UK Yankee
Americans in the UK

MARRIAGE AND CIVIL AND OTHER PARTNERSHIP

QUESTION 1
Should we seek to define more clearly what constitutes a genuine and continuing relationship, marriage or partnership, for the purposes of the Immigration Rules? If yes, please make suggestions as to how we should do this.

The presumption should be that marriages are genuine and valid, unless shown otherwise. A marriage is a fundamental social and legal contract, one which is widely valued throughout society, and should be treated with due respect. Couples should not be placed in the position of artificially accumulating evidence to demonstrate the validity of their relationship beyond the fact that they are legally married -- marriage is considered a sufficient legal commitment in all other areas of law. Forced marriages are an affront to society, but they are not a specific immigration problem and should be dealt with independently of immigration matters.

The proposal to obtain objective measures for the validity of relationships is absurd; commitment cannot be numerically measured from precise sets of evidence, especially given the cultural diversity of the UK and the range of relationship practices that exist. It would be difficult indeed to find measures which work reliably for couples who have online relationships, who have met while serving in the armed forces abroad, who have arranged marriages through their families or who have formed relationships while studying together.

Any tests which are truly able discriminate between genuine loving couples and dedicated frauds are liable to involve extremely contentious invasions of privacy. Couples have a right to enjoy a private family life without being compelled to engage in normative behaviour to ensure that they are not caught out by artificial tests. Even a requirement for continuous cohabitation is at variance with marriage practices among British citizens; many couples have to live apart for some period of time due to work commitments. Members of the armed forces may be separated for very long periods, but the validity of those relationships is not in question. British citizens with foreign national partners should not have to live their lives under the strictures of prescribed marriage practices that non-immigrant families are not subject to. The consultation suggests looking at the age differences of partners when considering the validity of marriages. It is not the place of the government to moralise about the relationships which people form. Successful and genuine relationships with large age gaps abound. Any reform should concentrate on the elimination of fraudulent applications, not on the persecution of undesirable groups. British citizens have a right to marry whom they wish, a right the government has repeatedly stated that it will recognise.

The Prime Minister has recently stated that government policies should be subject to a test as to whether they promoted the support of families. In his speech of the 15th of August, he said:

"I*f [a policy] hurts families, if it undermines commitment, if it tramples over the values that keep people together, or stops families from being together, then we shouldn't do it."*
The proposed measures in this consultation could not be more clearly undermining commitment and devaluing the status of marriage in society. It reduces marriage to an assumed arrangement of convenience which must somehow be validated, and the effect of these changes will be to split apart genuine families.

The proposal also suggests requiring applicants to demonstrate a twelve month relationship prior to marriage. This has several problems. Firstly, relationship length does not necessarily indicate the genuineness of that relationship. There are people that have been married for decades who had a short courtship period; conversely, there are others who dated for years and their relationship collapsed once they were married.

Secondly, it is not apparent what qualifies as a relationship in this context, and what will be considered as "regular contact", or how this could be defined in a flexible way. Many couples in genuine romantic relationships start out as friends – would time spent in these kinds of relationships count towards the pre-marriage period? There is also a serious issue with obtaining appropriate evidence to prove the validity of the relationship, particularly as many relationships are now, at least initially, largely conducted over ephemeral media such as text messaging, Skype calls or instant messaging chats. Demanding that couples begin capturing physical, verifiable evidence of their relationship for a year simply to prove that their marriage is not a sham is enormously intrusive and will result in many genuine marriages not being recognised. Those wishing to engage in fraud will have to go to more elaborate and perhaps unpalatable lengths, but they will be well prepared for these published objective tests. It is no great hardship for them artificially to accumulate evidence and live according to the government's prescribed relationship practices.

Finally, the increasing financial burden that will be placed on couples by these reforms is also of concern. If couples are obliged to avail themselves of the twelve month temporary leave to demonstrate that the relationship is genuine, this will add an additional visa fee to the already expensive cumulative costs of immigrating to the UK. In combination with the proposal to extend the probationary period to five years, this could result in couples facing a six-year wait for settlement with up to four separate visas required. Given the current visa pricing and the bi-annual fee increases, the total cost in visa fees from entry clearance to settled status could total more than ten thousand pounds.

The number of sham marriages is presumably small, at least among those carried out in the UK, as the Home Office official estimate of the number of sham marriages was 561 in 2009. This is a tiny proportion of the total number of marriages of British citizens and residents to non-EEA nationals; 55,600 visas were issued on the basis of marriage in the same period. Introducing additional layers of burdensome bureaucracy to all applicants just to catch the 1% who break the rules is a disproportionate response.

It is also questionable whether tightening British immigration law will have any effect on sham marriages as a whole, since it is vastly easier for a non-EEA national to marry a non-British EEA national and claim the right to remain in the UK under free movement

regulations. The EEA route presumes that marriages are genuine unless evidence to the contrary is presented, and the government cannot apply any general barriers to the granting of EEA family permits. It would be perverse indeed if these reforms barred British citizens in genuine marriages from enjoying their right to a family life while sham marriages via the EEA route continued unabated.

Getting married is a highly personal event, and an individual's choice of how to get married and whom to invite to the ceremony should not prompt investigations into the validity of the relationship. Many couples choose to have a simple personal legal ceremony followed by a larger family affair when finances permit, and this is well within their rights. The proposal to critically examine the circumstances of wedding ceremonies is especially worrying as the later proposals in the consultation suggest permitting the delay or cancellation of weddings which are merely under suspicion. Many will be unwilling to risk a large, lavish event that might be cancelled on spurious grounds.

The one reliable and practical measure that could improve decision making is the introduction of interviews for those wishing to marry, or interviews at the issuing consulate for those who have married abroad. Such interviews are in line with the immigration practices of other countries and would be an effective barrier to sham marriages without being unduly inflexible and intrusive. Interviews would need to be carried out with appropriate oversight and rights of appeal, and provision of interview appointments would also need to be sufficient across the country to avoid introducing an unreasonable delay in wedding plans or in obtaining entry clearance.

The proposal to require partners to provide accurate details about each other is, on the face of it, reasonable. However, any tests should be such that ordinary British couples could reasonably satisfy. Requiring detailed knowledge about the birthplaces of grandparents or the dates of family weddings is a level of detail that few genuine couples would be likely to have discussed. Sham couples, of course, would have all of these details precisely rehearsed. Particular sensitivity would be required when dealing those who are adopted or were in care, where personal information may be patchy or emotionally sensitive.

With regard to the proposal to give weight to couples who have previously lived at a shared address, it is generally very difficult for international couples to reside together at the same address for a significant period of time and remain in compliance with immigration law. Even though a visitor could theoretically remain in the UK as a tourist for up to six months, few people may have sufficient funds to support such a lengthy stay, or be able to secure the necessary time off from work. Similar immigration restrictions apply in other countries. Couples who have lived together as visitors will not ordinarily be in possession of documentation of cohabitation, such as utility bills or leases, given their temporary status.

Marriage is of singular importance to a great number of people, and remaining with one's spouse is often a concern which outweighs all others. The general risk when introducing barriers which eliminate a legal route for genuinely loving couples to remain together is an increase in illegal migration. Some level of immigration control is necessary, but as more genuine couples get caught up in unreasonable tests in the drive to reduce migration for

political ends this will become a pressing issue. This is a risk which is much more significant than restrictions in other immigration tracks, as people will often be willing take extreme measures to remain with family. The zealous closing of legal routes will lead to the creation of a class of illegal migrants who live in uncertainty and fear. In addition, such illegal immigrants are likely to be able to eventually claim the right to stay under human rights legislation. This is unlikely to engender respect for the law and will undermine the control of migration.

QUESTION 2
Would an 'attachment to the UK' requirement, along the lines of the attachment requirement operated in Denmark:

The proposal to introduce a balance of attachment is invidious and fails to serve the ostensible purpose of the family route reforms: to make family immigration fairer. This proposal will result in British citizens who have set up lives abroad with foreign nationals being permanently exiled from the UK. Once someone has "lost" this attachment they will have no opportunity to regain it; they cannot reasonably move back to the UK and re-establish ties without bringing their family. Citizens who have, for example, moved to US; married US citizens there; lived there for several years; and now wish to return the UK, will be permanently barred from returning with their spouses to the UK under these rules.

As a further example, it is not unusual for a British citizen to move to another country to begin a family on foreign soil, with specific intent to return to their homeland in their retirement years. Such scenarios often see the returning resident and his or her foreign partner leaving their adult children behind. The notion that grown children left behind in another country might be considered an insurmountable "attachment" to the foreign land seems at best an allusion to outdated family models, and at its worst an erosion of the basic right of British citizens to enjoy their family life in their own country.

The consultation suggests an exemption for those who were resident in the country or have been citizens for a period of time (such as are in effect in the Danish system). This would be essential if a requirement for attachment is imposed, to prevent the exile of long-term expatriates.

The consultation does not make clear the level of attachment that will be required. If the requirement is for a substantial majority attachment to the UK, this will preclude the formation of many romantic unions, where each partner may have only visited the corresponding partner's country on a few occasions. This situation is not uncommon among young couples, and to restrict family immigration only to those who have previously had the opportunity to establish ties to the UK (via study or work visa, or existing family connections) is unreasonable in its constraint.

a)
Support better integration?

It is not clear how the balance of attachment will better support integration except by disqualifying those who are not already integrated. The government cannot possibly encourage integration simply by eliminating the possibility for a family member to integrate.

b)
Help safeguard against sham marriage?

A couple's joint attachment to the UK is not a useful test of the authenticity of a relationship. The test will be very poor at discriminating between real and sham marriages, as it catches many couples who may have met overseas, or who have met in the UK but where one partner has not spent long enough to establish ties. This would particularly be the case if the UK partner had spent some time abroad, so diminishing their attachment. But the most serious issue with the balance of attachment is that as it while risks eliminating genuine couples, it does little to target those who want to engage in sham marriages. Indeed it may well do precisely the opposite. Many of the individuals motivated to seek a sham marriage may have already legally established a life here through employment or study visas which can no longer be extended, or may have extensive family they wish to join. If they form a marriage of convenience with a UK citizen who has lived here for the duration of their life, the couple will easily pass the balance of attachment test.

c)
Help safeguard against forced marriage?

Forced and sham marriages will not be directly reduced by requiring an attachment to the UK, except that the proposals directly target those engaging in arranged marriages with partners from their country of origin -- and thus would not satisfy the balance of attachment. This would appear to be an attack on those communities who practise this style of marriage, rather than addressing the underlying issues of forced and false marriage. Forced marriage can best be targeted by more effective enforcement of the existing law -- and by the specific criminalisation of coerced marriage -- rather than introducing tests which crudely bar entire categories of immigrants.

QUESTION 3
Should we introduce a minimum income threshold for sponsoring a spouse or partner to come to or remain in the UK?

The introduction of a standardized income threshold would simplify the application process for both applicants and the examining officers. This would be a welcome change from the

current convoluted system, assuming the income threshold is set at a reasonable level, and exceptions for compassionate circumstances are made.

When considering an income level, it is important that variations in living costs throughout the UK are taken into account. Setting an income threshold that would be sufficient for a couple to live in London, for example, would be an unfair burden to those immigrating to areas with much lower living costs. This is particularly the case if a single flat income rate is implemented.

The proposal to restrict income to only sponsors is, however, extremely worrying, especially as it applies to in-country extensions and to settlement. Those who are switching from work or study visas, or who have completed their probationary term and are applying for ILR may well have established employment, and this should be counted towards the couple's financial standing. It is manifestly unfair for the government to dictate which of the partners in a couple must be employed when the ability of the couple to support themselves is not in question.

A requirement that only the sponsor's income be counted seems an outdated notion. It should not be the concern of the government as to which partner in a relationship is the breadwinner. In the present financial climate, if a family of ordinary means is to sustain itself in reasonable comfort, both partners often have to work. Especially in cases where the immigrant has a history of sustained employment in their home country, discounting their earning potential when they enter the UK makes little sense. Perhaps most importantly, if the intention behind the proposed change is to reduce the burden on taxpayers, the country would be well served if the law encouraged legal employment.

This proposal particularly undermines the ability for couples to make decisions balancing childcare needs and employment, and it is surprising that the Minister for Women and Equality has countenanced it. If, for example, a British citizen brought his wife to live in the UK, he would be required to stay in employment at least until ILR was granted in order to ensure that the subsequent visas would pass the income test, and he would not be able to stay at home to look after children or other dependants, regardless of whether his partner was able to adequately support the family financially.

Settled families should not have to live under the fear that the loss of the sponsor's job would result in the separation of the family if termination of employment happened to fall in the very narrow window in which settlement can be applied for. A spell of unemployment of only a few weeks at a critical time could leave the applicant at risk of refusal and subsequent removal. Compounding the misery of sudden unemployment with the threat of imminent family breakup is unconscionable. This is doubly so when the applicant is employed and can support the family. A family with two earners that fell victim to this employment lottery would

face the prospect of the now-sole breadwinner losing the right to work, rendering the family destitute and separated.

The consultation also proposes prohibiting sponsorship of marriage visas to anyone who has claimed specific benefits in the previous year. It is already established that sponsors can claim any benefits they are entitled to; however, they cannot claim additional benefits as a result of their partners joining them in the UK. If the level of benefits received will remain static and the family will still be able to financially support themselves without needing to claim additional benefits, there is no justification for refusing visas solely based on the sponsor receiving benefits other than punishing people for claiming benefits. Where sponsors are on benefits, it cannot be argued that the taxpayer is supporting the applicants given that no additional benefits can legally be claimed. It is purely punitive to apply this to sponsors who have had to take advantage of benefits available to them and have subsequently gained employment and thus no longer require them. Such individuals are as well qualified to sponsor a spouse as any other settled person of appropriate financial standing; receiving benefits should not become a black mark that tarnishes the reputation of the recipient.

QUESTION 4
Should there be scope to require those sponsoring family migrants to provide a local authority certificate confirming their housing will not be overcrowded, where they cannot otherwise provide documentation to evidence this?

This requirement seems reasonable, with the proviso that guidance on the nature of such inspections is made available by the UKBA to local authorities so that certificates can be issued in a standardised and fair way.

QUESTION 5
Should we extend the probationary period before spouses and partners can apply for settlement (permanent residence) in the UK from the current 2 years to 5 years?

There is no clear justification for this extension of the probationary period. Those who have lived together in a marriage for two years have undoubtedly demonstrated a committed relationship. Forcing couples to wait for such a long period for settled status -- and introducing another intermediate step into what is a very stressful process -- is unreasonable, and will do very little to combat sham marriages. All it is likely to do is to increase revenue for the UKBA and place genuine couples under significant strain. Partners without indefinite leave will have trouble obtaining employment when contracts extend beyond the end of the two temporary 2 or 3 year visas, and also face difficulty in obtaining financial services such as mortgages and insurance which require permanent residency.

It will be very difficult for young couples to consider having a family while their immigration status is uncertain and requiring them to wait for five years before being in sufficient security to start a family will severely impact many people's lives. The existing shorter period for

family track applicants to obtain residency compared to other visa categories is soundly justified; previous administrations did not make the distinction between the family route and other routes arbitrarily. Firstly, those who enter as spouses are sponsored by a partner, who is legally responsible for their welfare in a permanent and binding relationship. This is quite different from a work or study visa where the attachment and support for immigrants is much more fluid. Secondly, it is beneficial to society to have stable family relationships. This is an issue that the current government has pressed extensively; families are the bedrock of civilised society in Britain. It is in the interest of the country to promote stable and durable relationships in which families can be raised, and extending the period of unsettled immigration status, and introducing new points at which the family may face separation, flies in the face of this goal. If the government is committed to the preservation of family units based on secure marriages or partnerships, it should recognise this in immigration law.

Since 1998, immigration rules have changed so frequently that no family track immigrant has settled in the country under the rules that were in effect at the time they entered the country. This state of constant flux is extremely disruptive in the planning of family affairs, and it will only get worse if the probationary period is extended.

Many other countries have short waiting periods for permanent status for those married to citizens (2 years in the USA, 2 in Canada, 2 in Australia, 3 in France, 3 in Germany, and 2 in Italy); a five year period is quite out of line with regimes in comparable countries. The consultation is very selective in the comparisons it makes, focusing on the European countries with only the most restrictive immigration polices (Denmark, The Netherlands and Austria).

Five years (or six, in the case of applicants who are required to obtain the proposed twelve month pre-probationary visa) is a very substantial portion of an individuals life to live without the security of a common family home. No foreign national under the age of 26 will be permanently settled in the UK on family grounds if these proposals are implemented. The duration of the probationary period is a particular concern for those wishing to raise a family where the window of opportunity is very limited, for example female applicants in their late 30s. These concerns are quite specific to family immigration, and justify having a shorter probationary period than other tracks.

An extension to the settlement period to five years is especially galling in light of the fact that non-British EEA nationals may bring their non-EEA spouses into the country without payment of fee and without any tests on accommodation or financial settlement, and receive permanent status after five years. This will remain the case after the implementation of the proposed reforms, as the government cannot adjust the terms of the free movement treaty without renegotiating it with the other members of the EEA. Previously, the government has argued that the much stricter conditions for British citizens, as compared to EEA nationals, wishing to bring the spouses into the country has been offset by the shorter probationary period for settlement. Under the proposed system, British citizens would be a substantial

disadvantage to non-British EEA citizens in their own country. Under the proposal, a British citizen can expect to have to satisfy a raft of invasive tests, pay fees for three separate visas, and face the potential for separation at each of those visa points, while a German colleague can bring his or her partner into the country and settle in the same period without any of the conditions or fees. This is an unacceptable state of affairs.

Additionally, the courts have held (in the Surinder Singh case) that British citizens can take up residence in another EEA state for a period of six months or more, bring their spouse to this state under the provisions of the free movement directive, and then return to the UK with their partner under free movement rights. In this case, the only penalty with respect to immigrating under the provisions of British immigration law is the five year period before permanent residency. If these reforms are made, it seems likely that this principle will be more extensively used, given that settling under British law will offer no benefit whatsoever, only fees and burdensome tests. This will not limit immigration, but it will take control out of British hands.

The consultation seems to suggest that a five year period would be beneficial as the divorce rate after two years is 3%, whereas the divorce rate after five years is 10%. Divorce is not a measure of the authenticity of a relationship; perfectly genuine marriages collapse for a wide variety of reasons. Seeking to reduce immigration by hoping that more marriages will end in divorce is perverse and contrary to an ideology which respects stable family relationships.

It is especially worrying that these proposals might force those already in the country on 27 month visas to extend their probationary period before being granted indefinite leave to remain. Those couples are expecting to establish settled status after two years and making the extension retroactive to them would be grossly unfair. If an extension to the probationary period should be implemented, it is imperative that transitional arrangements are arranged for those already in the probationary period. The government should be wary of making retrospective changes which are likely to give rise to human rights challenges, as occurred when the previous government attempted to adjust the terms of the highly-skilled migrants programme.

QUESTION 6
Should spouses and partners, who have been married or in a relationship for at least 4 years before entering the UK, be required to complete a 5-year probationary period before they can apply for settlement?

This proposal is simply a measure to discourage citizens abroad from returning to the UK. Those who have been married for at least four years have demonstrated a commitment to each other and the current provisions for indefinite leave to enter visa recognise that. If the requirement of a probationary period is to eliminate sham marriages then removing the indefinite leave to enter route makes no sense. It appears that the purpose of this proposal is

to make life more difficult for those who might want to enter the UK and it offers no benefit to society as a whole.

It should be noted that the UK is not alone in offering immediate settlement to those who have been married for some time; the US, among other countries, has an equivalent measure for granting immediate settlement on the grounds that such couples have already proven the genuineness of their relationship. If the intent of a probationary period of settlement is to keep immigrants from accessing benefits, this can be accomplished without denying settlement. By way of example, in the US an immigrant cannot access means-tested benefits for a period of five years from the date of settlement. The immigrant derives all other rights of settlement in the US including right to employment, enabling them to become a taxpayer before they ever access benefits. It is understandable that the government wishes to limit access to benefits to incomers who have made no contribution, but the key issue for family immigrants is securing a stable family home, not the availability of welfare.

QUESTION 7
Should spouses and partners applying for settlement (permanent residence) in the UK be required to understand everyday English?

A basic level of English is a reasonable requirement for permanent settlement in the UK. Requiring spouses to speak English before entering, however, is unreasonable. Spouses will be in a much better position to learn English when immersed in the language and many will be unable to easily obtain English tuition in their home countries. This will be an insurmountable obstacle for many otherwise legitimate spouses of British residents. Partners should be offered the opportunity to learn English during their probationary period and subsequently have to prove a sufficient understanding to obtain ILR.

QUESTION 8
Which of the following English language skills should we test?

Any language test that is implemented should concentrate on listening and speaking English. Verbal skills are essential to everyday living and to eliminating the ghettoisation of communities. There may be some British nationals who are functionally illiterate and quite completely integrated into British society; if the proposed English tests are aimed at promoting integration -- and not simply as an obstacle to exclude sections of the community deemed undesirable -- it would be unreasonable to demand high attainment in written English.

TACKLING SHAM MARRIAGE

Question 9: Should we (in certain circumstances) combine some of the roles of registration officers in England and Wales and the UK Border Agency as a way of combating sham marriage?

One worrying thing about this proposal is that registration officers may not fully understand the different immigration laws. It follows that someone entering with a fiance or marriage visit visa should not expect the same level of scrutiny as someone marrying whose immigration status is unknown or who are marrying someone under EEA regulations. This is sometimes a problem for couples who wish to marry in CoE churches when they already have fiance/MV visas from UKBA. This results in a second round of proving the validity of a relationship, and should be unnecessary. This could be avoided with civil authorities and better guidance for clergy so they can understand the difference between those who have already shown their relationship is genuine with those who have not.

Aside from that concern, with proper oversight, this partnership may help the government identify and deal with suspected cases of sham marriage.

Question 10: Should more documentation be required of foreign nationals wishing to marry in England and Wales to establish their entitlement to do so?

This proposal seems to be more about adding bureaucracy to the immigration process rather than combating sham marriages. If a person seeking to settle here or to adjust their status on the basis of marriage or a civil partnership is later found to be in breach of bigamy laws or marrying a close relative, their leave can be revoked. If a marriage is invalidated, it would follow that even naturalised citizens would risk losing their citizenship if fraud was used to obtain their naturalisation.

This proposal also may not be justified by the actual numbers of couples seeking entry clearance or leave to remain based on illegal marriages. What are the rates of immigrant marriages found to be invalid due to marriage to close relatives? What are the rates of those found to be invalid later due to bigamy? This proposal will add a disproportionate burden on to the overwhelming majority of marriages to foreign nationals which are legally legitimate. The UKBA and other governmental agencies can use existing laws to deal with those who are later shown in breach.

Question 11: Should some couples including a non-EEA national marrying in England and Wales be required to attend an interview with the UK Border Agency during the

time between giving notice of their intention to marry and being granted authority to do so?

There is no reason to believe legitimate couples would not be willing to submit to an interview. However, care should be made to allow any required interviews to be scheduled flexibly. Wedding plans for couples marrying in the UK should not be delayed by lack of available appointments. We support this proposal provided there is appropriate oversight and rights to appeal and the provision that congestion at the Public Enquiry Offices will not ruin wedding plans, and that those applying from abroad would not be subject to long waiting period whether applying for fiance visas or for those applying as those already in a marriage or civil union. The government must also ensure that cultural differences are handled sensitively, and that questioners understand that what may be an appropriate for one couple might not be for another based on the non-EEA spouse or partner's culture, whether the people performing the interview are Entry Clearance Officers in consulates abroad who may already have a good understanding of local culture or whomever will be tasked with conducting the increased number of interviews here in the United Kingdom.

Question 12: Should 'sham' be a lawful impediment to marriage in England and Wales?

Yes, provided the couple has the right to show that it is a legitimate marriage and the right to appeal any decision, and that a negative decision would not be a permanent impediment against the couple.

Question 13: Should the authorities have the power in England and Wales to delay a marriage from taking place where 'sham' is suspected?

Yes, provided the implementation involves reasonable and sparing use of this power with proper oversight with the registrars and not the Border Agency having final say in whether or not a wedding or civil union should proceed. Care should be taken to avoid legitimate marriages being delayed, especially considering the cost of planning a wedding and the personal inconvenience of having to reschedule weddings, then this would need to be re-examined. We also suggest compensation for couples whose wedding plans were disrupted where the government fails to show that the marriage or union was one based solely on the desire to provide a means for one of the people to immigrate.

Mistakes can be made, such as the recent case of Neil McIlwee and Yanan Sun in Northern Ireland. This genuine couple had their wedding day ruined when UKBA and local authorities swooped into their wedding, arrested them, and then had to release them later because the arrest was a blunder. The raid occurred just days after a series of Sunday tabloid reports on

sham marriages. This public inflammation and an anonymous tip off rather than actual investigative work was justification to lead this couple away in handcuffs on their wedding day.

We believe mistakes like this one are based on the assumption that anyone from outside the EU marrying a European or British national must be marrying for immigration purposes. It totally disregards the global world we live in where business, ease of travel, and the Internet has brought couples from around the world together. While a couple should need to provide evidence the partnership is genuine, the UKBA and other authorities should not criminalise love and marriage between people of different countries. The authorities also need to take into consideration all circumstances, including whether or not the investigation into whether a couple is a genuine couple was instigated by a tip-off where there may be other motives involved in reporting the pair to UKBA or other government authority. If there is evidence that the tip off was malicious, there should be consequences for the "tipster".

Delay should only take place where there is good reason to believe that the marriage or civil union will be a sham one, and when a mistake is made, the UKBA or other authorities should compensate the couple for the inconvenience and no arrest should be made unless there is solid evidence that the couple intends to circumvent immigration laws.

Question 14: Should local authorities in England and Wales that have met have high standards in countering sham marriage, be given greater flexibility and revenue raising powers in respect of civil marriage?

Our concern with this proposal is that this might lead to overzealous reports of suspected sham marriages. Not only does this risk adding unreasonable delays, checks, and bureaucracy for legitimate couples planning to marry in this country, the reports are then taken as an indication of an increase in sham marriage and not an increase in reporting marriages legitimate or not. "Suspected" sham marriages are not the same as sham marriages, but they are taken sometimes as exampled in this very consultation as "where there's smoke there is fire."

We have no problems with the Government recognising when councils have judiciously used the regulations to provide a quality service to their communities. That may mean discovering and reporting sham marriages or fraud, but it also means providing a service to those people who live there, some of whom may be marrying a non-EEA national. To provide a sort of race to see who can find the most sham marriages isn't the answer to this problem.

Question 15: Should there be restrictions on those sponsored here as a spouse or partner sponsoring another spouse or partner within 5 years of being granted settlement in the UK?

We see no problem with this limitation provided there is a means for people to appeal for an exception, particularly as a documented victim of abuse or a bereaved spouse.

Question 16: If someone is found to be a serial sponsor abusing the process, or is convicted of bigamy or an offence associated with sham marriage, should they be banned from acting as any form of immigration sponsor for up to 10 years?

We believe this is a reasonable proposal.

Question 17: Should we provide scope for marriage-based leave to remain applications to be counter-signed by a solicitor or regulated immigration adviser, as a means of confirming some of the information they contain?

Using an adviser or solicitor cosignatory for cases where there may be question of legitimacy (for instance a large age difference, met through a matchmaking site for women in developing countries, or a question about) may seem reasonable, but it raises a lot of questions.

How long would that adviser really confirm the legitimacy of their clients' relationship? How long would they know them? Should couples invite their adviser over for dinner? How would the adviser know that anything that a couple bent on defrauding the immigration system does indicates a real or fake relationship? Will the UKBA be issuing advisories to them? How would they then know that they won't face problems in the future of signing for too many couples who later turn out to be fraudulent marriages?

In the very least, having the lack of such a signature causing an application to be of concern where it wouldn't have been before is a bit unfair. Most people who do not have complicated applications should feel no need to have to hire an adviser or solicitor. This change to the guidance would add expense to an already expensive process.

Question 18: Should there be scope for local authorities to provide a charged service for checking leave to remain applications, including those based on marriage, as they can do for nationality and settlement applications?

This has the potential to be an excellent resource for people applying for leave to remain, and we support its implementation.

TACKLING FORCED MARRIAGE

Question 19: If someone is convicted of domestic violence, or has breached or been named the respondent of a Forced Marriage Protection Order, should they be banned from acting as any form of immigration sponsor for up to 10 years?

We see no reason to object to this provided there is a way for the sponsor to appeal in cases where the offenses are minor or there are mitigating circumstances.

Question 20: If the sponsor is a person with a learning disability or someone from another particularly vulnerable group, should social services departments in England be asked to assess their capacity to consent to marriage?

Provided the sponsor has the right to appeal, and this is not used as a means to deny people who would normally be seen as able to make the decision to marry. The learning disabled, if seen as able to consent to a marriage or union with a British national should not be subject to any more requirements than someone who is not disabled.

OTHER FAMILY MEMBERS

Question 21: Should there be a minimum income threshold for sponsoring other family members coming to the UK?

Any income requirements should be in line with the requirements for sponsoring a spouse or partner.

Question 22: Should adult dependants and dependants aged 65 or over complete a 5-year probationary period before they can apply for settlement (permanent residence) in the UK?

Ultimately, the security that is offered to immigrants and their families upon receiving permanent residency outweighs the benefits of extending the qualifying period, especially for the elderly. If there is a concern about the cost of supporting these types of immigrants, a restriction on access to public funds based on a time period rather than immigration status could be introduced. It is our understanding that elder and other adult dependents are a small proportion of family migrants. In fact, this type of immigration is rare under UK rules as they require it to be a last resort for such dependents. All other options in the home country are expected to be used before seeking to bring adult dependents into the United Kingdom,

and this limits the numbers of adult dependents receiving a visa or leave to remain. Overly long waiting periods for permanent residence or even access to benefits will only put undue strain on the small number of families who qualify for this stream. We believe this proposal is purely political with little or no benefit to the British public.

Question 23: Should we keep the age threshold for elderly dependants in line with the state pension age?

We believe it should be kept with the state pension age.

Question 24: Should we look at whether there are other ways of parents or grandparents aged 65 or over being supported by their relative in the UK short of them settling here? If yes, please make suggestions.

This is already a requirement under British immigration rules. Any change would have to fall onto EEA rules, and the Westminster's ability to change these policies in a meaningful way are doubtful.

Question 25: Should there be any change to the length of leave granted to dependants nearing their 18th birthday? If yes, please make suggestions.

There should be no change in the length of leave granted to dependents in their late teens. This period of life is one of the times when children need the security of having easy access to their parents and the family home when the need arises. The transition to adulthood can be stressful on young people, and changing the laws to separate families during the period where they are expected to take their first steps in the world on their own is cruel and unnecessary. We expect immigrants, regardless of age, to adjust and adapt to their new home. This measure will do the opposite. How can this government expect a 16 year old to form any sort of allegiance to the UK if the prospect of being booted out before he or she can obtain permanent residence? What sort of effect does this government think this will have on extremism in young people?

Young people need family in their late teens, whether they are entering the job market, going onto further education, or starting their own families. Furthermore, the prospect of being separated from their children gives the foreign parent(s) no incentive to feel that the United Kingdom is their home. If their children have to return to their home countries, how can they feel settled in any way.

While we realise that immigration rules currently separate families whose children have recently passed their 18th birthday, to not grant children who actually live here for a period a road to settlement is a cold, political proposal. On one hand, the British immigration system denies the right for 18-21 year olds to marry and sponsor a foreign spouse (or sponsor a

foreign spouse who is between 18-21), yet they want to say that once 18, children of recent immigrants are on their own if they haven't obtained permanent settlement?

Question 26: Should dependants aged 16 or 17 and adult dependants aged under 65 be required to speak and understand basic English before being granted entry to or leave to remain in the UK?

We see no issue with requiring teenagers to learn basic English or to enroll in basic English courses if they cannot pass the test upon entry. We do not support rejecting applications and forcing families to choose between their children and immigrating to the UK if a teenager fails to pass a test. Settlement should and does require a higher English proficiency. There should be exemptions, of course, for those who cannot take or pass an English test because of disability.

The elderly are different. As a person ages, it becomes harder for them to learn a language, even for those not experiencing any serious age related mental decline. Any language requirement for those over 65 should take that into consideration. We wouldn't rule out testing, but do not support rejecting applications for the elderly if they cannot pick up a language. We suggest requiring those who cannot pass basic English tests to enroll in English as a second language classes unless disability prohibits it.

Question 27: Should adult dependants aged under 65 be required to understand everyday English before being granted settlement (permanent residence) in the UK?

The requirements for the elderly should be at a much more basic level than those younger. It should also be very generous in taking physical and mental disabilities into consideration.

POINTS-BASED SYSTEM DEPENDANTS

Question 28: Should we increase the probationary period before settlement (permanent residence) in the UK for points-based system dependants from 2 years to 5 years?

The 'test for genuineness' should not be any more arduous on PBS dependants than it is for spouses of UK citizens, particularly if there is no evidence that this is a route of abuse for settlement in the UK. This would also cause problems for genuine relationships of longer-standing but where the dependants were not able to join the primary applicant immediately for some reason, such as previous work or study commitments, and would create a situation where the primary applicant has ILR but his dependants don't.

Question 29: Should only time spent in the UK on a route to settlement count towards the 5-year probationary period for points-based dependants?

As potential PBS dependants who are in the UK on another form of leave already have to leave the country to apply, and thus reset their 'settlement clock', this proposal does not make sense.

Question 30: Should we require points-based system dependants to understand everyday English before being granted settlement (permanent residence) in the UK?
PBS dependants who are not exempt from the English language requirement (i.e. KOL test or ESOL+citizenship course) must already satisfy this requirement, so this proposal is redundant. It would be hoped that the UKBA is already aware of its own existing policies.

OTHER GROUPS

Question 31: In what other ways could the UK Border Agency improve the family visit visa application process, in order to reduce the number of appeals?

Changing the rules to make it a no-switch stream will probably limit the number of appeals.

Question 32: Beyond race discrimination and ECHR grounds, are there other circumstances in which a family visit visa appeal right should be retained? If yes, please specify.

We believe that appeal in these and all other cases should be extended to include disability issues.

Question 33: Should we prevent family visitors switching into the family route as a dependent relative while in the UK?

We believe that prohibiting switching would be the best way to fix many of the problems that arise with the family visit visa. Although we do not have many members of our community who use them, we feel that this is an obvious solution. Those on other forms of visitor visas cannot switch, so we see no reason to not have the same requirements for those using or sponsoring someone with the family visit visa.

ECHR ARTICLE 8: INDIVIDUAL RIGHTS AND RESPONSIBILITIES

Question 34: Should the requirements we put in place for family migrants reflect a balance between Article 8 rights and the wider public interest in controlling immigration? Please comment further if you wish.

It is difficult to answer this without defining what is a public interest. We can look to this consultation which uses language such as “uncontrolled immigration” to get an idea of what the drafters of this consultation mean. Anyone with any understanding of the United Kingdom’s immigration regulations know that there is no such thing as uncontrolled

immigration when talking about the laws that the Parliament in Westminster can change. Shall we define what is a public interest based on what Migrant Watch, a far-right, anti-immigration organisation, who released their proposals for UK immigration law, most of which have ended up in this consultation? We are very concerned that a desire to appear tough on immigration and what is in the electoral interest of the government is being confused with the greater public interest.

Based on the proposals in this consultation, it seems that the Government at times wishes to pick and choose which regulations to implement from other European governments (without adding the counterbalances which protect their citizens rights). What will protect the UK and her citizens from reactionary, populist legislation which has nothing to do with improving the lives of the British public is ECHR Article 8.

There are times when actual public interests would supersede the right of European citizens and permanent residents to a family life. These are real and actual threats, not perceived or based on populist opinion. The government already has the power to act upon these threats, but it is our understanding that it is asking for a broad expansion of these powers to reduce family based migration numbers, a motive in itself that does not justify the potential disruption to the lives of law abiding British families and their non-EEA family members.

When considering the ability for citizens and residents to emigrate to their spouse's or partner's home country, we should consider the feasibility of that citizen or resident to obtain residence in the second country, and if the rights and protections afforded here are available in that other country. We should consider the disruption to personal and professional lives, the availability of affordable medical care, and the right for British citizens and residents to determine where they would like to live with their family.

The rights set out in the ECHR are binding, and the government is not free to vary them while it remains a member of the Council of Europe, regardless of the legislation it passes. Those rights are not absolute, but neither is there scope for the government to unilaterally declare what is in public interest.
Attempting to rewrite the law will result in a return to the pre-1998 status, where cases must be taken before the ECJ or the ECHR rather than being dealt with in domestic courts. Hampering the processes of justice in this way -- and redirecting the blame for unpopular decisions to European courts -- might be politically expedient, but it will do nothing to improve control of immigration.

The recent Zambrano decision is a prime example of a case heard at European level which binds the government and which new laws on human rights would not affect. It would be hoped that government takes sound legal advice before attempting to circumvent the protections guaranteed by the Convention. Introducing legislation that will inevitably be

invalidated in the courts is a egregious waste of taxpayers' money and is objectionable on that basis alone. Invoking human rights is a last defence against unreasonable and oppressive laws.

If the government genuinely believes in human rights, it would be better off drafting compliant legislation than attempting to adjust the definition of fundamental rights.

Question 35: If a foreign national with family here has shown a serious disregard for UK laws, should we be able to remove them from the UK? Please comment further if you wish.

When an immigrant is convicted of certain very serious crimes, then this concrete indication of whether the state's right to protect the public outweighs an individual's right to a family life. Incidents where the government would be able to wield this power should be rare and justified. We feel the crimes covered by this exception should be clearly defined and pose a real threat to the greater good, such as acts of terrorism, murder, or violent sexual offenses.

However, particularly after a certain point in the immigration process, namely naturalisation, but also years of law abiding permanent resident, it seems that the threat of being deported, especially over minor mistakes should be a distant one. Unless an act directly involves clear fraud in his or her applications for leave to remain or citizenship, a naturalised citizen should not be considered a second class citizen. If they commit a crime of any sort, they should be dealt with through the justice system just like a born citizen, and not have where they were born open the additional avenue of punishment through citizenship revocation. Reserving the punishment of banishment from family for settled persons who happen to be foreign-born undermines the principle of equality under the law.
The government already has the right to remove citizenship and deport residents under certain circumstances. We are worried that an expansion of these circumstances and the addition of hazier definitions of what justifies such an action by the government could lead to misuse, particularly if these justifications are seen to take precedence over Article 8 rights.

We support a nation's right to protect the public from serious criminals who abuse the right to a family life in order to remain in a country whose laws they have ignored or seek to undermine. We, however, think that without clear definitions, the place of birth of a person living here, even as a naturalised citizen, is used as a secondary punishment. We feel that the serious step of removal of citizenship or deportation, particularly for long term residents, should be rare and clearly justified, particularly if this would mean that innocent family members would have to choose between separation and leaving the country to live with their loved ones.

Question 36: If a foreign national has established a family life in the UK without an entitlement to be here, is it appropriate to expect them to choose between separation from their UK-based spouse or partner or continuing their family life together overseas? Please comment further if you wish.

We do not feel that asking the person without leave to return to their country when possible to apply for entry clearance is unreasonable. However, when dealing with legitimate relationships, we do not feel that there should be a change to the current policy of not issuing bans to family applicants unless there is evidence of fraud or serious deception.

Demanding that foreign nationals who have established family lives in the country leave without any recourse to regularisation of their status is only likely to lead to many families living underground in perpetual fear of separation. The formation of a relationship with a British citizen or settled person is a legitimate reason to remain in the UK, regardless of the circumstance in which that relationship was formed. Those who have established life here should be offered the chance to regularise their status if they can satisfy the same basic tests applied to applicants with legal status.