



Home Office

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05 OCT 2005

Dear Caroline

Thank you for your letter of 26 September 2005 on behalf of British Women married to foreign nationals who are under threat of deportation by the Home Office.

Where asylum is refused, consideration is given to the claimant's wider rights under the law, including the UK's international obligations and any other humanitarian factors which may justify allowing the individual to remain in the UK on exceptional grounds. In the case of a claimant who is married at the time of the claim, consideration is given to whether the spouse could not continue their family life overseas because of the situation in the country concerned. If after full and careful consideration a claim is refused, there is a right of appeal through the independent Tribunal system to the higher civil courts. Only if and when all appeal rights are exhausted will a person's removal from the UK be enforced.

A marriage that takes place after enforcement action has commenced is not itself considered a sufficiently compassionate factor to prevent removal. The onus rests with the settled spouse to make out a case with supporting evidence as to why it is unreasonable for him or her to live outside the United Kingdom. Factors which caseworkers would consider are whether the United Kingdom spouse:

- has a very strong and close family ties in the UK (e.g. Older children from a previous relationship that form part of the family unit)

- has been settled and living in the United Kingdom for at least the preceding 10 years
- suffers from ill-health and medical evidence conclusively shows that his/her life would be significantly impaired or endangered if he/she were to accompany his/her spouse on removal.

Full consideration is also given to the rights protected by the European Convention on Human Rights, including articles 8 and 12, and the possibility of granting discretionary leave on that basis. Article 12 is to be exercised "according to the national laws governing the exercise of this right". Article 8 does not give a person or their family the right to choose the country in which they enjoy family life if they are able to live elsewhere. This is even true where some members of the family are lawfully resident in the UK (including where they are British Citizens) and where relocation involves a degree of hardship for some or all of the family.

Paragraph 284 of the Immigration Rules prevents persons who have no permission to be in the UK and those here on a short term basis from switching into the marriage category of the Rules. This is a deterrent to prevent people from seeking to circumvent the immigration control. The Government accepts that a person who falls into one of these categories may be in a genuine relationship. However, it is appropriate to expect people to respect the UK's immigration procedures and apply for entry clearance as a spouse in the proper manner. To allow them to switch into marriage after entering the country on some other basis is unfair to those waiting in the queue overseas, whose circumstances may be just as compelling, and could act as an incentive to those who have entered the UK illegally to attempt to stay in that capacity.

You cite the case of a British citizen married to an Afghan. As in all immigration cases a duty of confidentiality prevents me from discussing or disclosing the details of cases that are currently under consideration, so I cannot comment any further on the particular case you raise.

With regards to Afghanistan, although it remains a country of concern for human rights reasons, the UK with others in the international community, regularly raises human rights concerns with the Afghan authorities and much has been accomplished over the last two years. The UK is using its role as EU and G8 Presidencies to keep the international community's attention on Afghanistan. Financial, technical and political support has been given which has resulted in a growth of human rights organisations on Afghanistan.

Significant progress has been made in Afghanistan on women's rights. For example:

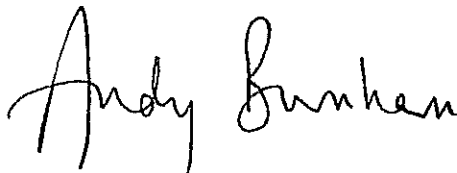
- The UK has funded numerous human rights projects for vulnerable groups, particularly women in all levels of education, such as health

education and teacher training. The FCO has provided financial assistance towards a major project by Action Aid to promote women's participation in government.

- The elections in September 2005, fielded women candidates. Of the 10.5 million registered voters, 42% were women. Of the 8.5million who voted, 40% were women. In a country where women previously suffered restrictions on their daily life (their dress was regulated, not allowed to go to school and confined to the house), this has been a significant achievement, with women being elected to key posts.

We are unable to identify the legislation on EU regulations which you mention, but are confident that UK nationals are dealt with appropriately. Please feel free to provide us with the legislation to look at. UK nationals are subject to UK immigration controls and not the freedom of movement laws of the EU.

Yours sincerely

A handwritten signature in black ink that reads "Andy Burnham". The signature is written in a cursive, flowing style.

ANDY BURNHAM