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Family Migration: sponsoring a partner under the Immigration Rules and the minimum income requirement

This information sheet discusses the requirements in the Immigration Rules for a British national or person with Indefinite Leave to Enter or Remain in the UK to bring their partner to join them in the UK if their partner is from outside the European Economic Area. It will discuss the impact of the recent decision in the UK Supreme Court in *R (MM (Lebanon) and others) v Secretary of State for the Home Department* [2017] UKSC 10 which considered the minimum income requirements in the rules.

Bringing a partner to the UK under the Immigration Rules

British nationals and people who are settled in the UK with Indefinite Leave to Enter or Remain (permanent stay) may apply to bring a partner from outside the Economic European Area to the UK under Appendix FM of the Immigration Rules. People with refugee leave or humanitarian protection may also use this route where they do not qualify for family reunion under refugee provisions, for example because their relationship was formed after they were granted protection. Different (and more generous) provisions apply under European Union (EU) law for EU citizens and others exercising rights under EU law to bring family members to the UK.

The Immigration Rules allow a British or settled person to sponsor a spouse, civil partner, fiancé(e) or proposed civil partner, or a partner who has lived with them for at least two years in a relationship similar to a marriage or civil partnership, to join them in the UK from outside the European Economic Area where certain requirements are met:

- They have made a valid application for leave to enter the UK from outside the UK;
- Both individuals are over 18 years of age, any marriage or civil partnership is valid, the relationship is genuine and ongoing and they both intend to live in the UK permanently;
- Their partner is accepted as suitable for entry to the UK (for example, they may be excluded for certain periods because of criminal convictions or their conduct unless there are compelling circumstances in the case);
- Their partner can demonstrate a basic level of speaking and listening skills in English (at least level A1 of the Common European Framework of Reference for Languages) unless exempt from this requirement;
- There is adequate accommodation for the family without overcrowding; and
- They can provide evidence that they meet the income requirements in the rules.

The minimum income requirements

Under the Immigration Rules, it is necessary to show a minimum income of £18,600 per year in order to sponsor a spouse or partner, with a further £3800 for the first child who is not British, settled in the UK or an EU citizen and £2400 for each additional child. In practice, this will be the income of the British or settled person sponsoring the family because their spouse or partner will often be leaving their employment to move to the UK and an offer of work in the UK to the spouse or partner is not taken into account.

If a person's income is below the minimum income requirement, the shortfall can be made up through savings instead, but the level of savings required is high: a sum of £16,000 plus 2.5 times the shortfall in the minimum income required. A person working full-time and receiving the national minimum wage (£14,976 per year) would have a shortfall of £3,624 and would therefore need to have additional savings of £25,060 to qualify (£16,000 plus 2.5 times the shortfall of £3,624)

These requirements are much more onerous than those they replaced which simply required that the family was supported without accessing public funds such as welfare benefits (a threshold of £13,400 calculated by reference to income support levels). The new requirements have led to the separation of families where the minimum income requirements could not be met. They have a disproportionate effect on women and ethnic minorities because of wage discrimination which means that, on average, their earnings are lower. This led to five families challenging the requirements in a case that has now been considered by the UK Supreme Court: *MM Lebanon and others v Secretary of State for the Home Department* [2017] UKSC 10. The Children's Commissioner for England and the organisation, Joint Council of Welfare of Immigrants (JCWI) intervened in the case.

The Supreme Court judgment in *MM (Lebanon) and others*

The Supreme Court gave its judgment in this case on 22 February 2017. The Court considered that the minimum income requirement and the level at which it was set were not in themselves unlawful. However, it found that the Immigration Rules and the accompanying guidance did not take sufficient account of the duty on the Home Office to ensure that the best interests of the child are a primary consideration in its decisions. They were declared unlawful in this regard as they did not address factors that were relevant when considering cases affecting children.

The Court also found that while it was acceptable to set a minimum income threshold in the Immigration Rules, where a person does not meet the rules, the Home Office has to consider whether the family should be allowed to come to the UK outside the rules, on the basis of respect for their right to private and family life under Article 8 of the European Convention on Human Rights. In these cases, a broader approach should be taken and include consideration of, for example, any alternative sources of finance or earnings available to the family (such as from other family members) or offers of employment etc. The Supreme Court concluded that the Home Office should either revise the Immigration Rules or the guidance to make the provisions compatible with the Human Rights Act 1998.

What will happen next

The Home Office has issued a statement indicating that it has 'paused' decision-making for applications that do not meet the minimum income threshold, in order to enable it to consider the implications of the judgment. The Home Office will be required to issue new guidance to decision-makers on how to apply the immigration rules to ensure compliance with its duty to children and to human rights legislation. In cases where an appeal has already reached the Tribunal, the Tribunal could make its own assessment of the case to determine whether to allow the appeal.