UK Supreme Court upholds minimum income immigration rule

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The UK Supreme Court has sided with the Conservative government in upholding a fundamentally anti-democratic immigration rule, discriminating against those on low incomes who want to bring a foreign partner to live with them.

Five years ago, the then Home Secretary and now Prime Minister Theresa May introduced a so-called "Minimum Income Requirement (MIR)." This clampdown on bringing non-European spouses to the UK is part of an ongoing attack on migrants and refugees conducted by the Conservative government.

In outlining the government's decision to withdraw the UK from the European Union's single market, May opposed the EU's freedom of movement legislation and promised to control immigration.

Under the MIR rule, a British citizen must have a minimum annual income of at least £18,600 if they want a spouse or civil partner born outside the European Economic Area (EEA) to come and live with them in Britain. The EEA comprises the 28 countries belonging to the European Union plus Iceland, Liechtenstein and Norway.

Previously, a couple had merely to demonstrate that they could maintain themselves without recourse to public funds. In other words, the calculation was based on the incomes or resources of *both* partners, or other support provided to them by family members.

Under MIR, the sole criterion is the income of the British spouse. Even if the earnings of their partner would take them above the £18,600 threshold, it is disregarded. Furthermore, if the couple has a child who is not a British citizen, the income requirement rises to £22,400, and by an additional £2,400 for each subsequent child. The MIR also applies to refugees who have been granted a right to remain, and who wish to bring their non-European spouses to the UK to join them.

In 2014, the High Court found the MIR breached human rights protections and amounted to a "disproportionate interference with a genuine spousal relationship." A subsequent appeal by the Home Office was upheld a year later, resulting in the present case going to the Supreme Court.

In best legal doublespeak, the Supreme Court ruled that the minimum income requirement does not breach Article 8 of the European Convention on Human Rights—the "right to a private and family life"—while admitting the rule causes "hardship to many thousands of couples, including some who are in no way to blame for the situation in which they find themselves."

As an example, the judges cited "British citizens who have been living and working abroad, have married or formed stable relationships there, and now wish to return to their home country. Many of these relationships will have been formed before the new rules were introduced or even publicly proposed. They also include couples who formed their relationships before the changes in the rules were introduced, and who had every expectation that the foreign partner would be allowed to come here."

Nevertheless, the seven Supreme Court judges found "the fact that a rule causes hardship to many, including some who are in no way to blame for the situation in which they now find themselves, does not mean that it is incompatible with the EctHR [European Convention on Human Rights] or otherwise unlawful at common law."

When the court did find in favour of the original plaintiffs, it was on the grounds that the existing rules and policies were unlawful in that they failed to protect the interests of any children involved.

An article on freemovement.org.uk noted the

prevalence of “standardised, templated reasons” being used in refusals, “something the court did not consider inherently unlawful.”

Pointing to the routine, semi-mechanized treatment of immigration cases, the article continued with the following: “The use of standardised reasons is characteristic of modern decision-making practices in fields of public administration where large numbers of applications can be processed more efficiently by employing information technology, using decision templates, drop-down menus and other software. It is also often designed to facilitate internal auditing and management processes.”

The Home Office welcomed the Supreme Court ruling, with a spokesman saying it had “endorsed” the government’s approach in setting an income threshold that “prevents burdens on the taxpayer and ensures migrant families can integrate into our communities.”

“The current rules remain in force but we are carefully considering what the court has said in relation to exceptional cases where the income threshold has not been met, particularly where the case involves a child.”

The effect of the MIR has been to tear families apart, or force the British partner to move abroad to be with their spouse. The case before the Supreme Court revealed that some 30,000 applications to bring a spouse to the UK were refused between 2012 and 2014. In that period, only 26 cases were successful in challenging the refusal. Other reports put the number of refusals at 17,800 non-European spouses a year.

According to the Children's Commissioner for England, there are at least 15,000 children who are separated from a parent because of the minimum income rule.

In one such case reported by the BBC, a 25-year old British women married to her young son’s Egyptian father said, "I feel very guilty towards my baby,” adding, "He hasn't done anything to deserve being without his father."

She works as a part-time sales assistant with earnings below the £18,600 threshold and cannot afford to work full-time as she also needs to care for her infant son.

Figures from the Home Office show the number of partner visas granted fell from 46,906 in the year ending June 2006 to 27,345 in the year ending June 2015, when it says 66 percent of applications were approved.

The MIR rule is patently anti-democratic and discriminates disproportionately against workers seeking to bring their non-European spouse to the UK. According to a recent article by the Global Research website, ignoring the top ten percent of UK earners (those pocketing almost £80,000 plus a year), the average income of the bottom 90 percent is just £12,969, well below the £18,600 MIR threshold.

The Supreme Court ruling follows the decision by the May government last month to bar entry to the UK of lone child refugees languishing in desperate conditions near the port of Calais in France.

Following a public outcry at the plight of thousands of refugees who had fled to Europe from the war zones of the Middle East and north Africa, Labour peer Lord Dubs proposed an amendment to the Immigration Act 2016—to bring 3,000 Calais lone refugee children from Calais to Britain.

Parliament, however, passed a hollowed-out version of the original amendment. The number of children to be helped was left open—the government was to make arrangements with local authorities to relocate not 3,000 but a “specified number” of unaccompanied child refugees from Europe to the UK.

The government finally decided the UK could only accommodate a total of just 350 children—meaning another 150 by March, when the scheme will close—as 200 are already in the UK.