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Family Migration - the rules revisited

The immigration rules relating to family migration were amended with effect from 9 July 2012 to limit entry for family members. By the Government's own estimate, almost 18,000 British people would be prevented from being reunited with their spouse or partner in the UK every year as a result of the 'new' rules.

On 10 June 2013, the All-Party Parliamentary Group on Migration published a report of their inquiry into these changes¹. The All Party Parliamentary Group concluded that the changed requirements have resulted in the separation of families.

Spouses, partners and children

The minimum income requirements to sponsor a family member were changed from the requirement to have an income equivalent to income support (along with adequate housing) to a minimum income threshold starting at £18,600. To sponsor children an additional £3,800 for the first child and a further £2,400 for each additional child is required.

This change has resulted in some British citizens and permanent residents in the UK, including people in full time employment, being separated from their partners from outside the European Union ('non-EEA partners') and, in some cases their children, as a result of the income requirement. The All Party Parliamentary Group found that,

- 47% of the UK's population would fail to meet the income level (£18,600) to sponsor a non-EEA partner; and
- Because of regional variations in earnings, there was a greater adverse impact on families outside London and the south-east

Difficulties in meeting the changed income requirements have been increased by changes to the types of income not taken into account. The following are not taken into account:

- Financial support from family members;
- The applicant's current and future income from employment or self-employment where an entry clearance application is being made (only that of the British spouse or partner is relevant);
- Earnings from self-employment in the individual's current financial year; and
- Savings, unless they have been held for a full six months.

As a consequence some non-EEA partners - however high their salaries are – are refused entry to join their British or settled sponsor and children are forced to live separately from a parent.

¹ All-Party Parliamentary Group on Migration, Report of the Inquiry into new family migration rules, June 2013
http://www.appgimmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-jun-2013.pdf

In some entry clearance cases, the exchange rate may determine whether the threshold can be met. The All Party Parliamentary Group records a submission from South Africa: "*As barristers, we are top earners here, but when converted into pounds we fall short*". Exchange rates and levels of earning in different countries also affect whether savings requirements can be met.

Under section 55 of the Borders, Citizenship and Immigration Act 2009, the Home Office has a duty to have due regard to the need to safeguard and promote the welfare of children (who may be British or from overseas) in the discharge of its immigration and nationality functions. The All Party Parliamentary Group records in the report breast-feeding mothers separated from their children and fathers who have never met their children and whose partners are struggling alone. The risks of breach of the legal duty are very high.

Adult dependent relatives

Under the rules in force before July 2012, parents or grandparents aged 65 or over could apply to come to the UK as adult dependent relatives if they were wholly or mainly financially dependent on the UK-based family member, did not have other close relatives in their country who could support them, and could be adequately maintained in the UK without recourse to public funds and housed in accommodation owned or occupied by the UK-based sponsor. Other adult relatives could apply if they could demonstrate "exceptional compassionate circumstances."

Since July 2012, all relatives including parents must show a need for "... *long-term personal care to perform everyday tasks*" and that even with the sponsor's practical and financial help they cannot get it where they now live "*because either it is not available and there is no person in that country who can reasonably provide it or it is not affordable*". The current application of the rules requires such a state of dependency that many elderly relatives will be unable to travel by the time they meet them. In addition, there must be no reliance on public funds in providing adequate support for the relative in the UK for at least five years.

This has created a 'catch 22' situation: those who have the means to support an elderly relative in the UK are considered able to do so overseas and therefore do not satisfy the Rules.

The rules are acting as a bar. In the period from 9 July to 31 October 2012 only one visa was issued to an adult dependent relative. It is not recorded whether that person was well enough to travel.

Calls for an independent review

The All Party Parliamentary Group has called for an independent review of the minimum income requirement and the rules regarding dependent adult relatives however so far the Government has rejected this although has stated that, over time, the regulations could be adjusted².

² House of Commons Report 19 Jun 2013 : Column 254WH