

# EXILED AND BROKEN: NEW AMENDMENTS TO UK'S DISCRIMINATORY IMMIGRATION RULES MAKE "HOMEMAKING" IMPOSSIBLE FOR UK WOMEN

## I. INTRODUCTION

On September 9, 2013, the Home Affairs Section of the United Kingdom ("UK") Parliament issued a Standard Note detailing new amendments ("Amendments") to the Immigration Rules.<sup>1</sup> The Amendments affect British citizens<sup>2</sup> or UK settled persons<sup>3</sup> ("UK citizens") who wish to sponsor a spouse, partner, or fiancé(e) who is not a citizen of a European Economic Area state ("non-EEA partner").<sup>4</sup> Sponsorship is a necessary evil for those who wish to obtain a visa and

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1. See generally Melanie Gower, *Changes to Immigration Rules for Family Members*, HOUSE OF COMMONS LIBRARY STANDARD NOTE SN/HA/6353 (Sept. 9, 2013) (on file with author).

2. British citizenship is just one form of British nationality, and it largely depends upon when a person was born. *Types of British Nationality: 1. Overview*, GOV.UK (July 26, 2015), <https://www.gov.uk/types-of-british-nationality/overview> [hereinafter *British Nationality*]. Any person born before January 1, 1983 is a British citizen if he or she was both a citizen of the UK, or Colonies, and had the right of abode in the UK. *Types of British Nationality: 2. British Citizenship*, GOV.UK (July 27, 2015), <https://www.gov.uk/types-of-british-nationality/british-citizenship> [hereinafter *British Citizenship*]; for a full list of British Colonies see *UK and Colonies*, GOV.UK, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/258242/ukandcolonies.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/258242/ukandcolonies.pdf) [hereinafter *Colonies*] (last visited Oct. 15, 2015). Right of abode means the individual is free from UK Immigration control, may enter the UK without permission, and can work and live in the UK without restriction. *British Citizenship*. All British citizens automatically have right of abode. *Prove You Have Right of Abode in the UK*, GOV.UK, Apr. 23, 2015, <https://www.gov.uk/right-of-abode/overview>. Pre-1983 requirements typically granted citizenship to individuals born in the UK, born in a British Colony with right of abode, naturalized in the UK, registered as a citizen of the UK and Colonies, or those able to "prove legitimate descent from a father to whom one of the above applied." See *British Nationality*, *supra*. Individuals born after January 1, 1983 do not automatically receive British citizenship simply because he or she was born in the UK. *Id.* These individuals are only granted British citizenship if their mother or father was a British citizen or settled in the UK at the time of their birth. *Id.* Further complicating this requirement, individuals born before July 2006 "normally" inherit their father's British nationality only if he was married to their mother at the time of their birth. *Id.* For those who are not born in the UK, five additional forms of British nationality exist. See *id.*

3. UK settled persons are individuals who have been granted indefinite leave to remain, British citizenship, or right of abode. *Family*, UK PERMITS, <http://www.ukpermits.com/visa-types/family> (last visited Oct. 15, 2015). An individual may only apply for indefinite leave to remain if he or she has lived in the UK for five years and holds a residence card as a refugee or person with humanitarian protection. *Settlement: Refugee or Humanitarian Protection: 2. Eligibility*, GOV.UK, Oct. 12, 2015, <https://www.gov.uk/settlement-refugee-or-humanitarian-protection/eligibility>. Alternatively, an individual may be granted right of abode through an application called a certificate of entitlement. See *Guide ROA: Guide to the Right of Abode in the United Kingdom and Applying for a Certificate of Entitlement*, GOV.UK 7, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/393533/Guide\\_ROA\\_v0\\_4\\_20150107.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/393533/Guide_ROA_v0_4_20150107.pdf) (last visited Oct. 15, 2015).

4. Gower, *supra* note 1, at 1.

settle in the UK permanently.<sup>5</sup> However, qualifying non-EEA partners for sponsorship has become a hurdle under the new Amendments: UK citizens must now meet a minimum income requirement (“MIR”) in order to sponsor their non-EEA partner, which increases if he or she has dependent children.<sup>6</sup> Many UK citizens who have been unable to meet the MIR are forced to remain abroad with their families or return to the UK and live apart.<sup>7</sup>

Unable to meet the MIR and refusing to admit defeat,<sup>8</sup> UK citizens Abdul Majid and Shabana Javed, and a refugee referred to in the case law as “MM,” applied to the High Court of Justice<sup>9</sup> seeking judicial review.<sup>10</sup> The three claimants alleged the MIR: violates the UK’s Human Rights Act,<sup>11</sup> “do[es] not apply to parents who [are] also seeking to enter as

5. Julian Ryall, *New Immigration Laws Hinder Some Married Expats Returning to UK*, JAPAN TODAY (July 25, 2013, 6:42 AM), <http://www.japantoday.com/category/lifestyle/view/new-immigration-laws-hinder-some-married-expats-returning-to-uk>.

6. Gower, *supra* note 1, at 5.

7. There is a loophole in the new Immigration Rules, called the Surinder Singh route, which allows a UK citizen who works in Europe for three months to bring a non-EEA spouse into the UK without meeting the MIR. Ryall, *supra* note 5.

8. *See UK’s New Visa Rules ‘Causing Anguish’ for Families*, BBC (June 10, 2013, 3:34 PM), <http://www.bbc.com/news/uk-22833136>. Immigrants who won’t take no for an answer pose an obstacle for the UK. Upon being refused permission to stay in the UK, 175,000 illegal immigrants went missing. Ian Drury, *‘Complacent’ Home Office Loses 175,000 Illegal Immigrants: Fresh Humiliation as Officials Admit How Many Went Missing After They Were Refused Permission to Stay*, DAILY MAIL (Sept. 3, 2014, 5:25 PM), <http://www.dailymail.co.uk/news/article-2742786/Complacent-Home-Office-loses-175-000-illegal-immigrants-Fresh-humiliation-officials-admit-went-missing-refused-permission-stay.html> [hereinafter *Complacent Home Office*]. The Home Office, which held roughly 301,000 backlogged immigration cases in September 2014 (the majority of which included immigrants who had been refused temporary or permanent admittance), received ridicule after admitting it had no idea where the 175,000 illegal immigrants might have gone. *Id.* An audit found roughly 50,000 immigrants barred from living in the UK had inaccurate or missing details and an additional 121,000 could not be traced due to false or out-of-date addresses. *Id.*

9. *See infra* note 63 and accompanying text (explaining what role the High Court of Justice plays in the UK judicial system).

10. MM, R (On the Application Of) v. The Sec’y of State for the Home Dep’t, [2014] Imm AR 245, ¶¶ 1–2, 12–13, 16–17, 20, [2013] EWHC (Admin) 1900, [2013] WLR(D) 280, [2014] 1 WLR 2306 (Eng.).

11. *Id.* ¶ 12. The Act stipulates “[i]t is unlawful for a public authority to act in a way which is incompatible with a Convention right.” Human Rights Act, 1998, c. 42, § 6 (U.K.), *available at* <http://www.legislation.gov.uk/ukpga/1998/42/data.pdf>. Claimants alleged that the Amendments are incompatible with Convention rights under Article 8 and 14. MM, R (On the Application Of), [2014] Imm AR 245 at ¶¶ 24–25. Article 8 of the European Convention of Human Rights states: “Everyone has the right to respect for his private and family life, his home, and his correspondence.” *Id.* ¶ 25. It also stipulates “[t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society . . .” *Id.* Interests pertaining to national security, public safety, economic wellbeing of the country, prevention of disorder or crime, protection of health or morals, and protection of rights and freedoms may override this right. *Id.* Article 14 prohibits discrimination in the application of Convention Rights

spouses,”<sup>12</sup> and unwittingly discriminates against women.<sup>13</sup> Presiding Justice Blake found substantial merit in the contention that the MIR is not compatible with human rights law and also an unjustified and irrational restriction on UK citizen rights.<sup>14</sup> Finding the MIR to be “more than . . . necessary to promote the legitimate” legislative aims, Justice Blake held in favor of the claimants.<sup>15</sup> The Secretary of State for the Home Department appealed.<sup>16</sup> Among the myriad of issues, it boiled down to whether the MIR disproportionately interfered with UK citizens’ rights under Article 8 of the European Convention of Human Rights.<sup>17</sup> To the claimants’ dismay, the Court of Appeal overturned the lower court’s holding and found the MIR to be a lawful means to an end.<sup>18</sup>

The Amendments prevent UK citizens from uniting with loved ones in their home country, and this is an issue of great consequence for these individuals and their families. However, the most serious consequence is the Amendments’ failure to take into account persistent gender-specific occupational barriers. This Note will examine the MIR and the sources of income couples may rely on to meet this standard in Part II. It will further show competing perspectives regarding the MIRs effectiveness. Part III will present the claimants’ case and expound on their theories that the MIR is unconstitutional. Part IV will discuss the historical discourse surrounding work and labor through Marxist and Marxist-feminist critiques and analyze the Amendments utilizing the theories of waged housework and social factory.<sup>19</sup> This Note will then illuminate, in Part V, how the Amendments: ensure female UK citizens are less able than male UK citizens to sponsor their non-EEA partners, strip UK women of their free will to stay at home, and marginalize, if not dismiss, the work women

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based upon “. . . sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” *Id.*

12. *Id.* ¶ 16. Claimants are referring to Appendix FM under the Immigration Rules, which permits a parent to receive limited leave to remain with merely “proof” he or she can financially support the child “without recourse to public funds.” E-LTRPT § 4.1 (2014), *available at* [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/370971/20141106\\_immigration\\_rules\\_appendix\\_fm\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370971/20141106_immigration_rules_appendix_fm_final.pdf).

13. MM, R (On the Application Of), [2014] Imm AR 245 at ¶ 21.

14. *Id.* ¶ 144.

15. *Id.* ¶¶ 144, 154–55. The Amendments aim to reduce migrant family reliance on the welfare system. *See* Regina (MM (Leb.)), [2014] EWCA (Civ.) 985 ¶ 142.

16. *See generally id.*

17. *Id.* ¶ 1.

18. *Id.* ¶ 142. Lord Justice Aiken found there was a clear “rational connection” between the new MIR and the underlying policy goal to ensure migrant families have a stronger likelihood of integration. *Id.* ¶¶ 141–42.

19. *See generally* Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (1991).

do as stay-at-home mothers and housewives. Part VI suggests novel ways to address the Amendments discriminatory effects. Last, Part VII will conclude with a concise summation reiterating that the Amendments have failed to reduce unwieldy immigration, unwittingly limited the pool of skilled workers, and underestimated the positive effects blended families have on the UK economy.

## II. THE NEW MINIMUM INCOME REQUIREMENT: A CLOSER EXAMINATION

On July 9, 2012, Immigration Rules became effective<sup>20</sup> requiring citizens who wish to sponsor their non-EEA partner to demonstrate a genuine and subsisting relationship,<sup>21</sup> meet a minimum income requirement (“MIR”) of £18,600 per year,<sup>22</sup> and endure a five-year probationary process.<sup>23</sup> The MIR increases by £3,800 for one dependent

20. Prior to July 9, 2012, Immigration Rules only required an MIR of £5,500 per year, which did not increase with dependent children. Melanie Gower, *The Financial (Minimum Income) Requirement for Partner Visas*, HOUSE OF COMMONS LIBRARY STANDARD NOTE SN/HA/06724 at 1, 3, Sept. 6, 2014, [www.parliament.uk/briefing-papers/SN06724.pdf](http://www.parliament.uk/briefing-papers/SN06724.pdf). The old Immigration Rules also allowed UK citizens to rely on alternate sources of income, now prohibited, in order to satisfy the MIR. *Id.*

21. This requirement is an attempt to deal with sham and forced marriages. Gower, *supra* note 1, at 6. Caseworkers are instructed that the following conditions may suggest a genuine and subsisting relationship exists: evidence the couple is in a long-term committed relationship, share financial responsibilities, and have definite plans to live together in the UK. *Id.* A couple’s inability to provide specific details about one another, a lack of guests at the wedding, and a couple’s previous refusal for permanent settlement are said to disprove the existence of this type of relationship. *Id.* Regardless of these factors, the caseworker holds ultimate discretion to grant or refuse an application based on his or her assessment. *Id.*

22. Gower, *supra* note 20, at 3. This is roughly equivalent to \$28,100 per year. *Currency Converter: Google Finance*, GOOGLE, <https://www.google.com/finance/converter> [hereinafter *Currency Converter*] (last visited Sept. 19, 2015) (enter “18600” where the field shows “1;” use the top drop-down menu to find “British Pound Sterling (£)” and click it; then use the second drop down menu to find “US Dollar (\$)” and click it; then click the “convert” button) (this figure is subject to change due to day-to-day market fluctuations). In the UK, the MIR helps a couple with two children hover just above the poverty level, which was an estimated £18,564 from 2009 to 2012. *The UK Poverty Line*, CHILD POVERTY ACTION GROUP, <http://www.cpag.org.uk/content/uk-poverty-line> (last visited Oct. 6, 2015).

23. Gower, *supra* note 1, at 4. First, the partners are granted temporary permission to stay in the UK for two-and-a-half-years. *Id.* Upon nearing the end of this period, the partner must re-apply for a two-and-a-half-year renewal. *Id.* If, after this “second period of temporary leave,” the relationship still meets Rule requirements, the partner will become eligible for permanent settlement. *Id.* Prior to the Amendments, non-EEA partners living with UK citizens abroad could apply for immediate permanent settlement. *Id.* at 5. Now, non-EEA partners must apply for sponsorship with the five-year probationary period like every other family. *Id.* It is important to note that the new Immigration Rules are not completely merciless. Bereaved spouses and victims of domestic violence are eligible to apply for permanent settlement while holding temporary leave to remain in the UK. *Id.* This exception remains unchanged from previous Immigration Rule amendments. *Id.*

child and £2,400 for each additional child thereafter.<sup>24</sup> A UK citizen may only rely on his or her individual earnings in the UK<sup>25</sup> to meet the MIR.<sup>26</sup> Third party income, migrant partner's income abroad, or a migrant partner's offer of employment in the UK may not be used to compensate for any MIR deficiencies.<sup>27</sup> UK citizens may only rely upon their migrant partner's income if he or she is already in the UK with permission to work.<sup>28</sup> However, cash savings above £16,000 held by either the UK citizen or their non-EEA partner may be used alone or in combination with salaried or non-salaried income in order to meet the MIR.<sup>29</sup>

These drastic Amendments are the result of the UK's new objective<sup>30</sup> to reduce "net migration levels from hundreds of thousands to tens of thousands."<sup>31</sup> This is intended to ensure UK citizens have sufficient

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24. Gower, *supra* note 20, at 3. The increased MIR for sponsoring biological, step, or adopted children is meant to reflect specific costs such as educational needs. *Id.* at 4. It persists until the non-EEA partner is granted permanent settlement even if the child has already turned eighteen. *Id.*

25. UK citizens who are currently living outside the UK may sponsor a non-EEA partner with a "verifiable job offer or signed contract of employment to start work within three months of their return" to the UK so long as this alone, or in conjunction with the approved income sources, meets the MIR. *Id.* at 13. Nonetheless, UK citizens must, in addition to the above requirement, show current employment overseas that would meet the MIR or have received income over the previous twelve months that satisfies the MIR (alone or in combination with permitted income sources). *Id.* at 13–14.

26. *Id.* at 4–5.

27. *Id.*

28. *Id.*

29. *Id.* at 13. In order to prove the MIR has been met, a UK citizen must submit evidence of wage slips, a letter from his or her employer, and personal bank statements. *Id.* at 13–14. The employer's letter should confirm the individual's gross annual salary, the length of time he or she has been paid this salary, and the type and length of employment. *Id.* at 13. The sponsorship application fee is £601 per person if sent by mail or £1001 if applying in person. *Apply to Remain in the UK With Family*, GOV.UK, Aug. 3, 2015, <https://www.gov.uk/remain-in-uk-family/overview>.

30. In November of 2014, Prime Minister David Cameron outlined a new plan to make the UK less attractive to immigrants. Steven Erlanger, *British Premier Plans Tougher Stance as Anti-Immigration Sentiment Grows*, N.Y. TIMES, Nov. 29, 2014, at A6, available at [http://www.nytimes.com/2014/11/29/world/europe/david-cameron-of-britain-toughens-stance-on-immigration.html?\\_r=0](http://www.nytimes.com/2014/11/29/world/europe/david-cameron-of-britain-toughens-stance-on-immigration.html?_r=0). Despite his initial desire to place a cap on the number of migrants allowed each year from neighboring EU countries, Mr. Cameron proposed migrants should not be permitted to receive low-wage government assistance or child benefit payments for children living outside the UK. *Id.* If Mr. Cameron remains the Prime Minister, he promises to negotiate a "new deal" attacking immigration head-on. *Id.* His plans may seem radical, but UK majority opinion is in agreement: In 2013, the British Social Attitudes survey showed 77% of Britons would like to reduce immigration with 56% of those surveyed indicating they would like to reduce immigration by "a lot." Scott Blinder, *UK Public Opinion toward Immigration: Overall Attitudes and Level of Concern*, THE MIGRATION OBSERVATORY 1, 4, July 3, 2014, <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Public%20Opinion-Overall%20Attitudes%20and%20Level%20of%20Concern.pdf>. Despite negative attitudes towards low-skilled workers who have migrated legally and usurped low-paying jobs, many Britons refuse to fill these positions prompting the British headline: "Is there no one left in Britain who can make a sandwich?" Erlanger, *supra*.

31. Gower, *supra* note 20, at 3. Government reports show from 2013 to 2014 there was a 38% increase in net migration into the UK, which amounted to more than 243,000 additional individuals

financial resources to support themselves and their migrant families without burdening the general taxpayer.<sup>32</sup> The UK Government has qualified the increased MIR by claiming the previous amount was insufficient to meet these new immigration objectives and failed to promote the migrant family's ability to integrate effectively.<sup>33</sup>

Unsurprisingly, the new Amendments have not been implemented without criticism.<sup>34</sup> One concern is that the MIR leads to unforeseen

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entering the country. *Net Migration Into UK Up By More Than 243,000*, BBC (Aug 28, 2014), <http://www.bbc.com/news/uk-28964323>. For the first time in almost three years, individuals migrating yearly to the UK from outside the EU increased to 265,000. *Id.* These migration patterns are unlikely to change with more people arriving than leaving every year for the past twenty years. *Id.* As a result, immigration has become a top priority for the UK. In 2014, it pledged £12 million to help combat immigration in the French port of Calais where individuals illegally and successfully cross the channel into the UK each year. Nadia Khomami, *British Government Pledges £12m to Tackle 'Illegal Immigration' from Calais*, THE GUARDIAN, Sept. 20, 2014, <http://www.theguardian.com/uk-news/2014/sep/20/uk-government-illegal-migrants-calais-twelve-million>. The UK Government plans to use these funds to construct "robust fences," "bolster security," and potentially install technology used to find individuals hiding inside trucks or boats. *Id.* Calais has presented one of the most difficult ports to regulate. *Id.* In September of 2014, roughly two hundred migrants stormed a ferry terminal in an attempt to board a passenger ship crossing the channel. *Id.* A week later, two hundred and fifty migrants clashed with police as they attempted to force their way onto trucks headed into the UK. *Id.* Despite many individuals seeking refuge from humanitarian crises in Africa and the Middle East, the small French town has suffered increased problems with migrants actively participating in mafia or trafficking activities. *UK benefits a magnet to migrants, says Calais mayor*, BBC, Oct. 28, 2014, <http://www.bbc.co.uk/news/uk-politics-29799733> [hereinafter *Benefits A Magnet*]. These types of criminal activities rely on cross-border transactions, which has fueled the UK's desire to tighten immigration efforts. See *Cross Border Organised Crime: Assessment 2014*, DEP'T OF JUSTICE NORTHERN IRELAND, at 32–33, available at <http://www.drugsandalcohol.ie/22721/1/cross-border-crime-assessment-final.pdf>; *Protecting Our Border, Protecting The Public: The UK Border Agency's Five Year Strategy for Enforcing Our Immigration Rules and Addressing Immigration and Cross Border Crime*, HOME OFFICE UK BORDER AGENCY (Feb. 2010), available at <http://webarchive.nationalarchives.gov.uk/20100303205641/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/crime-strategy/protecting-border.pdf?view=Binary>. A 2014 report showed violent crime costs the UK roughly £30 billion a year and drug-related crimes £13.3 billion a year. Nigel Morris, *Spend Money on Crime Prevention Instead of Prisons, Chris Grayling Told*, THE INDEPENDENT, June 26, 2014, <http://www.independent.co.uk/news/uk/politics/spend-money-on-crime-prevention-instead-of-prisons-chris-grayling-told-9563240.html>.

32. Gower, *supra* note 20, at 3. Despite this policy, UK citizens receiving "certain welfare benefits," which inherently "burden" the taxpayer, are exempt from the MIR for sponsorship purposes. *Id.* at 11.

33. *Id.*; see also *Home Office Wins Judgment on Minimum Income Threshold*, GOV.UK, July 11, 2014, <https://www.gov.uk/government/news/home-office-wins-judgment-on-minimum-income-threshold> [hereinafter *Home Office Wins*].

34. Gower, *supra* note 20, at 11–12. Some argue the MIR is set too high and does not adequately account for regional differences. *Id.* at 11. The 2014 *Annual Survey of Hours and Earnings* shows full-time London City workers earn the highest median salary at £928 per week while full-time Rother workers earned the lowest at £379. *Annual Survey of Hours and Earnings, 2014 Provisional Results*, OFFICE FOR NATIONAL STATISTICS, Nov. 19, 2014, [http://www.ons.gov.uk/ons/dcp171778\\_385428.pdf](http://www.ons.gov.uk/ons/dcp171778_385428.pdf) [hereinafter *Hours and Earnings 2014*]. The regional difference widens further when weekly salaries are broken down by gender. Women in London earned roughly £480 per week, while women in the South West earned roughly £290. *Regional Earnings Through Time: Median Gross*

costs.<sup>35</sup> The Home Office's Impact Assessment estimated the MIR would save £660 million over a ten-year period; however, Middlesex University argues the loss of "wider benefits of migrant partners' economic activity" could *cost* the UK £850 million.<sup>36</sup> While the new MIR seems steep, the UK's requirements seem to straddle the two extremes—a high MIR or none at all. Norway has one of the highest MIR requirements: In 2013, Norwegian citizens needed an annual income of 246.136 kr,<sup>37</sup> which is the equivalent<sup>38</sup> to roughly £23,188.<sup>39</sup> On the other side of the spectrum, Canada has no MIR.<sup>40</sup> Canadian citizens who wish to sponsor their partner

*Weekly Earnings by Workplace, UK, April, 1997–2014*, OFFICE FOR NATIONAL STATISTICS, <http://www.neighbourhood.statistics.gov.uk/HTMLDocs/dvc138/index.html> (last visited Oct. 16, 2015) (click and drag the white circle at the bottom of the timeline to arrive at the year "2014;" then click on the magnifying glass with the plus symbol in the middle; then toggle back and forth between the "female" and "male" buttons at the top). The UK Government contends a single national threshold, which does not take regional differences into consideration, provides clarity and simplicity for both Home Office staff and applicants. Gower, *supra* note 20, at 11.

35. *Id.* at 12. Affected families argue it is more likely a UK citizen will resort to public funds in the absence of their migrant partner's assistance. *Id.* These families also argue the MIR undermines the UK Government's objective to promote self-sufficiency and family unity. *Id.*

36. *Id.* The UK Government has rejected these claims. *Id.* However, the UK economy loses large sums of money each year because migrants send more money "home" than they spend in the UK. Richard Harris & Claire Provost, *How Much Money Do Immigrants Send Home*, THE GUARDIAN, Jan. 31, 2013, <http://www.theguardian.com/global-development/interactive/2013/jan/31/remittances-money-migrants-home-interactive> (click on "leave tour and explore the data;" then click "okay"). Migrant data from 2010 shows that the UK is the fourth largest sender of remittances in the world with roughly seven million immigrants sending \$23.2 billion dollars to countries like India and Nigeria. *Id.* (click "more info"). Back in 2009, it was estimated the UK economy lost £4.9 million a day solely from remittances to family and relatives abroad. James Slack, *Economy Losing £4.9m a Day—Because Immigrants Send it Home to Relatives*, DAILY MAIL, May 31, 2009, <http://www.dailymail.co.uk/news/article-1189927/Economy-losing-4-9m-day--immigrants-send-home-relatives.html>. Despite large sending habits, these immigrants still pay considerably more in taxes than they receive in benefits. Erlanger, *supra* note 30.

37. *Income Requirement in Family Immigration Cases*, THE NORWEGIAN DIRECTORATE OF IMMIGRATION, <http://www.udi.no/en/word-definitions/income-requirement-in-family-immigration-cases/> (last visited Oct. 16, 2015). Norwegian citizens may rely on the following types of income to meet the MIR: employment income, permanent pensions or periodical benefits, introduction benefits given to new immigrants, educational loans or grants, benefits (for sickness, pregnancy, disability, retirement, or national insurance), parental support, and migrant partner's income if he or she works in Norway. *Id.* Unlike the UK, Norwegian citizens may never rely on savings accounts. *Id.*

38. *Currency Converter*, *supra* note 22 (adjust amount entered to "246.136"; use "Norwegian Krone (NOK)" and "British pound sterling (£)" in dropdown menus 1 and 2 respectively).

39. This is roughly \$35,000 and £4,500 more than the UK's current MIR. *Id.* (adjust amount entered to "23,188"). Keep in mind, cost of living in the UK is roughly 27% lower than in Norway. *Cost of Living Comparison Between Norway and United Kingdom*, NUMBEO (Nov. 2015), [http://www.numbeo.com/cost-of-living/compare\\_countries\\_result.jsp?country1=Norway&country2=United+Kingdom](http://www.numbeo.com/cost-of-living/compare_countries_result.jsp?country1=Norway&country2=United+Kingdom). For example, dining is extremely costly in Norway with prices 38% higher than in the UK. *Id.*

40. *Guide 3900—Sponsorship of a Spouse, Common-Law Partner, Conjugal Partner or Dependent Child Living Outside*, GOVERNMENT OF CANADA, Oct. 23, 2014, <http://www.cic.gc.ca/>

sign a contract with the Minister of Citizenship, called an undertaking, promising to provide support for their partner and dependent children.<sup>41</sup>

### III. UK CITIZENS BATTLE FOR FAMILY: REGINA (MM (LEBANON) V. SECRETARY OF STATE FOR THE HOME DEPARTMENT)<sup>42</sup>

In 2013, claimants<sup>43</sup> sought judicial review claiming the Amendments interfered with their lives and violated their human rights.<sup>44</sup> MM, a post-graduate student at the University of Wolverhampton, claimed the Amendments prevented him from relying on his wife's income and from receiving a deed of covenant from his brother.<sup>45</sup> Further, his father had promised to match the deed, which would have allowed him to meet the MIR requirements and successfully sponsor his wife.<sup>46</sup> His nephew, who was added as an interested party in this matter, claimed the inability to achieve family unity violated the Human Rights Act.<sup>47</sup> The second claimant, Mr. Majid, a UK citizen of Pakistani origins, had been taking care of four of his five children in the UK and had been unable to find work.<sup>48</sup> He claimed the new Rules do not apply to UK citizens who have been settled for seven years and argued that having his wife in the UK would allow him to focus on finding employment while she takes care of the children.<sup>49</sup> The third claimant, Ms. Javed, a UK citizen of Pakistani origin, claimed the regime of financial sponsorship "unjustifiably" discriminates against women due to their significantly lower rates of pay

english/information/applications/guides/3900ETOC.asp [hereinafter *Guide 3900*]. Despite its lack of MIR, Canada still aims to prevent migrant partners from relying on social assistance. *Id.*

41. *Id.* The Guide makes clear that the undertaking is unconditional. *Id.* It subsists even if the partner is granted citizenship, the couple separate or divorce, or they move to another province. *Id.* The Guide does not specify what happens if a Canadian citizen fails to uphold the undertaking.

42. See generally Regina (MM (Leb.)) v. Sec'y of State for the Home Dep't, [2014] EWCA (Civ.) 985, [2014] W.L.R. (D) 308 (Eng.).

43. UK citizens Abdul Majid and Shabana Javed, and a refugee referred to in the case law as "MM." *Id.* ¶¶ 1–2, 12–13, 16–17.

44. See generally *id.* ¶¶ 2–12.

45. *Id.* ¶¶ 7–8.

46. *Id.*

47. *Id.* ¶ 12; Human Rights Act, *supra* note 11, at c. 42, § 6.

48. Regina (MM (Leb.)), [2014] EWCA (Civ.) 985 ¶ 15. Single parenthood remains challenging in the UK. Welfare gives single parents fifteen "hours per week of free childcare for children aged 3 or 4," which requires the parent to enter the workforce shortly after the child's third or fourth birthday. Matthew Tinsley, *Parenting Alone: Work and Welfare in Single Parent Households*, POLICY EXCHANGE 10 (2014), available at <http://www.policyexchange.org.uk/images/publications/parenting%20alone.pdf>. In 2014, there was a 22% unemployment rate for single parents. *Id.* at 7. For more than half of those unemployed, their economic inactivity has been attributed to homemaking and childrearing associated with children under the age of five. *Id.* at 29.

49. Regina (MM (Leb.)), [2014] EWCA (Civ.) 985 ¶¶ 15–16.

and employment as compared to men.<sup>50</sup> She was unemployed and therefore unable to sponsor her Pakistani husband; regardless, she claimed she would be unable to meet the MIR even if employed since vacancies at her local “job centre” paid well below £18,000 per annum.<sup>51</sup>

Upon a lengthy review of precedent in the area of immigration, Justice Blake found in favor of the claimants stating the Amendments in combination with “prevailing circumstances” disproportionately interfere with the rights of UK citizens and their non-EEA partners to enjoy the fundamental importance of respect for family life.<sup>52</sup> The “prevailing circumstances” included an in-depth analysis of UK citizen rights, legitimate goals of the Immigration Rules, child welfare, and discrimination.<sup>53</sup> Justice Blake accepted that a UK citizen’s inability to reside in the country of his or her nationality due solely to the exclusion of his or her partner is an interference with the right of residence.<sup>54</sup> In contrast, Justice Blake did not find the claimants demonstrated the Amendments to be unlawfully discriminatory.<sup>55</sup> Similarly, he did not find it persuasive that the Amendments unlawfully override accommodation to serve the best interest of children.<sup>56</sup> His ultimate decision to find in favor of the claimants rested on the notion that five features of the MIR<sup>57</sup>

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50. *Id.* ¶ 21.

51. *Id.* ¶¶ 18–19.

52. *Id.* ¶ 144. Justice Blake also found that the exclusion of third party support and the inability to rely on the non-EEA partner’s future earning capacity exacerbates the UK citizen’s inability to meet the MIR. *Id.* ¶¶ 18–19.

53. *See generally id.*

54. *Id.* ¶ 100. Justice Blake came to this conclusion following precedent in *Quila v. Secretary of State for the Home Department* and *Abdulaziz v. United Kingdom*, which states a restriction of spousal admission interferes with the right to family itself. *Id.* ¶¶ 71–76 (citing generally *Quila v. Secretary of State for the Home Department*, [2010] EWCA Civ 1482, [2011] Fam Law 232 (Eng.); *Abdulaziz v. United Kingdom* z, (1985) 7 EHRR 471, [1985] ECHR 7, [1985] EHRR 471 (Eng.)).

55. *Regina (MM (Leb.)), [2014] EWCA (Civ.) 985* ¶ 112. Despite this ruling, Justice Blake recognized the Rules have a noticeable impact on women and will significantly impact their ability to sponsor a non-EEA partner. *MM, R (On the Application Of) v. The Sec’y of State for the Home Dep’t*, [2014] Imm AR 245, [¶ 113], [2013] EWHC (Admin) 1900, [2013] WLR(D) 280, [2014] 1 WLR 2306 (Eng.).

56. *Id.* ¶ 115. Justice Blake decided it was reasonable to expect additional funds be made available when bringing children to the UK in addition to a non-EEA partner. *Id.*

57. Justice Blake considered the following five features to be oppressively burdensome on partner relationships: (1) an MIR set above the £13,400 level determined by the Migration Advisory Committee to be the lowest maintenance threshold, (2) requiring a minimum of £16,000 before savings may be used to correct any income shortfall, (3) the thirty-month period used to project income instead of a twelve-month period, which could help individuals who will barely meet the MIR, (4) disregard for third party support, and (5) disregard for the non-EEA partner’s future income earning potential during the thirty-month initial entry period. *Regina (MM (Leb.)), [2014] EWCA (Civ.) 985* ¶ 68.

unjustifiably interfered with genuine partner relationships.<sup>58</sup> Justice Blake concluded by proposing less intrusive immigration measures;<sup>59</sup> however, he did not exercise the court's right to readily ignore or adapt the Rules.<sup>60</sup>

Justice Blake's decision was a momentary triumph for the Claimants as the Home Department quickly appealed.<sup>61</sup> After a brief review of the facts and Justice Blake's decision, Lord Justice Aiken laid out eight issues<sup>62</sup> to be considered by the Royal Courts of Justice.<sup>63</sup> He found Justice Blake

58. MM, R (On the Application Of), [2014] Imm AR 245 ¶ 123.

61. *Id.* ¶ 147. Justice Blake proposed reducing the MIR to £13,500, permitting savings over £1,000 to supplement income, permitting future post-entry earning capacity of the non-EEA partner to be taken into account, and reducing the income assessment time period to twelve months. *Id.*

60. It is well-established that the Immigration Rules are "neither primary nor delegated legislation, but a statement of the Secretary of State's policy." *Id.* ¶ 39. This means the court has no duty to follow the Rules, and may adapt them to better match the Human Rights Act. *See id.* ¶ 40.

61. Similar to the United States legal system, the UK permits parties to appeal legal decisions to judges in a higher court. *Appeal Process*, COURTS AND TRIBUNALS JUDICIARY, <http://www.judiciary.gov.uk/you-and-the-judiciary/appeals-process> (last visited Sept. 19, 2015). Appealing requires proper grounds and there are strict time limits. *Id.* Court staff and government officials are unable to review a judgment made by the courts because the judiciary requires freedom to decide the outcome of cases without governmental or administrative intrusion. *Id.* Judicial review is also permitted, which means the higher court does not review the decision, but rather the process by which the lower court's decision has been made. *Judicial Review*, COURTS AND TRIBUNALS JUDICIARY, <http://www.judiciary.gov.uk/you-and-the-judiciary/judicial-review/> (last visited Sept. 19, 2015). In other words, the court conducting a judicial review will examine whether the correct procedures have been used in coming to a decision. *Id.* It will not substitute what it thinks is the right decision. *Id.*

62. The issues for consideration included whether: (1) Justice Blake characterized the new MIR and its aims correctly, (2) Justice Blake's conclusions made it impossible for the new MIR to be compatible with Article 8, (3) the preclusion of third party funding is irrational, (4) Justice Blake was correct in holding the new MIRs discrimination is justified, (5) there are grounds to object to the new MIR under section 55 of the 2009 Act, (6) the "exceptional circumstances" provision is relevant, (7) Mr. Majid's "application for permission to cross-appeal" should be permitted; and (8) what legal principals the court should consider when deciding the new MIRs compatibility with Article 8. Regina (MM (Leb.)), [2014] EWCA (Civ.) 985 ¶ 90.

63. *Id.* The Royal Court of Justice houses an administrative group divided into multiple divisions each with its own court. *Royal Courts of Justice*, JUSTICE, Jan. 12, 2015, <http://www.justice.gov.uk/courts/rcj-rolls-building/rcj>. It includes both the Court of Appeal and the High Court. *Id.* Cases discussed in this Note were decided under the Queen's Bench Division of the High Court. *See generally* Regina (MM (Leb.)), [2014] EWCA (Civ.) 985. The Queen's Bench typically handles the following claims: breach of contract, negligence, libel and slander, non-payment of a debt, personal injury, and possession of land or property. *Queen's Bench Division*, JUSTICE, May 1, 2014, <https://www.justice.gov.uk/courts/rcj-rolls-building/queens-bench> [hereinafter *Queen's Bench*]. It also decides more specialized matters. *High Court*, JUSTICE, <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/high-court/> (last visited Sept. 19, 2015). For example, an application for judicial review may seek to establish whether a government decision has been made correctly. *Id.* Judges are assigned to the division and fill positions such as the President or Vice-President. *Queen's Bench, supra*. Other judges are in charge of administrative aspects like the jury or trial list. *Id.* Cases are heard by the President and seventy-three High Court judges. *Id.* In order for a case to reach the High Court, it must first begin in a lower court. *Tribunals Structure Chart as of September 2015*, COURTS AND TRIBUNALS JUDICIARY (Sept. 2015), [https://www.judiciary.gov.uk/wp-content/uploads/2010/02/tribunals\\_chart-23092015.pdf](https://www.judiciary.gov.uk/wp-content/uploads/2010/02/tribunals_chart-23092015.pdf). For the claimants, their case began in the County Court where trial is held for most civil cases. *Id.* The next highest court is the High Court, which is

correctly characterized the nature and aims of the new MIR.<sup>64</sup> Upon further review of previous decisions, he reiterated that the Secretary of State is “under a common law duty not to promulgate Immigration Rules that are discriminatory, manifestly unjust, made in bad faith,” or that cause an oppressive interference with rights of UK citizens.<sup>65</sup> In determining whether the Amendments should be struck down in part or totality, the Court found it had to decide whether the Amendments were incapable of being proportionate and inherently unjustified.<sup>66</sup> Lord Justice Aiken allowed the Secretary of State’s appeal in all three cases.<sup>67</sup> He held, despite UK citizens’ “statutory right to reside in the UK ‘without let or hindrance,’” this right cannot be extended to others.<sup>68</sup> Rather than examine what rights UK citizens and their partners have, Lord Justice Aiken turned to whether there was justification for the new MIR.<sup>69</sup> Finding the Court should not impose its own view, he claimed there was a “rational connection” between the new MIR and its underlying policy goals.<sup>70</sup> Since the Secretary of State meticulously planned both the MIR and the potential

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where Lord Justice Blake presided. *See generally* MM, R (On the Application Of), [2014] Imm AR 245. On appeal, the claimant’s case was heard at the Court of Appeals where Lord Justice Aiken presided. *See generally* Regina (MM (Leb.)), [2014] EWCA (Civ.) 985. Created in 1875, the Court of Appeals consists of two divisions: civil and criminal. *The History of the Court of Appeal*, JUSTICE, <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/court-of-appeal-home/coa-sub/> (last visited Sept. 19, 2015). Prior to 1875, all different types of courts heard appeals with little structure in docket assignment. *Id.* Following the Industrial Revolution, a growth in the number and complexity of cases required the appointment of a Royal Commission to examine and re-assess the judicial system. *Id.* The Royal Commission’s first report recommended the existing structure be replaced by a Supreme Court and two lower courts: a High Court and Court of Appeal. *Id.* This recommendation was implemented by the *Judicature Acts* and took effect in 1875. *Id.* Today, the Court of Appeal sits in the ornate Gothic Royal Courts of Justice building, which was opened in 1882. *Royal Courts of Justice, England*, TOURIST INFORMATION UK, <http://www.tourist-information-uk.com/royal-courts-of-justice.htm> (last visited Sept. 19, 2015). Both the Court of Appeal and the High Court are part of the England and Wales judicial system. *How the judicial system works*, FINDLAW UK, [http://www.findlaw.co.uk/law/government/constitutional\\_law/citizens\\_guide\\_to\\_the\\_judicial\\_system/8031.html](http://www.findlaw.co.uk/law/government/constitutional_law/citizens_guide_to_the_judicial_system/8031.html) (last visited Sept. 19, 2015). The UK also has two other judicial systems that govern Scotland and Northern Ireland. *Id.*

64. Regina (MM (Leb.)), [2014] EWCA (Civ.) 985 ¶¶ 91–92, Lord Justice Aiken dismissed the “exceptional circumstances” claim and found no legal requirement mandates the MIR provide for the best interest of a child. *Id.* ¶¶ 159, 162. He also dismissed Mr. Majid’s attempt to cross appeal and determined the “parent provisions” apply only in situations where an applicant is exercising sole parental responsibility in order to access rights to a UK child. *Id.* ¶ 171.

65. *Id.* ¶ 132.

66. *Id.*

67. *Id.* ¶ 172.

68. *Id.* ¶ 137. UK citizens do not have a constitutional right to reside in the UK with their non-EEA partner who lives abroad and lacks UK right of abode. *Id.* (citations omitted).

69. *Id.* ¶ 139.

70. *Id.* ¶¶ 150, 142. The Amendments aim to prevent migrant families from relying on welfare and promotes their ability to integrate upon arrival. *Id.* ¶¶ 136–53.

exclusion of third parties—understanding there may in fact be some inherent discriminatory effects in order to achieve the policy’s purpose<sup>71</sup>—Lord Justice Aiken ultimately found the Amendments to be a reasonable means to an end and ruled they should remain in effect.<sup>72</sup>

The long awaited judgment allowed an estimated four thousand individuals, whose applications met every sponsorship requirement except for the MIR, to reach a final rejection.<sup>73</sup> Upon hearing that the new judgment upheld the MIR’s lawfulness, Security Minister James Brokenshire commented that he was delighted.<sup>74</sup> Speaking on behalf of the Government, and country at large, he stated, “[w]e welcome those who wish to make a life in the UK with their family, [but] . . . family life must not be established in the UK at the taxpayer’s expense . . . .”<sup>75</sup> Campaigners did not share the Security Minister’s sentiment and argued the Amendments remain a “shocking infringement of the right to family life.”<sup>76</sup> Migrant Rights Network Policy Director Ruth Grove-White noted thousands of UK citizens had their lives put on hold for over a year while they waited to reunite with their families.<sup>77</sup> She urged that the right to family continues to make the campaign for reform worth fighting.<sup>78</sup>

71. *Id.* ¶ 40.

72. *Id.* ¶¶ 153, 156–57. The Court agreed with Justice Blake in finding any revisions made to the MIR, in an attempt to make them less discriminatory, would only create more rather than less discrimination. *Id.* ¶ 157. It went on to hold that the Rules’ discriminatory effects are a necessary evil in order to reduce migrant reliance on taxpayer dollars. *See generally id.* ¶ 136–53. Thus, Justice Aiken found Justice Blake’s determination was ill founded. *Id.* ¶ 153 (overruling Justice Blake’s holding that the new MIR was “incapable of being compatible with Article 8”).

73. These applicants had been put on hold pending the Court’s decision. *Home Office Wins*, *supra* note 33.

74. *Id.*

75. *Id.* Despite this concern, the vast majority of UK immigrants who have recently been denied the right to remain have “gone to ground.” *Complacent Home Office*, *supra* note 8. These immigrants work in the “black economy” illegally claiming benefits and voting in elections. *Id.* Calais’ Mayor Natacha Bouchart has told officials the £36 in entitlement benefits given to asylum seekers make migrants willing to die in their efforts to make it to the UK. *Benefits a magnet*, *supra* note 31. The UK is not very generous with its social benefits but it is still easier “for new immigrants to qualify for them than in most European countries.” Erlanger, *supra* note 30. Regardless of what the UK may actually give migrants in terms of financial assistance, it is the perceived benefits that await these migrants that push them to great lengths at the Calais channel, added Ms. Bouchart. *Benefits a magnet*, *supra* note 31.

76. *Appeal Court Backs Spouse Visa Change*, BBC, July 11, 2014, <http://www.bbc.co.uk/news/uk-28267305>.

77. *Id.*

78. *Id.*

#### IV. MARXIST AND MARXIST FEMINIST DISCOURSE SURROUNDING WORK AND LABOR

Justice Blake noted that the Immigration Rules' original statutory scheme granted "right of abode to Commonwealth wives of British citizens" with the historical presumption that wives would follow their husbands.<sup>79</sup> This presumption appears anachronistic when juxtaposed with the changing state of the nuclear family.<sup>80</sup> Likewise, discourse surrounding work and labor remains unevolved. Generally, work within the society is not only viewed as "socially mediating and subjectively constitutive," but also the "dominance" of these values.<sup>81</sup> The tradition of work is typically defended on the basis of necessity and social duty;<sup>82</sup> working is an "individual moral practice" to which all of us have a "collective ethical obligation."<sup>83</sup> For example, Marxists<sup>84</sup> believe production and consumption are directly correlated in that an individual does not have

79. *MM, R (On the Application Of) v. The Sec'y of State for the Home Dep't*, [2014] Imm AR 245, [¶¶ 22–23], [2013] EWHC (Admin) 1900, [2013] WLR(D) 280, [2014] 1 WLR 2306 (Eng.). This provision was located in section 2.2 of the 1973 Act. *Id.* The "modern era of immigration control dates" back to the first Immigration Act passed in 1973. *Id.* ¶ 22.

80. *Infra* note 134 and accompanying text (noting an increase in the number of stay-at-home fathers in the UK).

81. KATHI WEEKS, *THE PROBLEM WITH WORK: FEMINISM, MARXISM, ANTIWORK POLITICS, AND POSTWORK IMAGINARIES* 11 (2011).

82. Feminist scholar Maria Costa complains that the rule of capital through wages compels every able-bodied person to function and not always in a way that is immediately profitable to the whole. Mariarosa Dalla Costa & Selma James, *The Power of Women and the Subversion of the Community*, 10 (1972), available at <https://libcom.org/files/Dalla%20Costa%20and%20James%20-%20Women%20and%20the%20Subversion%20of%20the%20Community.pdf>. This complaint makes salient that work does not necessarily create capital—even in the workforce. It also raises important questions about individuals who are not able-bodied. The new MIR does not apply to UK-based sponsors who receive disability allowances. Gower, *supra* note 1, at 6. For these individuals, the maintenance requirement is set at the old MIR, which requires sponsors to show they can adequately support their partner without recourse to public funds. *Id.* No specific monetary value must be shown. *Id.* Nonetheless, this exception is useless for individuals who suffer impairments that do not meet disability or other type of disabled-bodied allowances through the government. Furthermore, no exception seems to exist for individuals who are sick, but not terminal, and cannot physically go back to work even if they tried.

83. WEEKS, *supra* note 81, at 11.

84. Marxism is a body of doctrine developed by Karl Marx and Friedrich Engels in the mid-nineteenth century. Henri Chamber, *Marxism*, *ENCYCLOPAEDIA BRITANNICA*, Oct. 29, 2014, available at <http://www.britannica.com/EBchecked/topic/367344/Marxism>. Marx's written works cannot be reduced to a philosophy or philosophical system; his work "is a radical critique of philosophy" geared towards not just interpreting the world, but transforming it. *Id.* In 1985, Marx hypothesized "social production shape[d] social, political, and intellectual processes of life." *Id.* This theory of historical materialism later shaped critiques of society and capital. *Id.* In his view, capitalist society is divided into two realms: political citizen and economic actor. *Id.*

worth if he or she does not produce something for consumption and in turn consume what others have produced.<sup>85</sup>

Marxist feminist critiques of industrial capitalist modernization “reject the view that freedom exists beyond the realm of necessity,” and envision an alternate economy that better resonates with a humanist paradigm.<sup>86</sup> This humanist paradigm would allow work and life to integrate promoting “mothering” and other forms of labor in which a person is involved in the direct and immediate production of life rather than things or wealth.<sup>87</sup> Then, a lifetime of work could be not a curse but a “source of human fulfillment and happiness.”<sup>88</sup>

Contemporary Marxists, seeking to synthesize with feminism, often analyze the family’s internal dynamics or its relationship to society.<sup>89</sup> This synthesis inherently leads to hybridization: Marxist feminism omits sexual relationship and property relations morphing the home and family into a “microcosm” for “capitalist social relations” as determined by the marketplace.<sup>90</sup> Waged housework is one such hybrid that attempts to analyze women’s situations by revaluing the contribution women have always made and demonstrating the value of women’s socially degraded and universal function as homemakers.<sup>91</sup> It promotes women claiming a fair share of social product for activities almost all women perform, and largely for men.<sup>92</sup> Waged housework re-defines production<sup>93</sup> and opens critical issues of value, labor and its division by sex,<sup>94</sup> and the inner

85. WEEKS, *supra* note 81, at 89. This labor theory of value is a major pillar in “traditional Marxian economics.” David L. Prychitko, *Marxism*, THE CONCISE ENCYCLOPEDIA OF ECONOMICS, <http://www.econlib.org/library/Enc/Marxism.html> (last visited Oct. 16, 2015). Although his labor theory of value has been found “demonstrably false,” his ideologies about labor power and the laborer’s desire to work in exchange for a wage still holds weight in economic analysis. *Id.* Today, capitalists believe entrepreneurs earn profits by “foregoing current consumption, taking risks, and organizing productions.” *Id.*

86. WEEKS, *supra* note 81, at 88.

87. *Id.*

88. *Id.*

89. MACKINNON, *supra* note 19, at 61.

90. *Id.* As a result, women are subsumed under a class analysis and women’s problems are given no specificity. *Id.* MacKinnon claims women’s problems are thereby “eclipsed by those of the working class” and any available remedies “collapsed into socialism.” *Id.* at 61–62. Her point is further reinforced by contemporary Marxists who do not criticize traditional wife and motherhood roles. *Id.* at 62. They claim these roles are abused by capital rather than viewing women “as abused in and by these roles.” *Id.*

91. *Id.* at 65.

92. *Id.*

93. Typical models of sexuality have been deeply Freudian and essentialist in that sexuality is found a pre-political unconditioned disposition. *Id.* at 131.

94. The division of labor so readily distinguishes between gender, race, and nation, that scholars have debated whether the category of work should be used to examine gendered patterns of work.

dynamics of social order.<sup>95</sup> Putting this theory into action would be revolutionary in that it would expose women's greater role as social and essential—"not natural and socially marginalized."<sup>96</sup> It would alter women's economic dependence upon men and the balance of advantage within the family.<sup>97</sup> Feminist scholar Catherine MacKinnon warns that waged housework is less Marxist and more classical political economy.<sup>98</sup> As such, many Marxists charge the household as a sphere of capitalist society that has yet to be penetrated fully, or pre-capitalist.<sup>99</sup> Feminists argue if a laborer claimed he labored every day for love in order to provide for his family this feeling would not affect the "systemic logic of the inner determinations of capitalist production" in that he would still get paid.<sup>100</sup> Marxists would in turn view this as a "necessary[,] but false reflection of [a] system" that creates necessity, and thus allows individuals to endure the system by experiencing concocted eagerness and self-fulfillment.<sup>101</sup>

In the late 1960s, feminists became "mired in a debate about how to conceive the relationship between domestic labor and the Marxist theory of labor."<sup>102</sup> Feminists argued gendered divisions of labor "were part and parcel of contemporary capitalist social formations."<sup>103</sup> As a result, many theories emerged supporting wages for household work such as Mariarosa Dalla Costa's social factory theory.<sup>104</sup> The social factory theory contends that the family is a privatized machine of social reproduction and thus serves an important yet obscured "component of the wage system."<sup>105</sup> The family serves a crucial role in keeping wages lower and hours longer by providing goods and services that would otherwise need to be purchased

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WEEKS, *supra* note 81, at 17. MacKinnon argues women's dependence on men for money and the wage system keep women subordinate in order to maintain the power of capital outside the home. MACKINNON, *supra* note 19, at 67.

95. *Id.* at 66.

96. *Id.* at 67.

97. *Id.* Implementing the waged housework theory comes with its own difficulties. Feminists worry a tangible wage would tie women's livelihood to their home or that men would step into the role of women's employer. *Id.* at 69. Feminists note the theory could be undermined as stay-at-home fathers would also receive a wage. *Id.* Moreover, because the theory "bases itself in *women's work*," feminists believe it "fails fully to grasp women's role as women." *Id.* (emphasis added).

98. *Id.* at 71.

99. *Id.* at 71–72.

100. *Id.* at 77.

101. *Id.*

102. WEEKS, *supra* note 81, at 118–19.

103. *Id.* at 118.

104. *Id.* at 121 (citations omitted).

105. *Id.*

or created outside the home.<sup>106</sup> Despite this, the family's role in the wage system remains concealed by "discourses that naturalize, romanticize, privatize, and depoliticize the institution."<sup>107</sup> Costa's theory is a reminder that the institution of family helps absorb reduction in the price of labor allowing lower-cost and flexible forms of feminized labor while relieving the state and capital from the burden and costs of social reproduction.<sup>108</sup> This revitalizes the age-old question: why has women's labor not been viewed as productive?<sup>109</sup>

#### V. THE PROBLEM: PERMANENT EXILE AND BROKEN FAMILIES

For the first time, the UK government has set the minimum income requirement ("MIR"), absent exceptions for extraordinary circumstances, at a level for childless couples more than three times higher than previous MIRs.<sup>110</sup> The new MIR aims to protect the UK's welfare system,<sup>111</sup> however, the Migration Advisory Committee has calculated that the new MIR would have prevented roughly 45% of applicants given sponsorship back in 2009.<sup>112</sup> Even more troubling, the new MIR is higher than the average salary for a large number of trades and occupations in the UK.<sup>113</sup>

106. *Id.*; See also MACKINNON, *supra* note 19, at 79. Weeks raises the singular most important question: who should pay and who should benefit? WEEKS, *supra* note 81, at 121. In other words, where does value emerge and how should it be measured? *Id.*

107. *Id.*

108. *Id.*

109. MACKINNON, *supra* note 19, at 55.

110. MM, R (On the Application Of) v. The Sec'y of State for the Home Dep't, [2014] Imm AR 245, [¶ 107(i)], [2013] EWHC 1900, (Admin) W.L.R. (D) 280, [2014] W.L.R. 2306, [2014] 1 W.L.R. 2306. Justice Blake notes this multiplier would be less if the family has to pay for housing and other miscellaneous costs. *Id.* ¶ 107(i) n.5.

111. A 2012 analysis published by the Department for Work and Pensions showed roughly 267,000 claimants of working age benefits are thought to be non-EEA nationals. *Id.* However, this analysis did not determine what percentage of non-EEA claimants had migrated to the UK through spousal sponsorship. *Id.* The Immigration Rules go on to assume most non-EEA nationals making claims have in fact migrated through spousal sponsorship due to the fact that specific nationalities (e.g. Pakistani, Somali, Indian, Bangladeshi, and Iraqi) are the most frequent and significant recipients of partner visas. *Id.* The welfare system is not the only cost the UK hopes to tackle with increasingly long and difficult Immigration Rules. After October of 2013, any individual applying to settle permanently in the UK must pass an intermediate English language skills test. Gower, *supra* note 1, at 1. Studies published by Shields and Wheatley-Price show English proficiency increased the "average occupational wage" by approximately 20% and that interpretation services create significant costs for UK taxpayers. *Id.* at 3. From 2009 to 2010, roughly £2.6 million was spent on telephone interpretation services and an additional £400,000 in document translation. *Id.* (quoting *Changes to Family Immigration Rules*, HO0065 HOME OFFICE IMPACT ASSESSMENT 9–10 (June 12, 2012)).

112. MM, R (On the Application Of), [2014] Imm AR 245 ¶ 107(ii).

113. *Id.* ¶ 107(v). A person who works forty hours per week for fifty-two weeks per year at the national minimum wage of £6.31 per hour would only earn £13,124 per year. *Id.*

It is estimated that the gender pay gap in the UK “remains consistent” at roughly 14.9%.<sup>114</sup> Women constitute approximately one-third of all migrant sponsors.<sup>115</sup> To make matters more difficult, the presence of an infant is associated with a 45% decrease in a UK mother’s likelihood of employment.<sup>116</sup>

Unpaid work in the home is not economically visible within the public sphere and is thus readily categorized as “unproductive, unoccupied, and economically inactive.”<sup>117</sup> The public/private dichotomy reduces an individual’s right to self-determination in freely pursuing “economic, social, and cultural development” free from constraint.<sup>118</sup> Modern international law borrows from western legal thinking in that it assumes “the law is objective, gender neutral and universally applicable.”<sup>119</sup> Nevertheless, states remain patriarchal by nature in the “use of force to maintain control.”<sup>120</sup> One purpose of feminist legal theory is to reinterpret and reformulate substantive law so that it may more adequately reflect the experiences of all individuals.<sup>121</sup> Feminist approaches generally reject the Universalist approach in an attempt to try and recognize the “situated nature of people’s lives.”<sup>122</sup>

Traditionally, women have been the primary sex responsible for the care of children and housekeeping.<sup>123</sup> In 2013, the UK workforce was

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114. *Id.* ¶ 113. The *Annual Survey of Hours and Earnings* shows the gender pay gap for 2014 was roughly 9% for full-time workers. *Hours and Earnings 2014*, *supra* note 34, at 10. While this seems like a much-improved figure from the 14.9% estimated in *MM, R (On the Application Of)*, the number rockets to 19% when part-time workers are added to the statistic. *Id.*; *MM, R (On the Application Of)*, [2014] Imm AR 245 ¶ 113. In 2013, male migrant partners earned an average £21,300 per year compared to female partners who earned roughly £15,600. *Hours and Earnings 2014*, *supra*, at 10. Lord Justice Aiken acknowledged that wage discrepancies are larger in regions outside the South East. *Regina (MM (Leb.)) v. Sec’y of State for the Home Dep’t*, [2014] EWCA (Civ.) 985, [¶ 153], [2014] W.L.R. (D) 308 (Eng.). This means women living outside the South East have multiple factors working against them in meeting the MIR.

115. *MM, R (On the Application Of)*, [2014] Imm AR 245 at n.10.

116. Janet Gornick et al., *Public Policies and the Employment of Mothers: A Cross-National Study*, 140 LUXEMBOURG INCOME STUDY WORKING PAPER SERIES 24 (June 1996).

117. Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT’L L. 613, 640 (1991) (quoting M. WARING, COUNTING FOR NOTHING 13 (1988)).

118. *Id.* at 642 (citations omitted).

119. *Id.* at 644.

120. Charlesworth et al., *supra* note 117, at 622. Male power is often socially defined. MACKINNON, *supra* note 19, at 131. In capitalist countries, male power is constructed through wealth as masculinity “having it” and femininity “not having it.” *Id.*

121. Charlesworth et al., *supra* note 117, at 634.

122. Jo Shaw, *Importing Gender: Feminism and the Analysis of the EU Legal Order*, 7 J. EUR. PUB. POL’Y 406, 412 (2011).

123. Laura T. Kessler, *The Attachment Gap: Employment Discrimination Law, Women’s Cultural Caregiving, and the Limits of Economic and Liberal Legal Theory*, 34 U. MICH. J.L. REFORM 371, 378 (2001).

almost equally divided with 49% women and 50% men.<sup>124</sup> However, roughly 20% of those women worked in part-time positions compared to men who, at 6%, worked disproportionately more in full-time positions.<sup>125</sup> Economically, the UK has seen improvement: UK unemployment fell below two million in 2014 with five hundred thirty-eight thousand fewer individuals unemployed over a three-year period compared to 2013 altogether.<sup>126</sup> This has been a small triumph for the UK as part of a long recovery from the global financial system crisis six years ago;<sup>127</sup> however, the nuclear family remains something of the past.<sup>128</sup> There are ten times more stay-at-home fathers in the UK than there was a decade ago.<sup>129</sup> This means 1.4 million men have now become the primary household caregiver.<sup>130</sup> This shift is a small success for gender equality,<sup>131</sup> but

124. *Annual Survey of Hours and Earnings, 2013 Provisional Results*, OFFICE FOR NATIONAL STATISTICS 14, Dec. 12, 2014, [http://www.ons.gov.uk/ons/dcp171778\\_335027.pdf](http://www.ons.gov.uk/ons/dcp171778_335027.pdf).

125. *Id.* at 20. While a causal connection should not automatically be made, household duties and child rearing are likely factors that contribute to women holding on average more part-time positions than men.

126. Angela Monaghan & Phillip Inman, *UK Unemployment Falls Below 2 Million for First Time Since Financial Crisis*, THE GUARDIAN, Oct. 15, 2014, <http://www.theguardian.com/business/2014/oct/15/uk-unemployment-falls-6-percent-lowest-lehman-brothers>.

127. *Id.* Pay growth remained sluggish in 2014 fluctuating between 0.6-0.9% throughout the year. UK citizens continued to be at an average deficit of £2,500 per year in terms of spending power. *Id.*

128. *Infra* note 130 and accompanying text (noting stay-at-home fathers are more common in the UK now).

129. Mark King, *Stay-at-Home Dads on the Up: One in Seven Fathers are Main Childcarers*, THE GUARDIAN, Oct. 25, 2011, <http://www.theguardian.com/money/2011/oct/25/stay-at-home-dads-fathers-childcarers>. Stay-at-home fathers seeking to sponsor their families are likely to experience challenges similar to those faced by stay-at-home mothers; however, they are more likely to meet the MIR once employed. *Supra* note 114 and accompanying text (showing male migrant workers are typically employed at roughly £21,300 per year compared to their female partners who earn roughly £15,600).

130. *Id.* Twenty-six percent of UK fathers have reduced or given up work to look after their children while their partner works. *Id.* Experts speculate the sharp increase in stay-at-home fathers has largely to do with increased child care costs and shifting parental responsibilities. *Id.* Many “mums and dads” now enjoy “non-traditional roles.” *Id.*

131. Twenty-first century Britain has been deemed one of the most positive places for young women to reach achievement. Kathy Gyngell, *It Drives Me Mad that Feminist Won't Fight for Stay-at-Home Mothers: The Sisterhood has Won Every Battle but there's Still One Group of Women Treated Like Second-Class Citizens*, SAYS KATHY GYNGELL, DAILY MAIL, Mar. 5, 2014, <http://www.dailymail.co.uk/femail/article-2574250/It-drives-mad-feminists-wont-fight-stay-home-mothers-The-sisterhood-won-battle-theres-one-group-women-treated-like-second-class-citizens-says-KATHY-GYNGELL.html>.

Some of Britain's most recent triumphs include the 2010 Equality Act, which “imposes duties on employers to protect and promote women in the workplace,” and a growing number of female workers in predominately male professions. *Id.* Sixty percent of doctors under the age of 30 and 53% of the Civil Servant staff are now female. *Id.* Yet, even with enhanced occupational freedom, women still receive judgment when they elect to work in the home. *Id.* Deciding to stay at home is often regarded with contempt; seen as “a form of patriarchal oppression,” UK women often believe that the only fulfilling role is in the workplace. *Id.* To make matters worse, stay-at-home parents lose their child benefits once their partner earns an income in the upper tax bracket. *Id.*

reliance on one salary has left many families vulnerable.<sup>132</sup> Family dynamics aside, most women still complete the “bulk of domestic duties in the home—even when both parents are working.”<sup>133</sup>

Under the Amendments, UK citizens who have chosen to stay-at-home, for whatever reason, are unreasonably penalized from uniting with their family. Social factory and waged housework are theories that exemplify the crucial role stay-at-home parents play in reducing wage requirements of working partners by providing services that would otherwise cost money if provided externally. A stay-at-home parent relieves the working partner from family constraints that can get in the way of their job and interfere with upward mobility; moreover, through the biological process, stay-at-home mothers fulfill a fundamental role in creating future laborers.<sup>134</sup> Without a “wage” for housework, UK citizens who live abroad as stay-at-home parents are practically incapable of re-entering the UK job market at the current MIR, and thereby permanently exiled from their homeland.<sup>135</sup> From this perspective, many citizens who wish to sponsor

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132. King, *supra* note 129.

133. *Id.* Women are often in charge of cooking, homework, activity planning, and reading with the kids. *Id.*

134. See WEEKS, *supra* note 81, at 121.

135. One such example is Gillian Hudson, a UK citizen who moved to Kyushu, Japan to participate in the Exchange Teaching Program. Ryall, *supra* note 5. When she returned to the UK she met Tsuyoshi Okuma whom she later married in 2004. *Id.* Upon receiving a scholarship at The University of Tokyo, the two decided to move back to Japan. *Id.* Ms. Hudson believes she will now be unable to return to the UK because, with two dependent children (a newborn and three-year old daughter), she would have to secure a position that pays roughly £25,000 after an eight-year break from the UK job market. *Id.* Of those eight years, Ms. Hudson spent two studying and two as a housewife. *Id.* More importantly, she doesn't want to be the full-time wage earner, but this is unimportant since the Immigration Rules require her to be the “breadwinner.” *Id.* Ms. Hudson said she never thought marrying her husband would mean she would lose her right to family life in the UK forever. *Id.* The UK is where her extended family remains and where she hoped to raise her children for part of their life. *Id.* Ms. Hudson is not alone; BritCits, a campaign organization, has collected forty real-life case studies illustrating just how arbitrary the new MIR operates in practice. *Liberty's Submission to the All Party Group on Migration's Inquiry into the New Family Migration Rules*, LIBERTY 7 (Jan. 2013), available at <https://www.liberty-human-rights.org.uk/sites/default/files/changes-to-immigration-rules-briefing-on-family-migration-inquiry-jan-2013.pdf>. Gary, a UK citizen, married Lise, a South African human rights lawyer. *Id.* With Gary's extended family in the UK, the couple would like to move there permanently. Gary earns less than the MIR, but combined with Lise's income they make twice the threshold. *Id.* Unfortunately, since Gary cannot rely on Lise's income they are unable to make the move. See generally Gower, *supra* note 20. Similarly, Alice met and married a Tunisian man with whom she has a daughter. Liberty, *supra*. Alice is not even able to have her husband visit for six weeks. *Id.* The couple submitted proof of savings sufficient to cover Alice's husband's six-week visit, and Alice's father has even come forward as guarantor, yet he was refused entry altogether because there was not a sufficient reason for him “to return to his country following the visit.” *Id.* As a single mother working in retail, and living in the small town of Norfolk, she remains incapable of meeting the MIR. *Id.*

their families will never be free to choose when or whether he or she will join the workforce.

## VI. AMENDING THE AMENDMENTS

The Immigration Rules should undoubtedly be amended; however, it will require a balancing of interests between the UK government and its citizens.<sup>136</sup> The wages for household labor theory should not be taken literally,<sup>137</sup> but rather revitalized as a revolutionary force to challenge the rigidity with which the Immigration Rules were created. One solution inspired by this theory is an amendment that permits the UK citizen to switch places with their partner for MIR purposes.<sup>138</sup> For example, if a UK citizen is able to prove the couple has relied solely upon the other partner's income to support their family abroad, that partner may subsume responsibility for the MIR requirement. This would be contingent upon the non-EEA partner's proof of savings which would grant him or her time to obtain employment within the UK, if necessary,<sup>139</sup> and preclude the family's need for government assistance. Alternately, couples could use the non-EEA partner's offer of employment to prove the couple will meet the MIR once he or she is granted entry.<sup>140</sup> This would acknowledge that the UK citizen works full-time inside the home and permit families to maintain their current dynamic without incurring additional expenses from

136. UK citizens unable to meet the MIR would like it reduced in order to preserve their right to family life and to reside within their country of citizenship. *MM, R (On the Application Of) v. The Sec'y of State for the Home Dep't*, [2014] Imm AR 245, [¶¶] 10, 12, [2013] EWHC 1900, (Admin), [2013] WLR(D) 280, [2014] WLR 2306, [2014] 1 WLR 2306. In opposition, the Government hopes to reduce stresses imposed upon current taxpayers from migrants who will now, or in the future, require financial assistance. *Home Office Wins*, *supra* note 33.

137. Wages for household labor is a theory that emerged in the 1970s as a demand for perspective. WEEKS, *supra* note 81, at 128. It was largely a force for demystification aimed to create new ideologies within the dominant work and family discourse at that time. *Id.* at 129. The demand was used to show household labor was a "job like any other, that must be paid like any other" and "refused like any other." *Id.* (quoting Power of Women Collective, *The Home in the Hospital*, in *ALL WORK NO PAY: WOMEN, HOUSEWORK, AND THE WAGES DUE* 69, 87 (Wendy Edmond & Suzie Fleming, eds., 1975)). It was intended to "demystify and deromanticize domestic labor" while challenging gender norms and compulsory heteronormativity within the increasingly publicized family sphere. WEEKS, *supra* note 81, at 129.

138. *MM, R (On the Application Of)*, [2014] Imm AR 245 ¶ 7 (explaining MM complained he could not rely on his wife's earning capacity in order to apply for entry clearance).

139. In some circumstances, a non-EEA spouse may be able to keep his position abroad and telecommute from the UK. Taxpayers would feel no additional burden and the UK could potentially gain extra income via property taxes, foreign income taxes, and healthcare costs.

140. Ms. Javed alleged the spousal reliance exclusion was particularly discriminatory since her husband was not only likely to find employment, but also receive a higher rate of pay as a male migrant. *Id.* ¶ 21.

outside the home. Last, it would preserve the UK citizen's right to choose whether he or she works in or outside the home.<sup>141</sup>

A more liberal amendment would be one that eradicates the MIR altogether. Like Canada,<sup>142</sup> the UK could require its citizens, or extended family members with qualifying circumstances, to sign an agreement placing them financially responsible for any applicant who subsequently requires government assistance post-arrival. Since it is foreseeable that an overseas guarantor could easily disappear in order to avoid liability, the UK could require guarantors to maintain a verified address or place of employment within the UK or one of its overseas Colonies.<sup>143</sup> Agreeing to take financial responsibility could have legal consequences similar to those when a person defaults on a loan. The UK could also mandate participation in local employment service programs that would monitor and assist the non-EEA partner in finding work. While these methods may result in unwanted governmental intrusion and expense, they would permit UK citizens to rely on sources of income that are currently unavailable to many multi-national couples, such as financial assistance from extended family members. Both methods also allow the couple time to seek employment while in the country where it is much easier to conduct interviews and phone calls than when applying abroad. However, the most important aspect of these two methods is the UK citizen's ability to be reunited with their partner and children more easily.

A third and altogether different solution would be the automatic approval of applicants that are qualified to fill one<sup>144</sup> of the occupations listed on the *2014 Occupation Shortage List*.<sup>145</sup> While there is a push to

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141. Finding work outside the home does not liberate a woman, or man for that matter; work remains work whether it is found "inside or outside the home." Costa & James, *supra* note 82, at 18. For this reason, she emphasized family as the pillar of the capitalist organization. *Id.* at \*19. A lack of one element will cause the entire system to fail. Without money the family cannot be sustained, but without familial support, spouses cannot leave the home in order to earn money. A vicious cycle ensues; the family becomes a self-reliant self-sustaining machine requiring either the full-time employment of both spouses (one in the home and one in the workplace) or a self-settled agreement to work part-time in both capacities in a regulated cycle. The cycle may only be broken if the family decides to outsource support via babysitting services, eating out on a regular basis, etc.

142. *Guide 3900*, *supra* note 40.

143. *See* British Nationality & Colonies, *supra* note 2.

144. The UK could also incentivize multi-national couples if *both* individuals filled these much-needed positions. Incentives could include tax breaks, annual bonuses, scholarships for the couple's child(ren) if they pursue a degree in math or science, or free/discounted childcare.

145. The number of skilled UK graduates continues to drop as "children continue to shun maths and sciences." Graeme Paton, *Immigrants Fill One in Five Skilled British Jobs*, THE TELEGRAPH, Nov. 3, 2013, <http://www.telegraph.co.uk/news/uknews/immigration/10424148/Immigrants-fill-one-in-five-skilled-British-jobs.html>. Half of the 119 occupations listed in the government's report require engineering, and an additional 20% require scientific or technical roles. *Id.* Occupations that make the

decrease migrant workers in these positions, permitting non-EEA partners to fill the void would not only bring UK citizens back into the country, but also increase the likelihood that UK citizens will fill these positions in the future.<sup>146</sup> The only foreseeable problem with this solution is that many “shortage occupations” have a low entry-level pay at roughly £21,000.<sup>147</sup> Couples with one stay-at-home parent hired into an entry-level position would need concessions either through a lower MIR or a grace period during which his or her salary is allowed to increase to the MIR within a reasonable amount of time. Also important, couples granted entry based upon the fulfillment of a specific job could be contractually required to work at that company for a certain number of years in order to qualify for sponsorship. Like active military duty, a non-EEA partner permitted entry based upon their skills must, in exchange, use them to actively serve the UK.

## VII. CONCLUSION

*The question of the right to a full life has to be divorced completely from the question of work.*

—James Boggs, *The American Revolution*.<sup>148</sup>

Despite evolving gender and social norms, amendments recently made to the UK’s Immigration Rules discriminate against stay-at-home parents and predominately women who have historically filled this role. UK women will be largely unsuccessful in their pursuit of familial sponsorship without greater flexibility in the qualifying Amendments. Female citizens face different obstacles based upon where they live geographically. For those currently living within the UK, sponsorship requires her to not simply join the workforce, but also obtain a specified income.<sup>149</sup> While she may not need to acquire employment for a myriad of reasons (e.g. she receives monthly support from her partner abroad, parents, extended family, etc.), she has no choice in the matter. On the other hand, UK

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list include biological scientists and biochemists, civil engineers, mechanical engineers, IT business analysts, medical practitioners, nurses, and social workers. For the full list see *Tier 2 Shortage Occupation List*, UK VISAS AND IMMIGRATION, Apr. 6, 2014, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/308513/shortageoccupationlistapril14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308513/shortageoccupationlistapril14.pdf)

146. For example, having at least one parent with a skilled occupation might influence their children to follow in their footsteps. Furthermore, a child whose parent is able to tutor them in math and science homework will promote the child’s interest and ability to do well in these subjects.

147. See generally *id.*

148. WEEKS, *supra* note 81, at 227 (citations omitted).

149. Gower, *supra* note 1, at 5.

women abroad must not only prove they have worked at the proscribed income while overseas, but they must also secure employment back in the UK in order to meet sponsorship requirements.<sup>150</sup> For UK citizens that are also stay-at-home wives or mothers, the sponsorship process is not just maddening—it's impossible. Setting aside all other Amendments, the MIR alone strips UK women of their right to provide for their family by working in the home. Moreover, the act of becoming employed may not be their only hurdle. With a steep gender pay gap<sup>151</sup> and a significant decrease in the ability to find work after having children,<sup>152</sup> UK women—especially mothers—will likely find the sponsorship requirements too cumbersome.

At this time and for the foreseeable future, the Immigration Rules will continue to single-out stay-out-home wives and mothers who have chosen a transnational lifestyle,<sup>153</sup> who live in rural areas,<sup>154</sup> who receive financial support in unique ways,<sup>155</sup> and who cannot otherwise make ends meet without the collective income of two partners. In doing so, the UK will miss out on untapped couple and family-based immigration benefits. An amendment would be mutually beneficial for the UK and its citizens. For example, UK citizens living apart from their partners could reunite in order to finally receive the support they need to seek full-time employment and *get off* the welfare system.<sup>156</sup> Moreover, a partner trained in engineering abroad could fill one of the UK's many vacant science positions.<sup>157</sup> Successful sponsorship could also mean two parents working full-time with an increased gross income and greater spending power. In

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150. *Supra* note 25 and accompanying text (stating UK citizens must show current employment overseas that would meet the MIR or show they have received income over the previous twelve months that satisfies the MIR).

151. *Supra* notes 34 & 114 and accompanying text (showing the UK has a large pay gap, which increases drastically when locality and part-time workers are taken into consideration).

152. Gornick et al., *supra* note 116 (explaining there is a 45% decrease in a woman's ability to find work after having a child).

153. *Supra* note 135 and accompanying text (using case studies to show how women living abroad are affected by the MIR).

154. *Supra* note 34 and accompanying text (explaining women living in Rother earned the lowest weekly salary).

155. *Id.*

156. *Supra* note 48 and accompanying text (showing single parents have great difficulty finding employment, which has been associated with childrearing and homemaking duties).

157. *Supra* note 145 and accompanying text (showing the following occupations are typically unfulfilled: biological scientists and biochemists, civil engineers, mechanical engineers, IT business analysts, medical practitioners, nurses, and social workers).

spite of rising concerns over illegal immigration,<sup>158</sup> the UK must ensure it does not punish its citizens with untenable laws. Unless the UK further amends the Immigration Rules, anti-immigration efforts will permanently exile many of its well-meaning citizens while blocking a potential influx of taxable income and spurning current and future skilled workers.

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158. *Supra* notes 8 & 75 and accompanying text (explaining one hundred seventy-five illegal immigrants went missing upon being rejected in their pursuit to remain in the UK and that many of them work in the “black market” illegally claiming benefits and voting in elections).

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