Briefing Paper 8.58

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Marriage Visas and English Language Requirement

The requirements to be met by applicants for marriage visas needed to bring in to the United Kingdom with a view to settlement in the UK spouses from countries outside the EEA are set out in Rule 281 of the Immigration Rules made under section 3 of the Immigration Act 1971. The basic requirements have long been as follows:

1. The applicant from abroad must be married to or the civil partner of a person present or settled in the United Kingdom or being admitted for settlement on the same occasion. In the latter case, by an amendment made in 1997, the applicant must have sufficient knowledge of the English language and of life in the United Kingdom unless at the time of making the application he is under 18 or over 65.
2. The parties to the marriage or civil partnership must have met.
3. The parties must intend to live together permanently and the marriage or civil partnership is subsisting.
4. The parties must have adequate accommodation which they own or occupy exclusively for themselves and any dependants without recourse to public funds.
5. The parties will be able to maintain themselves and their dependants adequately without recourse to public funds,

2 I have noted under item 1 the amendment made in 1997. That amendment remains but further very substantial amendments were made to take effect on 29 November 2010 which considerably expand the requirements relating to knowledge of the English language. The applicant must provide an original English language test certificate in speaking and listening from an English language test provider approved by the Home Secretary. An applicant who falls within one or other of the following categories is exempt from this requirement:

1. Aged 65 or over at the time of application.
2. Subject to a physical or mental condition which would prevent him from meeting the requirement.
3. Exceptional compassionate circumstances which would prevent him from meeting the requirement.
4. A native of Australia, Canada, New Zealand, United States or one of the Caribbean English speaking Commonwealth countries.
5. Holding a graduate or post-graduate degree from an educational establishment in one of the countries mentioned in 4.
6. Holding a graduate or post-graduate degree which is recognised by UK NARIC (National Academic Recognition Information Centre) and was taught or researched in English.

3 On 16 December 2011 Mr Justice Beatson, sitting in the Administrative Court in Birmingham, handed down a judgement in the case of *R. (Chapti and others) v. Secretary of State for the Home Department* [2011] EWHC 3370 (Admin.), a judicial review case dealing with three applicants who claimed that the amending Rule violated their rights to bring in their spouses and was a disproportionate and unlawful interference with their rights to family life and to marry under Articles 8 and 12 of the European Convention on Human Rights (ECHR) and was discriminatory on grounds of race and nationality. Evidence was given by the claimants relating to the cost and difficulty of obtaining adequate English language tuition in their home countries. Evidence was given by the Home Office, defendant in the case, of the costs incurred by the necessity of providing a large volume of translations for official dealings with immigrants who were unable to speak English.

4 The applications were dismissed in a detailed judgement of 42 pages for the reasons set out in the following paragraphs.

5 **Article 12 of ECHR** states that "men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercise of this right." The judge ruled at paragraph 65 of his judgement that the amended rule did not interfere with the applicants' Article 12 rights. "[The rule] does not prevent marriage within the United Kingdom, where both parties are present in the jurisdiction, or prevent anyone within the United Kingdom from travelling abroad to get married. Article 12 does not confer a right to marry in the United Kingdom where one party to the proposed marriage is abroad and has no right to enter the United Kingdom."

6 **Article 8 of ECHR** states that "everyone has the right to respect for his private and family life, his home and his correspondence".. However, Article 8.2 permits interference with this right in accordance with law and as necessary in the interests of public safety and for other public benefits. The judge found that the rights conferred by Article 8 had to be taken into account in considering the impact of the amended Rule. In paragraphs 84 and 85 of his judgement he ruled that the objects of the amended Rule, to promote integration of immigrants within British society and to reduce the financial burden on public services of providing translations for immigrants with no or inadequate English, were adequate justifications for the rule within the meaning of Article 8.2. The judge ruled also, in paragraphs 87 –115 of his judgement, that the amended Rule was not a disproportionate interference with the rights conferred by Article 8 and was justified. The exceptions to the operation of the Rule are quoted in paragraph 2 above. The judge accepted that in particular individual cases limitations on the operation of exceptions, e.g. compassionate individual circumstances, might result in the denial of a visa which amounted to an infringement of the applicant's rights under Article 8, but that possibility of itself did not render the Rule disproportionate.

7 **Article 14 of ECHR.** This Article requires that rights and freedoms set out in the Convention shall be secured without discrimination on any ground such as sex, race, nationality etc. The claimants pleaded that the exemption mentioned in paragraph 2.4 above in favour of nationals of English speaking countries was discriminatory. The judge ruled that there was a clear and distinct line drawn between English speaking countries and others. English is still an important and official language in e.g. India, Pakistan and Nigeria but is not the main language of the majority of the population as is the case in the exempted countries. Rulings on this subject are to be found in paragraphs 132, 133 and 138 of the judgement. The judge held also that the amended Rule did not discriminate on the grounds of nationality, origins or disability. There is of course no requirement imposed on nationals of other EU Member States to be competent in the English language, but such nationals are not subject to immigration control which regulates the admission of nationals of other states. The immigration rights of nationals of EU Member States are regulated by the EU Treaties and the Directives made under them, not by Immigration Acts or Rules.

8 **Conclusion**. The judgement in this case shows a welcome degree of understanding of the need to accommodate the requirements of immigration control within the constraints imposed by the ECHR. It contrasts markedly with the attitude taken by the justices of the Supreme Court in *Quila* [2011] UKSC 45, decided in October 2011 and discussed at length in Legal Paper MW 240 *Quila* had to consider a different amendment to the Immigration Rules which was intended to raise the minimum age for grant of a marriage visa from 18 to 21. The object of the amendment was to put an obstacle in the way of forced marriages, but the Supreme Court found that it was an unreasonable constraint on other marriages of persons between 18 and 21 and as such infringed rights under Article 8 of ECHR. It was agreed by the parties in the course of the hearing of *Chapti* that the disposal of the case should await the decision of the Supreme Court in *Quila*. The judge in *Chapti* accordingly showed a clear awareness of *Quila*, which is evident from the exhaustive and meticulous attention to detail in the analysis of the facts and legal arguments. This was a decision at first instance and there is at least a possibility of appeal to the Court of Appeal and if necessary beyond that to the Supreme Court.

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21 December 2011