



Submission to
House of Lords Justice and Home Affairs Committee
Family Migration
September 2022

Introduction

1. Amnesty International UK and Migrant Voice welcome the Committee's inquiry into Family Migration. We take note of the broad approach the Committee intends. Accordingly, our submission provides analysis of the UK immigration and asylum systems ("the immigration system") as these relate to family. That encompasses migration for the purpose of maintaining or reinstating family life, migration for other purposes but which nonetheless concerns family life, and other impacts of these systems upon family life.
2. Our submission is divided into two sections. Section A of this submission provides a brief analysis of international human rights law obligations and domestic policy that relate to family life. The conclusion to this section draws the analysis together by identifying three systemic concerns. Section B briefly considers discrete aspects of the present rules, policy and domestic immigration law concerning family life. This consideration is not a comprehensive account of concerns but provides examples of how the immigration system treats family life. The conclusion to this section brings the consideration of examples back to the systemic analysis of the previous section.

SECTION A – analysis of international human rights law obligations and domestic policy

Right to respect for family life and immigration controls

3. The right to respect for family life is expressly recognised in the 1948 Universal Declaration of Human Rights.¹ Regionally, this is given expression in Article 8 of the 1950 European Convention on Human Rights ("Article 8"). The right is not absolute. Interference with family life is permitted provided it is lawful and a proportionate and necessary consequence of policy or action that pursues a legitimate purpose.² In broad terms, the maintenance and enforcement of immigration controls constitutes such a purpose. However, that does not mean all immigration control measures are legitimate, still less that in any specific case they will be proportionate or necessary.

¹ Article 12

² e.g. *Razgar v Secretary of State for the Home Department* [2004] UKHL 27; *Huang & Kashmiri v Secretary of State for the Home Department* [2007] UKHL 11

4. The Universal Declaration emphasises the importance of family by stating:

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”³

5. The vital importance of family is a long and settled policy position in the UK, affirmed by successive administrations of varying political colours. So much so that in October 2014 the Government adopted the Family Test to guide policy across all departments. The current guidance to that test states:⁴

“1. The government recognises the importance of safe, secure and nurturing relationships to the quality and enjoyment of people’s everyday lives. Healthy and strong family relationships are also recognised as an important component of individual, community and national wellbeing.

“ ...

“5. As government develops wide-ranging policies to improve lives, we must not underestimate the potential impact on family relationships and functioning. While supporting families is an explicit goal of some public policy, and implicit in other areas, across government as a whole, policy that supports or inadvertently impacts on strong family relationships is not always anticipated or well understood.”

6. Domestic immigration law has, at least to some extent, long recognised that respect for family life is a significant policy objective. The Immigration Act 1971 has from its commencement identified the need for the Secretary of State to include, within her rules for regulating immigration, provision for “...admitting... persons coming... as dependents of persons lawfully in or entering the United Kingdom.”⁵ At its initial commencement, the Act made specific provision to protect the rights of Commonwealth citizens settled in the UK to be joined by their wives and children.⁶ The commencement of the Act coincided with the UK’s joining the European Union (EU). From that time until relatively recently, the UK has been a party to a regional arrangement for freedom of movement of persons for the purposes of work, study and other economic-related activity, which freedom was underpinned by a recognition that maintaining family life was necessary to give real effect to the arrangement.
7. Of course, there have been significant changes since 1973. The protection granted to Commonwealth citizens at the commencement of the Immigration Act 1971 was withdrawn in 1988.⁷ On 31 December 2020, the UK left the EU. Nonetheless, wider social and political recognition of the vital importance of family life is not fundamentally changed. These previous arrangements give emphasis to the need to ensure this domestic value – reflected in the very foundations of international human rights law – is given real effect in the area of immigration policy. The Committee’s inquiry provides opportunity to reflect upon the degree to which that imperative is or is not now met; and if not, why not.

Family and family life

8. There have been other significant developments over the past few decades, which have relevance to understanding what constitutes family and family life. In *Singh v Entry Clearance*

³ Article 16(3)

⁴ Guidance: The Family Test, updated 26 May 2021

⁵ Section 1(4)

⁶ Section 1(5)

⁷ It was repealed by section 1 of the Immigration Act 1988 from 1 August 1988.

Officer [2004] EWCA Civ 1075, the Court of Appeal was concerned with the refusal of entry clearance to a 6 year old Indian boy to join his adoptive parents under an adoption that was valid according to the laws of India but not recognised by the UK. The refusal was challenged as failing to respect family life within the meaning of Article 8. In giving the lead judgment, Dyson LJ identified the “*core principle*” to be:

“...stated by the ECtHR in *Lebbink v The Netherlands* (App. NO. 45582/99, judgment of 1 June 2004) at para 36:

“*The existence or non-existence of “family life” for the purposes of Article 8 is essentially a question of fact depending upon the real existence in practice of close personal ties*”.⁸

9. In his concurring judgment, with which Chadwick LJ agreed, Munby J emphasised:

“...such is the diversity of forms that the family takes in contemporary society that it is impossible to define, or even describe at anything less than almost encyclopaedic length, what is meant by “family life” for the purposes of Article 8... In my judgment there is no single factor whose existence is crucial to the existence of family life, either in the abstract or even in the context of any particular type of family relationship.”⁹

10. That conclusion was reached after lengthy consideration of the nature of family life in contemporary society, which is “*multi-cultural and pluralistic*”,¹⁰ has over recent decades undergone “*enormous changes in [its] social and religious life*”¹¹ and must, particularly in its judicial (and arguably political) institutions, be “*increasingly alive to the need to guard against the tyranny which majority opinion may impose on those who, for whatever reason, comprise a weak or voiceless minority*.”¹²

11. A full analysis of the judgments in the Court of Appeal, let alone of domestic and Strasbourg judgments concerning family and family life, is beyond the scope of this submission. However, any inquiry into family life in the context of the UK’s immigration system requires careful reflection upon the nature of family life and its extremely wide ambit as more fully described in the judgment of Munby J.

Children and their best interests

12. Not all family life concerns children. Nonetheless, no adequate inquiry into family life can fail to give particular consideration to children. The importance of family life in relation to children, childhood and development is recognised in both international and domestic law. The 1989 UN Convention on the Rights of the Child (“UNCRC”) states in its Preamble:

“*The States Parties to the present Convention,*

“...
“*Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.*

⁸ [2004] EWCA Civ 1075, paragraph 20

⁹ [2004] EWCA Civ 1075, paragraph 72

¹⁰ [2004] EWCA Civ 1075, paragraph 63

¹¹ [2004] EWCA Civ 1075, paragraph 62

¹² [2004] EWCA Civ 1075, paragraph 67

“Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding, ...”

13. The UNCRC enumerates specific rights of children and generally provides that their best interests are to be a primary consideration in all actions concerning them (including the making of law and policy).¹³ As regards the specific rights, these include that the role and rights of a child’s parents and family are respected;¹⁴ the right of the child to preserve family relations;¹⁵ protection against separation from parents or the impact of that;¹⁶ the right of children to be reunited with family;¹⁷ the right to respect for a child’s family life;¹⁸ and obligations to assist in tracing a child’s family.¹⁹ It is clear that the importance of family life in relation to a child’s safety, welfare and development runs through the entirety of the UNCRC.
14. The seminal statement of domestic policy concerning children, *Every Child Matters*,²⁰ both emphasises that “*all children deserve the chance to grow up in a loving, secure family*”²¹ and that “*over the last generation, children’s lives have undergone profound change... [and] family patterns are changing.*”²² This emphasises both the importance of family life to children and the importance that general considerations of family life include specific consideration of children. The importance of family life in relation to children’s safety, welfare and development is here and elsewhere recognised to run through all policy concerning children. The Family Test, referred to above, recognises the close connection and importance of family life and children. Indeed, while emphasising that there are a range of family relationships to which the test applies, it provides a list of examples all but one of which expressly concern children.²³

Immigration rules and policy

15. The foregoing discussion of family life, its nature and breadth and the rights of children have important consequences for the maintenance and application of any essentially rules-based system, such as the immigration system, in seeking to give proper respect to something as fundamentally important as family life.
16. There are important potential advantages to published rules. Rules can assist people to assess the prospects of any claim they or their family member may wish to make to enter or remain in the UK. Rules can assist to avoid arbitrary, inconsistent and unfair decision-making. Moreover, rules can provide a means to hold decision-makers to account and secure confidence in decision-making on the part of both claimants and the wider public. These advantages can contribute to improved efficiency and fairness, saving public resources and the resources of claimants and prospective claimants. However, these advantages will not likely be achieved merely by the publication of rules nor even by their consistent application in practice. The relative success of any rules will be profoundly affected by the degree to which they reasonably and properly reflect and respect the lives of the people made subject to them. Rules that are too distant from the reality of people’s lives, too insensitive to their real needs and too inflexible in

¹³ Article 3

¹⁴ Article 5

¹⁵ Article 8

¹⁶ Article 9

¹⁷ Article 10

¹⁸ Article 16

¹⁹ Article 22

²⁰ Cm 5860, September 2003

²¹ *Op cit*, page 8, paragraph 14

²² *Op cit*, page 14, paragraph 1.7

²³ *Op cit*, paragraph 10

the face of the diversity of their circumstances are likely to prompt costly legal challenges and/or lead to unnecessary or unreasonable costs associated with enforcement of rules with which people cannot reasonably be expected to comply. In some circumstances, such rules can compel people into unsafe, deprived or exploited conditions.

17. A critical question, therefore, for any inquiry into family life in relation to the immigration system is whether the rules (or policies outside the rules) that are set, and their implementation, are truly fit for purpose having regard to the nature and breadth of family life in contemporary society. A central concern is that hostility towards immigration and human rights law, and Article 8 in particular, has created a profound disconnect between, on the one hand, rules, policy and, in some instances, legislation and, on the other, the family life of people made subject to these. Moreover, that is compounded by the related concern that this hostility has become self-perpetuating or, worse, exacerbating. Rules that do not reasonably accord with the reality of people's lives are liable to be avoided, disputed or unmet. Where those rules concern profound family ties, the risk of this is enlarged.
18. The result can only exaggerate the sense of some that the system is unfair and of others that it is being abused, while gravely increasing its direct and indirect costs. The political tendency has long been to blame either the people subject to the rules or the people and organisations to whom they may turn rather than consider the degree to which the problem lies with the rules and their implementation. That is perhaps unsurprising since it is politicians who make the rules, policies and related legislation. However, it is unhelpful. Moreover, when it extends to criticism of lawyers, courts and human rights laws, it is even more damaging, even constitutionally so.²⁴

Conclusion to section A

19. The challenge in making and maintaining a set of immigration rules that are fit for purpose is undoubtedly substantial in relation to family life. The rules must not merely have regard to the diversity of family life and its vital nature. The rules must address a wide variety of circumstances in which considerations of family life arise.
20. The rules currently include many family-related provisions including those for (a) people to visit family; (b) people to come to the UK to marry or enter a civil partnership; (c) people to join or remain with their partner in the UK; (d) children to be reunited with parents in the UK; (e) adopted children to join adoptive parents in the UK; (f) adult relatives to join the family member in the UK on whom they are dependent; (g) family reunion in the UK with refugees (and people with humanitarian protection); (h) partners and children to accompany people coming to the UK for other purposes; (i) survivors of domestic abuse to be able to secure their status independent of abusers; and (j) regard to be had to family life in considering exercise of deportation powers.
21. Some of these provisions concern temporary migration; others concern migration that is or had been expected to be permanent. Some provisions concern migration that is primarily or solely for family reasons; others concern migration for other purposes but where this affects family life. The nature of specific provisions is affected by the differing family relationships that are at stake and by the British citizenship or immigration status of particular family members. It is also affected by underlying policy objectives associated with the rules' various provisions, parts and appendices – including to enable family life, enable or encourage certain economic

²⁴ In this regard it may be useful to consider the findings of the Joint Committee on Human Rights in separate reports with more than a decade in between them: *The Human Rights Act: the DCA and Home Office Reviews*, Thirty-second report of Session 2005-06, HC 1716, HL Paper 278, November 2006 and *Enforcing human rights*, Tenth report of Session 2017-19, HC 669, HL Paper 171, July 2018

migration or to provide real and effective asylum to people who have fled war, torture or other persecution.

22. The complexity entailed by all of this is enlarged because the rules are not merely concerned with determining the question of who is eligible or ineligible to enter or stay in the UK for reasons relating to family life. The rules are also concerned with the conditions of any permission (leave) that is granted to someone to enter or stay for such reasons. The rules, therefore, have profound and continuing impact upon someone's family life long after a first decision to permit that person to enter the UK or be joined in the UK by their family member. Setting rules that pay proper respect for family life, therefore, requires much more than merely identifying the circumstances in which people are to be permitted to enter or stay in the country for the purpose of family life. It requires an understanding of how the rules affect family life of many people in many different circumstances over, in many instances, an extended period of their lives during which the rules may or will affect them.
23. Before considering some discrete concerns relating to the rules (and wider policy), we draw the Committee's attention to three systemic matters:
 - 23.1. There is an absence of any substantial statement of underlying policy objective concerning the value of family life – whether in the rules or elsewhere. There is, therefore, nothing to guide both policy and decision-making to ensure consistency across the broad range of circumstances in which the immigration system affects family life.
 - 23.2. The sheer volume and complexity of the rules, and the regularity and degree with which they are changed, presents policy-makers with a severe challenge if seeking to give effect to any consistent consideration of the value of family life. This is because changes in any one provision, part or appendix may affect family life – including where the particular provision, part or appendix is not primarily or directly concerned with that. To secure consistency in approach to family life, regard needs to be had to how such changes sit with any objective concerning family life elsewhere in the rules or wider policy.
 - 23.3. The absence of any clear statement of underlying policy objective concerning family life has required consideration of Article 8 to do the work that law and policy-makers have declined to do. Ironically, that has encouraged increased scrutiny, much of it hostile, of human rights law and Article 8 in particular.
24. In contrast to these systemic concerns, Parliament has sanctioned an attempt to narrow the considerations relevant to any official or judicial decision-maker's consideration of Article 8 by legislation that gives no expression to the value of family life, either its personal or social value.²⁵

SECTION B – how the immigration system treats family life

Exceptionality

25. References to 'exceptionality' have become a common feature of the rules (and wider policy). The Supreme Court has sat as a panel of more than five members on separate occasions to consider the application of 'exceptionality' to decisions concerning whether to separate a family in the UK by expelling someone²⁶ and decisions concerning whether to permit family unity in

²⁵ Sections 117A-D of the Nationality, Immigration and Asylum Act 2002 (as amended by section 19 of the Immigration Act 2014)

²⁶ *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60

the UK by permitting someone to enter or stay.²⁷ Current Home Office guidance to decision-makers concerning family life between partners or parents and children states:

“‘Exceptional’ does not mean ‘unusual’ or ‘unique’. Whilst all cases are to some extent unique, those unique factors do not generally render them exceptional. For example, a case is not exceptional just because the criteria set out in the Immigration Rules have been missed by a small margin.

“Instead, ‘exceptional’ means circumstances in which refusal of the application could or would result in unjustifiably harsh consequences for the individual or their family such that refusal would not be proportionate under Article 8.

“‘Unjustifiably harsh consequences’ are ones which involve a harsh outcome(s) for the applicant or their family which is not justified by the public interest, including in maintaining immigration controls, preventing burdens on the taxpayer, promoting integration and protecting the public and the rights and freedoms of others.”²⁸

26. This guidance has no direct application to a host of family life questions that do not concern whether someone subject to immigration control should be permitted to enter or stay in the UK for the purposes of family life with their partner or child. Nonetheless, the guidance exposes something of the wider problem with the way in which family life is, and has long been addressed, by the immigration system. That wider problem is the general absence of any positive statement about the value of family life and the purpose of the immigration system in promoting and securing that value. What is to be regarded as ‘unjustifiably harsh’ or, in other iterations within the rules and policy, sufficiently ‘compelling’, ‘most compelling’ and/or ‘compassionate’ circumstances is not readily identified. The specific criterion is unsupported by any substantial explanation of the values or purpose that it is intended to pursue. In the absence of any tangible contrary indication, all iterations of an ‘exceptionality’ criterion, whether that term is used or another, are liable to be treated by decision-makers as a general indication to refuse a claim where the ‘normal’ criteria fixed by the rules (or policy) are not met.
27. This leaves – or appears to leave – decision-makers unable to identify circumstances in which insistence on compliance with inflexible rules is arguably so inappropriate as to be irrational.

Example:

The circumstances of Irene Clennell have been widely reported. Born in Singapore in 1964, she moved to the UK in 1988. She married a British citizen in 1990, with whom she had two British citizen children. Irene had indefinite leave to remain. The family moved between Singapore and the UK over an extended period. A significant reason for this was the need for Irene to care for her parents each with distinct serious health conditions. Her absences caused her indefinite leave to remain to lapse. However, her husband needed to return to the UK because of his own deteriorating health. Irene experienced various refusals of permission to return or to extend her stay, periods of detention and expulsion from the UK while her husband was in hospital recovering from heart surgery. During the relevant period, the Home Secretary had adopted the minimum income threshold (requiring the British citizen or settled partner of someone seeking to join them in the UK to have a minimum income and/or savings, the calculation of which is set in the rules). The repeated refusal to permit Irene to maintain her family life in the UK with her ill husband, for whom she was the primary carer, her children and her grandchildren (all British citizens) persisted over many years and caused much harm and distress to the family. It attracted substantial media attention, involved

²⁷ R (MM (Lebanon) & Ors) v Secretary of State for the Home Department [2017] UKSC 10

²⁸ Family Policy: Family life (as a partner or parent) and exceptional circumstances, version 18.0, August 2022

protracted and expensive immigration proceedings with substantial application and legal fees (significantly met by crowdfunding).

Minimum income threshold

28. Since 2012 – albeit with moderations intended to address inadequacies that were sufficient to lead the Supreme Court to find the relevant rules and supporting guidance to be unlawful²⁹ – the Home Secretary has applied a minimum income threshold for British citizens and settled people in the UK to be joined by their partners (and children).³⁰ The threshold is an income of £18,600 to be joined by a partner (or £22,400 to be joined by a partner and one child; and a further £2,400 for each additional child). The threshold can be moderated down such that the income threshold is reduced by a sum constituting two-fifths of the value of any savings over £16,000 (e.g. savings of £20,000 would reduce the income threshold by £1,600 – i.e. $(£20,000 - £16,000) \times 0.4 = £1,600$).
29. The introduction of this policy followed a public consultation on family migration³¹ and an inquiry, commissioned by the Government, by the Migration Advisory Committee (MAC) upon the question of setting a minimum income threshold for partners and children to be permitted to enter and stay in the UK.³² That question had been a key proposal of the consultation. It was striking that the opening words of the then Home Secretary’s Foreword to the consultation concerned the Government’s commitment to reduce net migration. Whereas the Home Secretary expressly identified “*families are the bedrock of society*”, there was little in the consultation and nothing in the terms of reference presented to the MAC to give substance to that statement or the value of family life more generally. The MAC was asked:
- “What should the minimum income threshold be for sponsoring spouses/partners and dependants in order to ensure that the sponsor can support his/her spouse or civil or other partner and any dependants independently without them becoming a burden on the State.”*³³
30. That question is divorced from any consideration of the value of family life. Amongst other things, its sole focus on the income of the sponsor and that person’s independent capacity to support the relevant family members negates or ignores the role in many differing families of wider family support. Its narrow focus on an income threshold to ensure the relevant family members do not become “*a burden on the State*” suggests there to be no role for the State in supporting family life where that involves anyone subject to immigration controls. The outcome has, perhaps inevitably, caused real harm to many families, including many children, including in circumstances where the family may well have been capable of self-sufficiency albeit either within means below a threshold set nationally to apply to all circumstances and/or by means that draw on other sources of income or savings. This is notwithstanding the judgment of the Supreme Court in *MM (Lebanon)*.

Examples:

Ivan, his wife and children fled political persecution but had to leave their country of nationality separately. He arrived and sought asylum in the UK. She and their children sought safety in Spain. However, while each was ultimately permitted to stay in the UK and Spain respectively, neither was recognised as a refugee. Ivan is now a British citizen, but he has long suffered with poor health – he has received a liver transplant, without which it appeared

²⁹ [2017] UKSC 10, *op cit*

³⁰ This is to be found in Appendix FM to the immigration rules.

³¹ UK Border Agency, *Family Migration: A Consultation*, July 2011

³² *Review of the minimum income requirement for sponsorship under the family migration route*, Migration Advisory Committee, November 2011

³³ Page 6, paragraph 1.3, *ibid*

likely he would die – and he cannot work or otherwise secure the income or savings required to sponsor his wife and children to join him in the UK. He has also been refused permission for a visa to visit his family in Spain on grounds that he may not return to the UK (this appears to mirror a similar position often adopted by the UK immigration system). The relationship between Ivan and his wife and children has now completely broken down. A significant aspect of this was her disbelief that the barrier to reunion lay in the UK's immigration rules rather than Ivan; and that disbelief has been shared by their children. Ivan and his wife are now divorced; and he is alone in the UK.

Aksan was settled in the UK and supported by his relatively affluent family. He wished to sponsor his fiancée to the UK, where they would marry and settle together. However, his income was insufficient to meet the minimum income threshold and, although the relatively small shortfall could be met by support from his family, this was rejected as a means to meet the requirement. The impact for Aksan was devastating because his fiancée would not accept that this was the reason for the refusal and suspected some dishonesty on his part. Their relationship broke down.

Sara was working on a post-graduate visa in the UK and living with her British citizen partner. While her income was more than sufficient to meet the minimum income threshold, the demand was that her partner's income should do so. It did not as he was only working part-time to complete his PhD. When her temporary visa ended, Sara did not find a sponsor for a job that would have built her career and permitted her to stay; and her partner could not sponsor her because of his income. Ultimately, Sara moved back to her country of nationality and the couple lived apart for several years. They are now reunited in the UK. However, the visa application process and cost, moving homes and countries and general distress of this have been substantial.

31. Notwithstanding modifications, particularly to guidance, the impact of the minimum income threshold upon many families and children appears to remain much as was elaborated in the 2015 report of the Children's Commissioner, *Skype families*.

No recourse to public funds (NRPF) conditions

32. Just as the minimum income threshold (see above) appears to be predicated on the notion that there is no role for the State in supporting family life that involves anyone subject to immigration controls, the rules providing for NRPF conditions appear to substantiate that.³⁴
33. However, the impact of NRPF conditions is not (or not solely or mostly) upon the question of whether permission is to be granted for a family member to come or stay. That question is already addressed by the requirement to demonstrate a capacity for accommodation and maintenance without recourse to public funds (and a capacity in that regard that is significantly elevated in circumstances where the minimum income threshold applies). Rather, the impact concerns families afflicted by unforeseen, possibly unforeseeable, experiences that negatively affect their financial circumstances – such as illness, injury or redundancy. Such experiences inevitably cause serious strain upon families, which in other circumstances the State – recognising family life to be an especially important individual and social good – would have a role in supporting. Instead, the impact of immigration policy is to exacerbate that strain by adding an additional stress – the threat of separation or exile.³⁵

³⁴ This is a condition that may be applied under section 3(1)(c)(ii) of the Immigration Act 1971.

³⁵ NRPF conditions were maintained during the coronavirus pandemic. Even when the Home Secretary introduced policy permitting the condition to be lifted, this was on the basis that the route to settlement (permanent residence in the UK) of the person affected would effectively be doubled by taking advantage of that – thus giving with one hand only to take away with the other by prolonging the uncertainty for someone who would remain subject to immigration rules and the need for repeated applications for several more years.

Family visits

34. Many families have suffered the pain and indignity of being refused visiting opportunities, including at times of especial family significance – such as birth, death, illness and marriage. The impact of being refused a temporary reunion in the UK is exacerbated when reasons given appear to bear no reasonable or rational relation to the applicant’s circumstances but rather seem founded on generalised suspicion or prejudice.

Examples:

Nadia has been settled in the UK for many years and become a British citizen. She invited family to the UK for her daughter’s wedding. Her sister was refused a visa to visit for the wedding on the grounds that, although Nadia would be accommodating and supporting her, she would not return to Lebanon. This required an appeal, which was ultimately successful. However, Nadia was made to feel like a second-class citizen, “*I have lived here for many, many years. I work hard. I obey the law. I pay taxes. I have a British passport. Now I’m a British citizen, but this made me feel like I’m second-class citizen. I cannot invite a family member. It has left me with a sour taste.*”

Refugees with family in the UK

35. With the exception of the Ukraine Family Scheme (UFS),³⁶ the immigration system has long refused any provision for refugees to seek asylum in the UK on the basis of having family here. Even the UFS was introduced with obvious reluctance and lacking the political will to ensure its swift and effective implementation.³⁷ The general position of UK asylum policy remains to (i) require people to be in the UK to seek asylum here, (ii) to require visas for people to travel to the UK from countries from which come the overwhelming majority of refugees, and (iii) to make no visa available for the purpose of seeking asylum. There is no exception made for people with family in the UK.³⁸
36. Accordingly, the great majority of people who do seek asylum in the UK must do so by making journeys for which there is no prior permission available under UK law. Family connections provide one compelling reason for some people to seek asylum in the UK. Yet, such people are among those compelled to make long and dangerous journeys, relying on smugglers and vulnerable to abuse and exploitation, to the UK. At no point on the journey is there the possibility of avoiding these means to seek asylum in the UK, even for people who could establish clear connections to family living here.
37. This is a boon to people smugglers and others profiting from exploiting people. It maintains conditions in which people seeking asylum are compelled to risk abuse, harm and even their lives on dangerous journeys. It sustains the misery of family members in the UK afraid for the safety and welfare of their loved ones.

Refugee family reunion

38. The immigration rules have long made specific provision for refugees, granted asylum via the asylum system, to be able to sponsor their immediate family members (partners and children)

³⁶ This is now to be found in Appendix Ukraine Scheme to the immigration rules.

³⁷ We draw this conclusion from the initial reaction of ministers to the Russian invasion, the delay in establishing the UFS even after it was announced and the lengthy delays in processing applications that persisted over several more months.

³⁸ See e.g. Amnesty International UK’s *Safe and Legal Routes* briefing in relation to ‘people seeking asylum’: https://www.amnesty.org.uk/files/2021-01/Amnesty%20International%20UK%20-%20Safe%20and%20Legal%20Routes%20Briefing_0.pdf

to join them.³⁹ However, those rules have long denied any provision for child refugees to sponsor their immediate family members (parents and siblings) to join them. Respect for even the most basic notion of a family (parents and children) is accordingly restricted to where the refugee granted asylum is an adult parent/partner. The impact upon child refugees in the UK, subjected to this restriction, is plainly contrary to their best interests.⁴⁰ Yet, the notional justification that has sustained it for decades remains neither evidenced nor substantiated.⁴¹

39. Immigration rules made under section 12 of the Nationality and Borders Act 2022 have exacerbated the continued failure of asylum policy to respect, still less promote, family life among refugees.⁴² The rules now allow the great majority of refugees granted asylum in the UK for having sought asylum here by the only means available to them (as discussed above) to be penalised. That penalisation includes denying or delaying any possibility of being reunited in the UK with their family. This will enlarge barriers to refugees in the UK recovering from trauma and building a new life in the UK, adding to distress over separation and worry for their family to existing barriers and, if the family members are to attempt reunion with the refugee in the UK, requiring them in turn to rely upon smugglers and dangerous journeys.
40. Even before these changes, several refugees granted asylum in the UK have faced considerable obstruction to reunion with family under rules for which their family members are eligible.

Examples:

A two-parent refugee family living in the UK with three young children, two with disabilities requiring significant care, faced separation because although the wife and children were granted asylum as refugees, the Home Office decided to seek to remove the husband to Italy under the Dublin Regulations, to which the UK was then a party. He was only granted asylum after substantial media reporting of the family's circumstances.

Two other Syrian refugee couples, who had become separated, were initially refused family reunion because, in the one case, there was a gap of two weeks in WhatsApp chat messaging between them (from which the Home Office inferred their relationship was not genuine) and, in the other, the couple were unable to obtain their original marriage certificate (which could not safely be secured from the country they had both fled).

Deportation policy

41. Deportation policy has increasingly been designed to narrow or exclude consideration of the impact upon someone's family and their family life of expelling them from the country. Yet, it is plain that a decision to deport – including someone who may have lived in the UK for years or decades (even all of their lives) and whose family life may be of years or decades duration and all in the UK – is likely to have serious impacts upon family life, including upon children.
42. The Immigration Act 2014 introduced legislative directions to official and judicial decision-makers concerning family life in relation to matters of deportation.⁴³ It is remarkable that the legislation, expressly on the application of Article 8, provides no positive statement of Parliament's recognition of the value and importance of family life. It is similarly noteworthy that the family relationships that are given specific recognition in these provisions are very limited. Not only are they restricted to minor children and partners, many such children and

³⁹ Paragraphs 352A *et seq* of the immigration rules

⁴⁰ See e.g. *Without My Family: The impact of family separation on child refugees in the UK*, Amnesty International UK, Refugee Council & Save the Children, 2019

⁴¹ *ibid*

⁴² Changes made by Statement of Changes in Immigration Rules (HC 17)

⁴³ Section 117C of the Nationality, Immigration and Asylum Act 2002 (as inserted by section 19 of the Immigration Act 2014)

partners are excluded from specific consideration by reason of, in the case of minor children, their age or length of residence being under 7 years and, in the case of partners, neither being citizens nor settled.⁴⁴

Survivors of domestic abuse

43. Survivors of domestic abuse need the opportunity to escape family life with their abuser or abusers. The immigration system provides only limited opportunity for that for survivors whose current leave to enter or remain in the UK is on the basis of partnership with a British citizen, settled person or refugee.⁴⁵ Even this much has not been effectively and consistently secured in the rules and by wider law and policy that relates to it.⁴⁶
44. However, provision for survivors of domestic abuse to escape family life is also about preserving family life. Most urgently, it is often about securing the family life between all the survivors of the abuse – generally, though not always, mothers and their children.

Conclusion to section B

45. The various examples provided in this submission highlight a systemic failure of the immigration system – both as a matter of policy and decision-making – to give effect to the value of family life, as understood in both international law and domestically (though outside the area of immigration policy). The results are harmful to families and the wider community. Moreover, law and policy-making in this area has and continues to be so oppressive to family life that it both undermines any possible confidence in the immigration system while inflaming attitudes that sustain that oppression. For an increasing number of families, meeting the conditions and fees required by an immigration system that either has no care for their real circumstances or is simply averse to their continuation has become a profoundly harmful and chronic anxiety – made all the worse by the system’s delays, dysfunctions and unstable rules and demands. Sustaining family life under such unpredictable and hostile conditions is not merely difficult. It takes a toll on all members of the family – a toll that is plainly at odds with the wider international law and domestic policy commitment to recognise the family as foundational for personal welfare and development, on the one hand, and society on the other.
46. The systemic concerns summarised in section A and their impact are accordingly being nurtured and exacerbated by the UK’s immigration system.
47. It is concerning that this may be exacerbated under powers in the Nationality and Borders Act 2022 to refuse, suspend or cancel visas on grounds that the Home Secretary has concluded the government of the country of which the applicant is a national has failed to cooperate sufficiently with attempts to return one or more persons to that country. The statutory provisions mean this could be applied to visas sought or granted for family life reasons, including in circumstances where the visa would otherwise be granted or honoured for the purpose of the applicant making a permanent move to the UK for family reasons. This would permit profound interference with family life for reasons that have no direct bearing on anything the applicant, or any other member of their family, has done or might reasonably be expected to do.

⁴⁴ Section 117D of the Nationality, Immigration and Asylum Act 2002 (as inserted by section 19 of the Immigration Act 2014)

⁴⁵ Appendix FM to the immigration rules

⁴⁶ There are a range of outstanding matters of inconsistency, including the impact of creating distinct routes to settlement for certain categories of people under the ‘points-based system’, which have not been aligned with the domestic abuse rules to ensure that migrant spouses of people, who are on a route to being or are settled under that system, are provided protection under immigration policy and rules concerning domestic abuse. Paragraph 28 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 remains to be amended to reflect the inclusion of partners of refugees with the domestic abuse rules.