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Steve Symonds ILPA Legal Officer 020-7490 1553 steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

Marriage Age Judgment 3

10th November 2011

On 12 October 2011, the Supreme Court gave judgment in *Quila & Anor v Secretary of State for the Home Department*. The judgment is available at:

<http://www.bailii.org/uk/cases/UKSC/2011/45.pdf>

The judgment relates to the change in the Immigration Rules, in November 2008, raising the age that is required under the Rules for both partners in a marriage or civil partnership where one partner is seeking to rely on the relationship to be permitted to come to or stay in the UK. The age was then raised from 18 years to 21 years. This information sheet provides further information about the judgment and the age requirement. At the end, this information sheet sets out the Government's response to the judgment and the situation now for those applying to come to or stay in the UK on the basis of their being a partner.

Further background is set out in the December 2009 "Marriage Age Judgment" and December 2010 "Marriage Age Judgment 2" information sheets.

The Supreme Court judgment

Of the five judges in the Supreme Court, four agreed on the result. In such cases, it is the majority that counts. The Home Secretary's appeal against the decision of the Court of Appeal (see the "Marriage Age Judgment 2" information sheet) was, therefore, dismissed.

The issue the Supreme Court decided was whether application of the 21 years age requirement in the cases before the court had disproportionately interfered with the family life of the two couples in those cases. The Supreme Court decided that it was disproportionate. Lord Wilson described the degree of interference with their family life as follows:

"32. These were two British citizens who had lived throughout their lives in the UK and who, aged 17 and 18 respectively, had just embarked upon a consensual marriage. The refusal to grant marriage visas either condemned both sets of spouses to live separately for approximately three years or condemned the British citizens in each case to suspend plans for their continued life, education and work in the UK and to live with their spouses for those years in Chile and Pakistan respectively. Unconstrained by authority, one could not describe the subjection of the two sets of spouses to that choice as being other than a colossal interference with the rights of the respondents to respect for their family life..."

However, of itself, this did not mean that the Home Secretary's appeal should be dismissed. The Home Secretary's case was that the 21 years age requirement was necessary to prevent forced

marriages. Lord Wilson summarised the Home Secretary's case as follows:

"48. [The age requirement] ...is likely to deter forced marriages... [because] the passage of up to three years should strengthen the ability of either the intended or the actual victim of a forced marriage to resist either entry into it or her later act of sponsorship which, were she to have remained living in the UK, would enable the spouses to cohabit here."

The Supreme Court accepted that it was reasonable to think the age requirement might work in this way so as to deter forced marriage. However, the question the Home Secretary was required to answer was whether the effect upon unforced marriages (such as the two in the case before the court) was nonetheless proportionate. The court, therefore, considered the evidence presented by the Home Secretary in order to assess how effective was the age requirement in preventing forced marriages, and with how many unforced marriages did the age requirement interfere. Relevant to these questions were several other questions such as whether a forced marriage would take place anyway, whether a victim of a forced marriage might simply be held outside the UK (where the victim might have even less prospect of approaching authorities or other support agencies to assist the victim to escape the relationship) until reaching the age of 21 years or whether a victim might simply be forced into a marriage anyway (e.g. with a British citizen). The Home Secretary's evidence before the court indicated that the Home Office had not answered these and other questions. Lord Wilson said:

"50. The Secretary of State has failed to demonstrate that, when she introduced [the 21 years age requirement], she had robust evidence of any substantial deterrent effect of [it] upon forced marriages."

As for the Home Secretary's evidence of the impact upon unforced marriages, the court was similarly unimpressed. The Home Secretary had not even asked herself the right question. The Home Office had considered the total number of marriage visas in all age groups, and the percentage of this total that concerned persons under the age of 21 years. That showed that less than 3% of the total number of those granted a marriage visa before the age requirement was raised from 18 years to 21 years would be affected. However, as the court set out, the number of marriages affected in a year, on the Home Office figures, was estimated to be somewhere around 2,000 to 4,000. Lord Wilson summed this up:

"The only conclusion soundly available on the evidence before the court – not challenged by the Secretary of State save in relation to the emotive word "exile" – is, in the words of Sedley LJ in the Court of Appeal, that "[the 21 years age requirement] is predictably keeping a very substantial majority of bona fide young couples either apart or in exile" and that it has a "drastic effect... on thousands of young adults who have entered into bona fide marriages"."

The Home Secretary's appeal was, therefore, dismissed.

The Government's response

In response to the judgment, the Government has decided to change the Immigration Rules back to the minimum age requirement of 18 years. This was confirmed in a written statement by the Minister given to the House of Commons on 7 November 2011. The UK Border Agency has since confirmed this on its website. It also says that anyone who was refused between November 2008 and October 2011 (i.e. during the time the requirement was set at 21 years) may request a review of the refusal, if the refusal was because the requirement had been raised to 21 years. A request for a review must be made no later than 31 May 2012. More information is available at:

<http://www.bia.homeoffice.gov.uk/sitecontent/newsarticles/2011/november/10-marriage-visa-age>