases argued that the Rules fail to adequately consider children's best interests (an important principle of both international and UK domestic law) and are therefore unlawful in this regard. JCWI and Children's Commissioner for England jointly intervened in the case to argue that the Rules as presently construed do not protect the best interests of children.

Although the judges upheld the legality of the MIR, they found the Immigration Rules and official guidance to Home Office decision-makers are unlawful in the way they are applied to children. The judges also ruled that alternative sources of income should be taken into account when considering whether refusing a visa would strike the right balance between "public interest" in controlling migration on the one hand, and the family's rights to private and family life under Article 8 of the European Convention of Human Rights (ECHR) on the other.

- ***The Court ruled that the MIR itself is not unlawful.*** The judges upheld the overall acceptability and proportionality of the £18,600 minimum income requirement in principle, and its compatibility with human rights legislation under Article 8, Article 12 and Article 14 of the European Convention on Human Rights (ECHR) (given effect in UK domestic law through the Human Rights Act 1998). This was because when the MIR is not met in an individual case, the Secretary of State must consider whether a strict application of the Rules would violate a person or their family member's Article 8 ECHR right to private



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and family life. If so, a grant of leave to enter/remain outside of the Rules should be granted. *In these cases, the Court found that changes must be made to the Rules or guidance to ensure that decisions are lawful.*

- ***The Court ruled that the current consideration of children by the Home Office in spouse/partner visa applications is incompatible with their rights under national and international law.*** Specifically, the Family Migration Rules and accompanying guidance to Home Office decision-makers fail to fulfil the Government's legal duty to ensure that children's best interests are a primary consideration in immigration decisions. The judges declared the Rules and instructions to Home Office decision-makers unlawful in this respect.
- ***The Court emphasised the need to do a full assessment of an individual's circumstances where the MIR is not met.*** This is in order to assess whether refusal would interfere with the right to private and family life (Article 8 ECHR) of applicants and their family members and, if so, whether that interference is proportionate. The Court stated that this assessment could include considering alternative sources of funding apart from income, which may show that the applicant would not be a burden on the state or otherwise unable to integrate. If this is the case, refusal may no longer be proportionate and could amount to a breach of a person or their family's right to private and family life and a grant of leave "outside of the Rules" would be required.

### What This Means for Families

As a result of the ruling, the Secretary of State must now amend the Rules and the accompanying guidance to Home Office decision-makers. All applications that do not meet the MIR are currently on hold while the Secretary of State decides how to implement the required changes.

The Secretary of State has been given time to "consider her position" and must send written submissions to the Court and the appellants in the case on how she proposes to make the guidance lawful. However, presently there has been no action on the part of the Government, while affected cases remain on hold.

While the MIR remains in place, the ruling does have positive implications for some families. It has widened the scope for spouses and partners to be granted a visa outside of the Rules where the Minimum Income Requirement (MIR) is not met. This may be because it is in a child's best interests for the spouse/partner to be allowed to live in the UK, or because when alternative sources of funding are taken into account, it is apparent that the family is not at risk of becoming a burden on the state or unable to integrate.



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**We call upon the Government to amend the Rules in line with the MM judgement as soon as possible in order to:**

- Comply with Human Rights legislation and ensure the Immigration Rules are proportionate and rational to their aims;
- Save public money spent on further costly litigation;
- Stop the unnecessary delay causing further harm to families whose cases have been put on hold as a result of the judgment.

## Brexit: An Opportunity for Wider Immigration Reform?

The UK's immigration policy and laws are facing a complete overhaul in the wake of the UK's departure from the European Union. EEA nationals have for over 40 years enjoyed the freedom to move to and live in the UK. This includes the right to be joined by family members. Following the UK's departure from the EU, EEA migrants and their family members will be brought under domestic immigration control.

Brexit provides an opportunity to review and reform UK immigration law: instead of being guided by arbitrary targets which prompt the creation of a disparate and complicated assortment of laws, regulations, guidance and policies, we now have a timely chance to instead embed a fair, welcoming and humane approach within all policies dealing with migrants of every nationality coming here to live, work or study.

Family migration must be included in this new approach. It is unconscionable that EEA national family members may be forced to leave the UK after Brexit, or that UK citizens living in another EU state with their non-British family may be prevented from returning. Theresa May promised not to split up families. We need a comprehensive review of existing domestic legislation to make good on that pledge.

## Campaigning in the New Parliament

It is vital that families, campaigners and parliamentarians continue to push for fair Family Migration Rules that recognise the right to family and private life and ensure that the best interests of all children impacted by decisions are always a primary consideration.

Together, we must work to ensure that the Supreme Court's ruling in *MM & Ors v SSHD* is implemented and all recommendations are reflected in the Rules and guidance, so that as many families as possible benefit from this judgment. However, this alone will not be enough. The



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evidence of the harm caused continues to mount as ever greater numbers of families find themselves separated from loved ones. We urgently need an independent review of these Rules, and to develop a new kinder and fairer system to govern family migration.

*If you have been affected by the Family Migration Rules and are willing to share your story, please email [policy@jcw.org.uk](mailto:policy@jcw.org.uk) or call 0207 553 7457 Monday-Friday 10am-5pm.*

*JCWI also has a small, dedicated team of experienced immigration lawyers who may be able to advise families on their case, or refer to someone who can. You can contact the legal team to book a consultation by calling 0207 251 8708 (lines are open Monday to Friday from 10am to 1pm and 2pm to 5pm) or emailing [legal@jcw.org.uk](mailto:legal@jcw.org.uk). Please note that we are unable to give legal advice via email or over the phone.*

For more information on anything contained in this briefing, please contact:

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