

Institution: Middlesex
Unit of Assessment: UoA 22
Title of case study: Research supporting legislative change in family migration
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>The impact has its origins in work carried out by social policy (Kofman) and legal (Wray, Howard) academics from the mid-2000s which challenged existing conceptualisations of family migration, the absence of gender considerations and the evidential basis for national and European policy in this field.</p> <p>This research has culminated since 2011 in an influential intervention in debates on restrictions on spousal migration, especially relating to income requirements, in Parliament, amongst NGOs and the public, and on the form and outcome of legal proceedings which challenged the compatibility of immigration rules restricting spousal migration with human rights and non-discrimination norms. The impact therefore takes the form of significant contribution to legal challenges and policy debate that are creating impetus for reform.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Kofman has been driving academic debate on family migration for the past decade and was amongst the first to offer a gender critique of policy and to draw attention to the inadequate conceptualisation of family migration. This work set the framework for subsequent investigation by other migration scholars and she was subsequently invited to collaborate in research projects funded by the Austrian Ministry of Research (NODE Programme - New Orientations for Democracy in Europe) (1) and the EU Integration Fund (2). These investigated the formulation of and strategic responses to family migration controls throughout Europe, particularly in their discriminatory effects on women. On the basis of these studies, she wrote a report for the European Women's Lobby (3), to be used in their response to the consultation on a potential redrafting of the EU Family Reunification Directive in 2011.</p> <p>Wray has been working on the regulation of family migration since the mid-2000s. Her focus has been the relationship between policy aims and legislative change and the role of the courts in determining the limits of government control over family migration. Her article 'An Ideal Husband' (4) analysed the inadequate evidential basis for government policy that dramatically interfered with the ability of migrants to marry in the UK. Her subsequent work (5) has deepened and extended the range of this analysis.</p> <p>Wray's experience of critical policy analysis led to her being invited in 2011 to provide expert evidence in a judicial review of a new rule which required incoming spouses to take an English language test before entry. Leading a team of three (Charsley, Clift and Jordan, not at Middlesex), she drew on her knowledge of the academic literature and her skills and experience of policy analysis to write a lengthy expert report and witness statements for the proceedings. This case was heard, first in the High Court (<i>Chapti and others v SSHD</i> [2011] EWHC 3370 Admin) and then in the Court of Appeal (<i>Bibi and another v SSHD</i> [2013] EWCA Civ 322). Wray et al's report showed that the test would not confer the linguistic benefits claimed for it and that there were serious practical issues involved in its implementation that would make it much more difficult for spouses from some countries to gain entry.</p> <p>New regulations for family migration from 9 July 2012, especially the income requirement of £18,600 per annum for sponsors, have had a discriminatory impact on the ability of British citizens and residents to live in the UK with their partners. It was estimated that 61% of British women in employment would be unable to bring in spouses (Oxford Migration Observatory). Applications fell from 25,664 in the 6 months preceding the introduction of the rule to 10,854 in the 6 months after, and with a much higher rate of rejection, especially for women. In 2012, Wray, together with</p>

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Kofman and Howard, an expert on national and European anti discrimination legislation (6), were approached to write an extensive expert report used as the background material for the legal case submitted to the High Court and discussed below (*MM and Ors v SSHD* [2013] EWHC 1900 (Admin)). This demonstrated that the high financial threshold required for spouses to be sponsored was well above the minimum adult wage (£13,400) and meant that it was likely to be incompatible with human rights and discrimination laws and would particularly affect those on low incomes, women, minority ethnic groups, young people or living outside of London. It also questioned the Government's assertion that the new regulations represented a saving on welfare expenditure and argued that income requirements on foreign spouses could be putting an additional burden on the taxpayer.

3. References to the research (indicative maximum of six references)

These outputs are either in highly rated journals and book series or have been extensively reviewed by the commissioning organisations.

- 1) Kofman, E., A. Kraler, M. Kohli and C. Schmoll (2011) 'Issues and debates on family-related migration and the migrant family: European perspectives' In A. Kraler, et al. (eds) *Gender, Generations and the Family in International Migration*, University of Amsterdam Press, pp.13-54 (Introduction based on the Austrian Ministry of Research programme (NODE) project Civic Stratification, Gender and Family Migration Policies in Europe http://www.node-research.at/joomla/index.php?option=com_content&task=view&id=50&Itemid=151)
- 2) Kofman, E. and Meetoo, V (2008) 'Family migrations' in *International Organization for Migration World Migration 2007: Managing Labour Mobility in the Evolving Global Economy*, ch. 6, International Organization for Migration, Geneva.
- 3) Kofman, E. (2011) 'Family Reunion Legislation in Europe: is it discriminatory for migrant women, European Network of Migrant Women, Brussels. Available at: http://www.migrantwomennetwork.org/IMG/article_PDF/Family-Reunion-Legislation-in-Europe-Is-it-Discriminatory-for-Migrant-Women_a261.pdf
- 4) Wray, H. (2006) 'An Ideal Husband? Marriages of Convenience, Moral gatekeeping and Immigration to the UK', *European Journal of Migration and Law*, 8, 303-320.
- 5) Wray, H. (2009) 'Moulding the Migrant Family', *Legal Studies* 29(4): 592-618.
- 6) Howard, E. (2011) 'EU Equality Law: Three Recent Developments', *European Law Journal* 17 (6), 785-803.

4. Details of the impact (indicative maximum 750 words)

Impact on legal practice and capacity building: Wray's report in *Chapti* was placed on the website of the Joint Council for the Welfare of Immigrants (JCWI) where it could be used to support appeals brought by other claimants (<http://jcwi.org.uk/2011/12/16/chapti-ors-v-sshd-pre-entry-language-test-judgment>). Wray was also asked to provide support in other court proceedings and received unsolicited emails from lawyers thanking her for the quality and usefulness of her work. Wray (2011) and Kofman (2012) were asked to present to the AGMs of the JCWI, their work for these reports, in each case addressing an audience of over 100 lawyers and activists from across the UK. In 2011, Wray addressed about 40 immigration lawyers at a meeting convened by the Immigration Law Practitioners Association and in 2013 at the Migrants' Rights' Network (MRN) Annual Summit (5.1), addressing about 100 activists. Their work was cited by Habib Rahman, Chief Executive of JCWI, in a keynote speech to the Oxford Migration Studies Conference in 2013 (5.2). It has also been posted and highly recommended on the Asylum and Migrant Network (Council of Churches) (5.3) and Britcitz websites, thus reaching out to a wider public and those affected by the changes.

Impact on public debate: Working closely with several leading NGOs in the campaign against the new regulations (MRN, JCWI) (5.1, 5.2)), the findings of the judgement and the critique of the potential savings to welfare expenditure made by Middlesex researchers have been widely reported in the BBC, regional and national newspapers, for example, - the Belfast Telegraph and the Daily Express (<http://www.express.co.uk/news/uk/413433/Warning-on-migration-shake-up-cost>) - and on politics.co.uk (5.4). This dissemination has made a significant contribution to campaigns and debates inside and outside Parliament which is creating considerable momentum for reform of the rule (see below).

Parliamentary impact: Based on their work, Kofman and Wray made a joint submission on the new income requirement to the All Party Parliamentary Group on Migration (APPG) in its Family Migration Enquiry. In March 2013, Wray gave oral evidence to the Enquiry at the House of Commons and its quality was singled out for praise by its Chair, Baroness Hamwee (5.5). Their submission was cited at several points in the Enquiry Report (June 2013) and received widespread publicity. In addition, the essential points of their evidence were put into a joint briefing with Minority Rights Network which was circulated to all MPs ahead of a Westminster Hall debate on 19th June 2013. Kate Green, MP Stretford and Urmston, made extensive use of the evidence during her contribution to the debate (5.6). The briefing was later circulated to Peers ahead of a Lords debate on 4th July 2013 and formed the basis of a press release timed to coincide with a national demonstration and parliamentary meeting on 9th July. There is evidence of growing political pressure to amend the rule (<http://www.migrantsrights.org.uk/blog/2013/09/tide-beginning-turn-family-migration>).

Impact on court proceedings: The first set of expert reports and witness statements, on the compatibility of pre-entry language testing with human rights, was submitted in the case of *Chapti*. This high profile test case was argued not only by the parties but by JCWI and the civil liberties organisation, Liberty, whose counsel, relied on the report in their submissions (5.7). Wray was thanked by the lawyers involved for the quality of her work which in particular underpinned a key argument relating to the nature of discrimination in this situation (5.8). Although the initial judgment found against the claimants in this regard as did the majority of the Court of Appeal (*Bibi v SSHD*), in a dissenting judgment, Keene LJ, took a different view and relied on Wray's evidence to find that the Government had not met its obligations to show the necessity of the rule and therefore its compliance with human rights. Leave to appeal to the Supreme Court has been sought and there is a good possibility that the question of the weight to be attached to expert evidence in cases of this kind will form the basis of a decision by the UK's highest domestic court as to the lawfulness of the pre-entry language test and therefore its applicability to thousands of spousal migrants entering the UK.

The judgement on *MM and Ors vs SSHD*, delivered on 5 July 2013, found that the combination of the new regulations was disproportionate, unjust and unduly harsh for a wide range of the population, especially young people, women and those on low incomes and would therefore breach article 8 ECHR in many cases. The judgment drew in many places on the findings and arguments in our expert report (5.8).

Impact on Family Migrant Sponsors and Spouses: In response to the *MM* judgment, the Home Office called a pause in the decision making of applications pending its appeal against the judgment. If the judgment is upheld by the higher courts, the government will be required, under the Human Rights Act, either to change the law or to legislate and risk an unfavourable judgment in the European Court of Human Rights. In the meantime, the findings in the judgement on article 8 incompatibility in most cases is assisting many applicants whose claims have already been rejected because they do not meet the income threshold to appeal their individual claims successfully (<http://www.freemovement.org.uk/2013/07/22/hope-for-families-divided-by-the-income-threshold/#more-9205>).

Impact on European policy: Kofman's report on family reunion legislation in Europe was relied on by the European Women's Lobby (EWL), the largest non-governmental umbrella organisation of

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some 2000 women's associations in the European Union and the European Network of Migrant Women (ENoMW) - a European network of more than 100 non-governmental and non-profit organisations from 16 European Union states in their response to the European Commission *Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*. The EWL submission (5.9) cites from Kofman's report at length and explicitly recognises her research. The report states '*Facts and figures in this response to the Green Paper are mainly based on the research by Prof. Eleonore Kofman, Middlesex University, London. She has accompanied and advised EWL's EPIM funded project on: "Equal Rights. Equal Voices. Migrant Women in the EU" from 2008-2011.*' The submission by the EWL/ENoMW informed debate among stakeholders who were invited to submit comments.

5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Policy Officer Migration Rights Network
2. Director JCWI
3. Churches Refugee Network. Middlesex University report *Divided families; some more divided than others Submission to the APPG on Migration - Family Migration Inquiry* on their resources section <http://www.ctbi.org.uk/96> (April 2013).
4. Revealed: The financial cost of Theresa May's immigration policy, <http://tinyurl.com/qyb6j4l>
5. Chair, Family Migration Enquiry, All Party Parliamentary Group on Migration and Co-Chair of the Liberal Democrat Parliamentary Party Committee on Home Affairs, Justice and Equalities (Home Office)
6. Vice Chair APPG on Migration, Shadow Minister for Equalities, HC Deb, 19 June 2013, c267-269WH
7. <http://www.liberty-human-rights.org.uk/about/legal/interventions/r-chapti-v-secretary-of-state-for-the-home-department-court-of-appeal-2011.pdf> (reference by Liberty to Helena Wray's submission to the Chapti case)
8. A lead Counsel in *Chapti/Bibi* and *MM*.
9. Submission of the European Women's Lobby (EWL) and the European Network of Migrant Women (ENoMW) in Response of the Green Paper on the Right to Family Reunification of third country nationals living in the European Union, 1 March 2012. Available at: <http://tinyurl.com/nhe6c88>