

January 2024

## **Increase in the Minimum Income Requirements for family visa applications**

On 4 December 2023, the Secretary of State made a statement in the House of Commons, setting out the government's 5 point plan to reduce net migration. Amongst other provisions is the plan to increase the minimum income requirement for family visas for British Citizens and those who are settled in the UK. This was initially going to rise from the minimum income threshold of £18,600 per annum to £38,700 per annum, but was changed to £29,000 per annum on 21 December 2023. The provision is due to come into force in the spring of 2024 and will only apply to first time applications.

Those who already have a family visa within the five year partner route, or who apply before the minimum income threshold is raised, will continue to have their applications assessed against the current income requirement and will not be required to meet the increased threshold. People applying for indefinite leave to remain after being on a partner visa are also required to meet the minimum income requirement. At present, it is uncertain whether the exemption also applies to them. The Home Office says full details will follow.

## **What options are available to those who are unable to fulfil the minimum income requirement of £29,000 per annum?**

### **Third Party Support:**

A credible guarantee of third party support can be used to fulfil the minimum income requirement in exceptional circumstances, where the refusal of a visa or permission to remain could result in unjustifiably harsh consequence for the applicant, their partner or a child under 18, resulting in a breach of the right to family life under Article 8 of the European Convention on Human Rights.

### **Article 8: Right to Family Life**

There is a general obligation for the Home Office to consider, when refusing a family visa, whether such refusal would result in unjustifiably harsh consequence for the applicant, their partner, a child under 18 or another family

member whose Article 8 rights, evident from the information, would be affected by the decision to refuse the application resulting in a breach of Article 8 right to family life. Relevant considerations in making a decision on this may include:

- a) Section 55 of the Borders Citizenship and Immigration Act 2009 and Article 3 of the UN Convention on the Rights of the Child, that impose an obligation on the Home Office to give primary consideration to the best interests of a child affected by an immigration decision.
- b) Whether the rights of a British Citizen child are going to be undermined by the refusal of the family visa. In *ZH (Tanzania)* (2011) UKSC 4, the House of Lords emphasized the intrinsic importance of a child's British Citizenship in assessing the proportionality of a decision.
- c) In assessing the proportionality of refusal under Article 8, the question of whether the British Citizen or settled partner will face any significant obstacles or difficulties in relocating to live with the foreign partner abroad will also be relevant.
- d) All the facts and circumstances that are specific to the applicant and their family will also need to be considered.

### **Conclusion:**

Chris Smyth, the Whitehall editor of the Times, noted that three quarters of British people are now 'too poor to marry a foreigner'. It is expected that there will be an increasing number of applicants who may have to rely on the exceptional circumstances provisions for their family visa applications.

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If you would like advice or assistance on any of the issues raised in this note/article, please contact Agnes Lai by email at

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