



Home Office

Rt Hon James Brokenshire MP  
Immigration Minister

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Anne Longfield OBE  
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Dear Ms Longfield,

Thank you for sending me a copy of your report, published on 9 September, on the impact on children of the minimum income threshold for sponsoring a non-European Economic Area (non-EEA) national spouse or partner to come to or remain in the UK under the family Immigration Rules.

The purpose of the minimum income threshold, implemented on 9 July 2012 with other reforms of the family Immigration Rules, is to ensure that family migrants are supported at a reasonable level so that they do not become a burden on the taxpayer and they can participate sufficiently in everyday life to facilitate their integration into British society. We welcome those who wish to make a life in the UK with their family, work hard and make a contribution, but family life must not be established here at the taxpayer's expense and family migrants must be able to integrate if they are to play a full part in British life.

The minimum income threshold was set, following advice from the independent Migration Advisory Committee, at £18,600 for sponsoring a spouse or partner, rising to £22,400 for also sponsoring a non-EEA national child and an additional £2,400 for each further such child. This reflects the level of income at which a British family or a family settled in the UK generally ceases to be able to access income-related benefits.

The relevant Immigration Rules have been approved by Parliament, which also reinforced the public interest under the ECHR Article 8 right to respect for private and family life in migrants being financially independent through section 19 of the Immigration Act 2014. The policy has been tested and upheld by the courts as lawful (in particular, by the Court of Appeal in *MM & Others*), including under Article 8 and under the Secretary of State's duty in section 55 of the Borders,

Citizenship and Immigration Act 2009 to safeguard and promote the welfare of children in the UK.

You are concerned about the impact of the minimum income threshold on families and made several proposals for changes to the rules and how they are implemented.

### **Meeting the minimum income threshold**

You suggest that the migrant partner's potential earnings should be allowed to count towards meeting the minimum income threshold and that third party support, including low-cost or free accommodation, should also be taken into account.

Employment overseas is no guarantee of finding work in the UK. Migrant partners with an appropriate job offer can apply to come here under Tier 2 of the Points Based System. Those using the family route to come to the UK must be capable of being independently supported by their sponsor and/or by their joint savings or non-employment income. It is essential for a properly sustainable system of family migration that couples wishing to establish their life together in the UK can stand on their own feet financially.

Promises of third party support are vulnerable to change in another person's circumstances or in the sponsor or applicant's relationship with them: that is not the basis for a sustainable system. We do allow cash savings to be counted in place of income to meet the threshold and these can originate in a gift from a third party, provided the money is now under the couple's control. The applicant and sponsor can also rely on accommodation (free or not) provided by a third party in order to meet the requirement for adequate accommodation, but the minimum income threshold takes account of GB-average rent and council tax, so that the couple can be expected to make their own arrangements if need be, again as the basis for a sustainable system of family migration.

You suggest that the minimum income threshold should vary by region to reflect earning levels. The Migration Advisory Committee noted several arguments against setting regional income thresholds and concluded that there was no clear case for doing so. For example, it would mean that a better-off sponsor in a relatively less well-off region would have to meet a lower income threshold than a poorer sponsor in a higher income region. Having a single national threshold also provides clarity and simplicity for applicants, sponsors and caseworkers. The courts have agreed that a single, national threshold is lawful. In addition, the Annual Survey of Household Earnings shows that in 2014 the median gross earnings of those in employment exceeded £18,600 in every country and region of the UK.

You suggest that the £16,000 threshold before savings are counted should be reduced and that assets (e.g. equity in property) should be counted without being liquidated. Cash savings of £16,000, like a gross annual income of £18,600, generally prevents access to income-related benefits. So to reduce that threshold would risk family migrants becoming a burden on the taxpayer once they reach settlement (Indefinite Leave to Remain) and gain full access to the welfare system. If they do not have the required level of income, family migrants and their sponsor will need cash to live off, not simply assets. It is reasonable to expect applicants and sponsors with such means at their disposal to organise their personal finances to meet the requirements of the family Immigration Rules. The courts have agreed.

You also suggest reducing the minimum income threshold to the equivalent of the National Minimum Wage (around £13,000 a year for a person in full-time employment). A couple with income equivalent to the National Minimum Wage can still access income-related benefits and tax credits. So a minimum income threshold set at that level would not be sufficient to prevent burdens on the taxpayer once the migrant partner reached settlement and had full access to welfare benefits. It would also provide less support for the migrant partner's integration in society.

### **Best interests of children**

You recommend the inclusion of a requirement in the Immigration Rules to identify and consider the best interests of children as a primary consideration in immigration decision-making. That is what the law already requires and the family Immigration Rules and their application by the Home Office reflect that. The courts have confirmed that the minimum income threshold complies with the Secretary of State's section 55 duty.

### **Forms and guidance**

You suggest that forms and guidance should be amended to ensure that children's best interests are properly considered in the decision-making process. Application forms ask for information relevant to ensuring that the decision on the application reflects the relevant requirements of the family Immigration Rules and the Secretary of State's section 55 duty. This is also emphasised in published guidance. However, any specific suggestions you may have for improvements may be directed to the Asylum & Family Policy Unit and will be considered carefully.

### **Application costs**

You suggest that a reduction in the cost of applications and the application process should be considered. It is right that fees for visa applications for family migrants to come to the UK with a view to settling permanently here should

reflect both the full cost of the administration required to consider and decide those applications effectively and the considerable benefits that will accrue to the migrants concerned if their application is granted. We also consider it right that family migrants not exempt from it should pay the Immigration Health Surcharge and thereby contribute to the costs of the NHS to which they will have access.

### Visitor visas


You would like to see more visitor visas granted to parents of children living in the UK. Parents of children living in the UK will be granted a visa to visit the UK where they meet the relevant visitor Immigration Rules. This includes satisfying the Entry Clearance Officer that they will leave the UK before the expiry of their visit visa.

### Data collection and publication

You suggest that data relating to children of an applicant and/or sponsor should be collected and published. We will look closely at what improvements may be possible, including at the scope for more child-related data to be transferred to, and then accessed from, our IT systems from the application process, including from visa4UK.

In relation to data, we have now had an opportunity to consider the analysis contained in the report you commissioned from Middlesex University and the Joint Council for the Welfare of Immigrants. The Annex to this letter contains some detailed observations, which in particular suggest that the report considerably overestimates the number of children affected by the minimum income threshold.

I look forward to the opportunity of discussing with you the issues raised in the reports at our next meeting.

Yours sincerely,  
  
Rt Hon James Brokenshire