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## Marriage Age Judgment

22<sup>nd</sup> December 2009

On 7 December 2009, the High Court gave judgment in the case of *Diego Andres Aguilar Quila and Amber Aguilar v Secretary of State for the Home Department* [2009] EWHC 3189 (Admin). This 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 in order to come to or stay in the UK. This information sheet provides information about the judgment and the change in the Rules. A copy of the judgment is available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2009/3189.rtf>

### **Those to whom the change does not apply**

The relevant Immigration Rules and November 2008 change are explained in more detail in the next section. However, there are two groups who are not affected by the November 2008 change:

- European Economic Area (EEA) nationals and their family members are not affected by the change. The Immigration Rules do not apply to them.
- Migrants coming to or staying in the UK for business, work or study under the Points Based System are not affected by the change. The Immigration Rules do apply to them, but the 18 years minimum age requirement remains for those under the Points Based System who want to be joined in the UK by their partner. The UK Border Agency has published guidance explaining that 18 years remains the minimum age requirement in these cases, see: <http://www.ind.homeoffice.gov.uk/sitecontent/newsarticles/2009/august/pbs-partner-age>

### **The Immigration Rules and the marriage/civil partnership age requirement**

The Rules set out purposes for which migration to the UK is generally permitted. The Rules also set out the requirements that migrants are required to meet if they wish to come to or stay in the UK for any of the purposes permitted by the Rules.

The Rules permit someone to join or stay with his or her partner in the UK if the partner is British or has indefinite leave to remain. This applies to partners in a marriage or civil partnership. (A civil partnership is a legally recognised partnership between partners of the same gender, and for which there is a formal ceremony.) Before November 2008, the Rules required that both partners were at least 18 years of age in order to permit a migrant to come to or stay in the UK on the basis of marriage or civil partnership. In November 2008, that age requirement was raised to 21 years.

### **Reasons for the change in the age requirement**

The Government's reasons for making the change relate to forced marriages. In December 2007, the UK Border Agency published a consultation document which included a proposal to raise the age requirement to 21 years. Information about this consultation is provided in the December 2007

“Marriage & Immigration” information sheet; and information is also available at:  
<http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/marriagetopartnersfromoverseas/>

The UK Border Agency says that raising the age requirement is a way to prevent or address forced marriages between a British citizen or someone settled in the UK and a foreign national. The victim of a forced marriage might be the British citizen or settled person, or the foreign national (though the consultation paper concentrated on protecting British citizens and settled persons). The UK Border Agency says that raising the age requirement for both partners before the foreign national could join the British citizen in the UK provides time to a victim (or potential victim) of a forced marriage to mature and finish education. The UK Border Agency says this will mean he or she is more likely to resist being forced into marriage. Where the victim (or potential victim) is a British citizen, the UK Border Agency says that raising the age requirement provides time for that person to get advice about the situation before agreeing to the other person coming to the UK, whether or not the marriage has taken place.

ILPA is not satisfied that raising the age requirement is a good way to address the problem of forced marriages. The number of victims of forced marriages is unknown, but the impact upon victims is very serious and in some cases life-threatening. However, marriages can still take place even though the age requirement for migration to the UK has changed. In some cases it may simply be that the victims, including British citizen victims, are forced to be outside the UK with their abusers for longer periods. If so, that may mean they are more at risk of harm because important safeguarding work, such as that of the Home Office Forced Marriages Unit, cannot reach them. ILPA is also concerned that raising the age requirement is a disproportionate interference with the lives of many people in relationships which clearly are not forced.

The Government commissioned research into forced marriages, and in 2007 the researchers recommended that the age requirement should not be raised because it would not address the problem of forced marriages and could increase risks of harm. However, the Government chose not to publish this research, and says that the findings of the research are not reliable.

### **The High Court judgment**

The High Court case was brought by two claimants – a British citizen and her Chilean husband. Neither of them is 21 years old. Their marriage is not a forced marriage, and there is no dispute about that. They first met in 2006 when he was living lawfully in the UK; and they decided to marry in September 2008. At that time the minimum age requirement was 18 years, but they were aware that the Government had decided to raise the requirement. Because she would not be 18 years until after the change in the Rules, there was no time at which they could meet the requirement of the Rules – whether before or after the change in November 2008. As a result, they have both moved to Chile. He moved because his permission to be in the UK as a student had come to an end. They wrote to the UK Border Agency explaining their situation and asking that they be permitted to stay together in the UK despite the new requirement in the Rules. This was refused.

The High Court rejected the claimants’ case. The court accepted the change in the Rules was a rational response to concerns about forced marriages, and that it was reasonable to raise the age requirement despite the recommendation of the researchers. Forced marriages are a serious problem, and it was for the Government to decide how best to tackle this problem. The court also decided that in the particular case, there was no interference with the claimants’ right to private and family life. For more information on this right see the August 2008 “Article 8” information sheet.

It is not yet known whether the claimants will seek to appeal to the Court of Appeal. If they do not, there may still be cases on their individual facts which show that to refuse someone’s partner entry to or stay in the UK would be an unlawful interference with private and family life.