



Forced Marriage and the Supreme Court – What Next?

In [Legal Briefing Paper MW 240](#) I summarised the judgement of the Supreme Court in the case of *Quila*, decided in October 2011. In 2008 Rule 277 of the Immigration Rules had been amended to raise the minimum age for the issue of marriage visas from 18 to 21. The motivation behind this amendment was to deter forced marriages rather than immigration control. The Supreme Court ruled by a majority that the amendment was not compatible with Article 8.1 of the European Convention on Human Rights (ECHR) because it also prevented parties to genuinely consensual marriages from living together in the United Kingdom and was therefore disproportionate as a means of dealing with the social evil of forced marriages. There is no appeal beyond the Supreme Court and the purpose of this further paper is to consider what other courses of action are open to the government as means of combating forced marriages.

2 In 2007 Parliament enacted the Forced Marriage (Civil Protection) Act. As its name implies, the Act provides civil sanctions in the form of Forced Marriage Protection Orders against parents or others who may be party to arranging forced marriages. Such Orders may be obtained by potential victims of forced marriage or by third parties who may seek them on behalf of potential victims. The possibility of making it a criminal offence to arrange a forced marriage was considered at the time when the Bill was going through Parliament, but was rejected. Other serious offences such as rape, false imprisonment and in some horrific cases murder have been committed in connection with organising forced marriages and the Home Affairs Committee of the House of Commons has recommended creating the further offence of arranging a forced marriage. Migration Watch supports this recommendation.

3 In July 2011 the United Kingdom Border Agency issued a consultation paper on various aspects of immigration law affecting families, including forced marriage. Migration Watch responded to the consultation paper in October 2011 and the paragraphs which follow are based on that response.

4 Rule 281 of the Immigration Rules sets out the requirements to be met by applicants for marriage visas. In the context of forced marriage requirement (iii) is obviously important:

“each of the parties intends to live permanently with the other as his or her spouse... and the marriage... is subsisting”.

Rule 290 sets out the requirements for leave to enter the UK as a fiancé(e) and the corresponding requirement (iii) states:

“each of the parties intends to live permanently with the other as his or her spouse...after the marriage”.

These requirements must obviously be based on a properly consensual marriage and are not compatible with a marriage which one of the parties has been forced against his/her will to enter. If compliance with this requirement is to be properly checked before the clearance sought is granted, ideally both parties should be interviewed separately. Unfortunately the practice which has now been in operation for some time is to grant spouse and fiancé(e) visas without interviews, simply

relying on written assurances. In our response to the consultation paper we have suggested that requirement (iii) should be considerably strengthened by making it mandatory that a whole list of factors by which the genuineness of consent to a marriage should be assessed is taken into account. Unfortunately failure to interview means that compliance with these additional requirements cannot be checked. The list of factors is set out in the following suggested additional sub-clause, the text of which was included in our response.

(1) In assessing whether the requirement at paragraph 281(iii) has been met, regard shall be had to the following matters:

- (i) the length of time that the parties to the marriage or civil partnership have known each other;*
- (ii) any cultural, religious, educational, language or age differences between the parties;*
- (iii) whether there has been undue pressure on either party to enter into marriage or civil partnership from family members or others;*
- (iv) whether there is any evidence that money has changed hands between the families in the course of arranging the marriage;*
- (v) whether both parties have genuinely consented to the marriage or civil partnership;*
- (vi) whether there has been any discussion between the parties concerning the practicalities of living together in the United Kingdom;*
- (vii) whether it is in accordance with the custom of the community concerned that the person seeking leave to enter should move to the family of the other party to the marriage or civil partnership.*
- (viii) whether it appears to be the case that obtaining leave to enter the United Kingdom was a significant factor in the parties' entering into the marriage or civil partnership.*

(2) In considering the factor mentioned at subparagraph (1)(vii) above the decision taker shall have regard to the custom in many societies that the woman normally moves to the man's family and not vice versa.

(3) The list of factors set out in subparagraph (1) is not exhaustive.

4 We said in our response to the consultation paper mentioned in paragraph 3 that we supported all the government's proposals for dealing with forced marriages. Paragraph 4.9 of the consultation paper stresses "the willingness of the victim or potential victim to seek help and if necessary to state publicly that a marriage is forced". It is important that victims who are pressed by their families to act as sponsors in applications for marriage visas for foreign nationals should be able to make it clear to entry clearance officers and immigration judges that they are unwilling sponsors, if that is the case. In paragraph 4 I have pointed out the deficiency of evidence available to entry clearance officers and immigration officers because applicants are no longer interviewed. When I was sitting as an immigration adjudicator (as immigration judges were previously designated) I had experience of cases of this kind. In the hearing of appeals against refusal of a marriage visa, the appellant's case would be presented by the sponsor, usually the wife, who would be accompanied by her parents and there would often be indications that she was inhibited from saying that she did not want to marry the appellant or, as the case might be, have him admitted into the UK. In one rare case I had before me a sponsor on her own who said in unequivocal terms that she did not want the appellant, whom she had married outside the UK, to join her in the UK. I had no hesitation in concluding that the appeal must be dismissed. In other cases the immigration judge may be obliged to draw what conclusions he can from other evidence in assessing whether the sponsor is a willing party. But whether the sponsor's parents or other relations were with her or not, the immigration judge who decides that the appeal must be dismissed is faced with the possibility that if he includes in his determination, as he is required to do by law, an accurate account of the proceedings and of his conclusions on the evidence, the sponsor will incur the serious displeasure of her family and may even be murdered because she is, according to the family's perceptions, bringing shame on them by refusing to marry the man they have chosen. Immigration judges have sometimes thought it expedient to refrain from stating accurately what the sponsor had said or what conclusions he drew from the evidence, but nevertheless at the end the decision must be that the appeal must be dismissed.

6 It is against this background that we suggested in response to the consultation paper that there should be amendments to the Procedure Rules which regulate the hearing of immigration appeals, allowing the immigration judge to exclude relations and others accompanying the sponsor from the hearing for the purpose of giving the sponsor the opportunity to state frankly whether she is a willing party to the match. The Rules should also permit the writing of a separate confidential part of the determination recording evidence given by the sponsor pursuant to such a rule. We

appreciate that such amendments would be a matter for the Ministry of Justice, but the UKBA clearly has an interest. We are not familiar with what instructions are given to caseworkers and others who may interview sponsors, but any amendments to these to similar effect would obviously not require legislation.

7 It remains open to the UKBA to continue to issue marriage visas as before, but with a minimum age for applicants of 18 instead of 21. The following is a summary of the further possibilities for guarding against forced marriages discussed in the foregoing paragraphs:

1. **New legislation making it an offence to organise or otherwise be involved in setting up forced marriages.**
2. **Revert to the regular practice of interviewing marriage visa applicants and sponsors.**
3. **Emphasise in the training of UKBA staff the significance of ensuring that requirement (iii) in Rules 281 and 290 of the Immigration Rules is properly met, i.e. that the marriage or planned marriage is or will be genuinely consensual.**
4. **Amend the Immigration Rules by inserting a new Rule as set out above, amplifying the interpretation of requirement (iii) in Rules 281 and 290.**
5. **Amend Procedure Rules regulating the hearing of immigration appeals so as to allow immigration judges to exclude from the hearing relations or other persons accompanying sponsors so as to ensure that sponsors are not inhibited in giving evidence.**
6. **Further amend Procedure Rules so as to allow immigration judges to record separately in their determinations evidence given by sponsors or other witnesses giving evidence in support of sponsors attending hearings alone or in the absence of relations or other persons accompanying them following their exclusion from the hearing in accordance with 5 above.**

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