

# **IMMIGRATION DIRECTORATE INSTRUCTIONS**

## **FAMILY MEMBERS UNDER APPENDIX FM OF THE IMMIGRATION RULES**

### **Annex FM Section FM 2.0**

#### **Genuine and Subsisting Relationship**

An assessment of whether an applicant's relationship with their partner is subsisting (which was regarded as including whether a relationship was genuine) has always formed part of the consideration of an application by the UK Border Agency. This document replaces existing guidance and applies to any application under the Immigration Rules submitted before, on or after 9 July 2012, including under Part 8 of the rules.

#### **SECTION CONTENTS**

- 1. Introduction**
- 2.0 Genuine and subsisting**
  - 2.1.** Leave to enter, leave to remain, further leave to remain and indefinite leave to remain applications.
- 3.0 Assessment of whether a relationship is genuine and subsisting**
  - 3.1** Factors which may be associated with a genuine and subsisting relationship
  - 3.2** Factors which may be associated with a relationship which is not genuine and subsisting

#### **Genuineness of relationship**

## 1.0 Introduction

This section covers those who apply for leave to enter or remain or for indefinite leave to remain in the United Kingdom on the basis of family life with a person who is:

- a British Citizen
- settled in the UK
- in the UK with refugee leave or
- in the UK with humanitarian protection

and who is their partner. In this guidance the term 'partner' means the applicant's fiancé(e), proposed civil partner, spouse, civil partner, unmarried partner or same sex partner, unless otherwise stated.

In Appendix FM, an unmarried partner or a same sex partner means a person who has been living with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application.

The following guidance provides factors that caseworkers must consider when assessing whether a relationship is genuine and subsisting and whether the requirements within the Immigration Rules have been met. A sham marriage and a forced marriage are not regarded as genuine and subsisting relationships.

## 2.0 Genuine and subsisting

Family migration must be based on a genuine and subsisting relationship. An applicant and their partner must provide evidence that they are in a genuine and subsisting relationship.

Caseworkers must consider the objective factors set out below when assessing an application for leave to enter, leave to remain or indefinite leave to remain in the United Kingdom. The outcome of an assessment may prompt additional scrutiny from caseworkers to identify and evidence a non-genuine, non-subsisting relationship (which may include a sham marriage or forced marriage) or, where indicated below, may result in an outright refusal.

The list of factors to consider, set out below, is **not** to be considered as a checklist. Its purpose is to assist and focus consideration of whether an applicant meets the genuine and subsisting requirement.

**Decisions on whether a relationship is genuine and subsisting are to be considered as a whole, based on all the available evidence, on a case-by-case basis taking account of all the circumstances of the application.**

### 2.1 Leave to enter, leave to remain, further leave to remain and indefinite leave to remain applications

Whether the relationship is 'genuine and subsisting' has to be considered at the

entry clearance/leave to remain, further leave to remain and indefinite leave to remain stages of the immigration process. The factors will inform casework decisions across these stages, but some will be relevant to one stage (e.g. entry clearance/leave to remain) and not others, or more relevant to one stage than others.

### **3.0 Assessment of whether a relationship is genuine and subsisting**

Caseworkers must be alert and sensitive to the extent to which religious and cultural practices may shape the factors present or absent in a particular case, particularly at the entry clearance/leave to remain stage. For example, a couple in an arranged marriage may have spent little if any time together prior to the marriage. For many faiths and cultures marriage marks the start of a commitment to a lifelong partnership and not the affirmation of a pre-existing partnership.

Caseworkers must take into account normal practices for marriages and family living according to particular religious and cultural traditions when considering the factors present or absent in each case. In particular, evidence of pre-marital co-habitation and joint living arrangements can be a factor associated with a genuine relationship; equally, their absence can be too. In some cultures it is traditional for the household accounts, bills etc to be in the name of the male head of the household (who could be the male partner or their father or grandfather).

Caseworkers have discretion to grant or refuse an application based on that overall assessment, regardless of whether one or more of the factors below is, or is not, present in the case. Consideration of whether a relationship is genuine and subsisting is not a checklist or tick-box exercise.

In assessing whether a relationship is genuine and subsisting, consideration should be given to the following factors listed in section 3.1 and section 3.2, which are not exhaustive.

#### **3.1 Factors which may be associated with a genuine and subsisting relationship**

- (i) The couple are in a current, long-term relationship and are able to provide satisfactory evidence of this.
- (ii) The couple have been or are co-habiting and are able to provide satisfactory evidence of this.
- (iii) The couple have children together (biological, adopted or step-children) and shared responsibility for them.
- (iv) The couple share financial responsibilities, e.g. a joint mortgage/tenancy agreement, a joint bank account and/or joint savings, utility bills in both their names.

- (v) The partner and/or applicant have visited the other's home country and family and are able to provide evidence of this. (The fact that an applicant has never visited the UK must not be regarded as a negative factor, but it is a requirement of the Immigration Rules that the couple have met in person).
- (vi) The couple, or their families acting on their behalf, have made definite plans concerning the practicalities of the couple living together in the UK. In the case of an arranged marriage, the couple both consent to the marriage and agree with the plans made by their families.

### **3.2 Factors which may be associated with a relationship which is not genuine and subsisting**

If a case contains one or more of the factors listed below, this may prompt additional scrutiny of the application but will not necessarily result in a negative decision. Caseworkers must continue to look at the circumstances of the case as a whole.

Even where additional scrutiny has been prompted by any of the following factors, it does not necessarily mean that the relationship is not genuine and subsisting.

The factors which **may** prompt additional scrutiny of an application include those listed below. Some factors **may** also, where specifically stated, lead to a refusal of an application without additional scrutiny but again, before deciding, caseworkers must continue to look at the circumstances as a whole:

- (i) If the marriage or civil partnership took place in the UK, a report – of a suspected sham marriage or civil partnership - was made by the registration service under section 24 of the Immigration and Asylum Act 1999.
- (ii) The applicant or partner makes a public statement that their marriage is a sham. An application can be refused on the basis of such a public statement alone.
- (iii) The applicant or partner makes a public statement (not in confidence) that they have been forced into marriage. An application can be refused on the basis of such a public statement alone.
- (iv) A sibling of the partner or applicant has been forced into marriage.
- (v) The applicant, partner or an immediate family member of either is or has been the subject or respondent of a forced marriage protection order under the Forced Marriage (Civil Protection) Act 1997 or the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 1999.

An application can be refused on the basis alone of a current order involving the applicant or partner.

- (vi) There is evidence from a reliable third party (e.g. the Forced Marriage Unit, police, social services, registration service or a minister of religion) which indicates that the marriage is or may be a sham marriage or a

forced marriage. (It may not be possible for this information to be used in any refusal notice). The fact that a third party indicates that in their opinion a marriage, partnership or relationship is genuine must not be afforded any weight.

- (vii) The applicant or partner does not appear to have the capacity to consent to the marriage, partnership or relationship, e.g. owing to learning difficulties, and independent evidence, e.g. from a social services assessment, has not been provided to confirm that such capacity exists.
- (viii) There is evidence of unreasonable restrictions being placed on the applicant or partner, e.g. being kept at home by their family, being subject to unreasonable financial restrictions, attempts to prevent the police or other agencies having reasonable, unrestricted access to the applicant or partner.
- (ix) Failure by the applicant or partner to attend an interview, without reasonable explanation, where required to do so to discuss the application or their welfare, or seeking to undermine the ability of the UK Border Agency to arrange an interview, e.g. by unreasonable delaying tactics by the couple or a third party.
- (x) The couple are unable to provide any information about their intended living arrangements in the UK or about the practicalities of the applicant moving to the UK.
- (xi) The circumstances of the wedding ceremony or reception, e.g. no or few guests and/or no significant family members present.
- (xii) The couple are unable to provide accurate personal details about each other (e.g. name, age, nationality, employment, parent's names and place of residence), provide inconsistent evidence, or do not have a shared understanding of the core facts of their relationship, e.g. how and where they met for the first time.
- (xiii) The couple are unable to communicate with each other in a language understood by them both.
- (xiv) There is evidence of money having been exchanged for the marriage to be contracted (unless this is part of a dowry).
- (xv) There is a lack of appropriate contribution to the responsibilities of the marriage, partnership or relationship, e.g. a lack of shared financial or other domestic responsibilities.
- (xvi) Matrimonial co-habitation is not maintained (except where one party is working or studying away from home) or there is no evidence that they have ever co-habited since the marriage.
- (xvii) The applicant is a qualified medical practitioner or professional, or has worked as a nurse or carer, and the partner has a mental or physical impairment which currently requires medical assistance or personal care in their own accommodation.

- (xviii) The partner has previously sponsored another partner to come to or remain in the UK.
- (xix) The partner has previously been sponsored as a partner to come to or remain in the UK (i.e. the partner has obtained settlement on this basis) and that marriage, partnership or relationship ended shortly after the partner obtained settlement. This excludes circumstances where the partner is a bereaved partner, or where the partner obtained settlement on the basis of domestic violence perpetrated by their former partner.
- (xx) If the partner was married to or in a partnership with the applicant at an earlier date, married or formed a partnership with another person, and is now sponsoring the original partner to come to or remain in the UK.
- (xxi) The past history of the partner and/or the applicant contains evidence of a previous sham marriage or forced marriage, or of unlawful residence in the UK or elsewhere.
- (xxii) The applicant has applied for leave to enter or remain in the UK in another category and been refused.

In this guidance 'additional scrutiny' means that where a caseworker has doubts that a relationship is genuine and subsisting, they must consider whether further information needs to be obtained, and the application investigated further, before they are able to make a decision on the case.

In forced marriage cases the UK Border Agency guidance on forced marriage should also be considered alongside this guidance to ensure we take into account the personal safety of the victim of forced marriage.