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# Minimum Income Requirement

The Court of Appeal in the recent case of *MM v. Secretary of State for the Home Department* [2014] EWCA Civ. 985 had to consider the minimum income requirement introduced into the Immigration Rules in June 2012. Previously the requirement for the issue of a marriage visa, as set out in Rule 281 was that the parties must show *inter alia* that they would be able to maintain themselves and their dependants adequately without recourse to public funds. The new Rules are set out in *Appendix FM Family Members Section E-ECP Eligibility for entry clearance as a partner*, which includes a financial requirement that an applicant for such a visa must show evidence of a gross annual income of £18,600 plus an additional £3800 for a first child and an additional £2,400 for each additional child.

The appellant was refused a visa on the ground that she was unable to show an income which met this requirement. She argued that the requirement was contrary to the provisions of the ECHR, Articles 8 – right to family life – 12 – right to marry and 14 - prohibition of discrimination. In a lengthy judgment the Court of Appeal did not accept this argument and dismissed the appeal.

At the hearing the Court heard the evidence of a civil servant who had been responsible for formulating the requirement and the underlying justification for it, including views expressed by the Migration Advisory Committee. The Court considered the decision of the Supreme Court in *Quila v. SSHD* [2011] UKSC 45, discussed in Legal Paper MW 240 and Legal Paper MW 252. In that case the Supreme Court ruled that the amendment of the Immigration Rules which raised the minimum qualifying age for issue of a marriage visa from 18 to 21was an infringement of the parties' rights under Articles 8 and 12, notwithstanding the reasoning behind it that it was an effective weapon against forced marriage. Lord Brown delivered a powerful dissenting judgment in that case stating that the judgment about the wisdom of raising the qualifying age should be left to elected politicians and not to judges.

The decision in *Quila* creates a precedent which the Court of Appeal was bound to follow, but in so doing it the learned judges came to the conclusion that the minimum income requirement did not infringe the appellant's rights under the ECHR, so there was no finding that the Immigration Rules in question were incompatible with the ECHR.

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