



1 October 2010

Damian Green MP
Minister of State for Borders and Immigration
2 Marsham Street
London SW1P 4DF

Dear Minister,

Re: New English language requirement for migrant spouses/partners/fiancé(e)s

ILPA and JCWI write following the Home Secretary's announcements of 9 June and 26 July 2010 that English language tests will be introduced for further categories of migrants, specifically that as of 29 November 2010 formal English language tests will apply to non-EEA spouses, partners and fiancé(e)s who wish to join, or remain in the UK with, their settled or British sponsor. The purpose of this letter is therefore two-fold. Firstly we wish to clarify some of the details surrounding the implementation of this scheme. Secondly we should like to reiterate our concerns about these measures and urge you to give serious reconsideration to the desirability of introducing them. We hope that you will delay implementing the tests until it is clear that this can be done fairly.

The Home Secretary stated on 9 June, when the tests were announced: "The new English requirement for spouses will help promote integration, remove cultural barriers and protect public services." In your speech of 7 September 2010 on people settling in the UK and how their numbers could be reduced you stated, in the context of families: "We have started to take action in this area by requiring, from November, a minimum level of English from those applying for marriage visas." These are contradictory aims for a single policy and we fear that keeping families apart for longer through language testing abroad will not meet the first aim.¹

Points of clarification

The press releases and the Ministerial statements referred to above leave many points unclear. As such, we should welcome clarification of the following:

With the exception of nationals from 'majority English speaking countries' are there any other categories that will be exempt from the requirements? In the case of [FH \(Post-flight spouses\) Iran \[2010\] UKUT 275 \(IAC\)](#) the Upper Tribunal held that appeals on the grounds of Article 8 of the European Convention on Human Rights by spouses and partners of refugees with settled status

¹ *Migrants marrying UK citizens must now learn English*, Home Office Press Release, Wednesday, 09 Jun 2010

or British citizenship should normally be allowed and suggested that consideration be given to amending the immigration rules governing such spouses and partners. We trust that that you can confirm now that this requirement will not apply to them and should appreciate your identification of other groups to whom it will not apply.

The possession of a degree taught in English and measured by National Academic Recognition Information Centre as satisfying the standard of a Bachelor's or a Master's degree or a PhD in the UK is currently sufficient to satisfy the English language requirements under the Points Based System. We hope that you can confirm that this will also be the case with spouses/partners/fiancé(e)s. Similarly, we hope that you can confirm that tests undertaken through testing centres that exceed level A1 of the CEFR levels will also be accepted as satisfactory evidence of fulfilling the relevant criteria.

The list of English language tests published in August 2010 does not explain how people in different countries will be able to take the tests. We should be grateful for a list of test centres in different countries. We are also concerned to know how people in some of the countries from which numbers of spouses and partners come, in particular Pakistan, Bangladesh and India, can find out where they can study and take the test. It is incumbent on the UK Border Agency to be sure that the infrastructure exists to make it feasible for people to meet the requirements of its rules, and we look forward to receiving details of test centres in each country and of the arrangements that will be made for applicants from countries which do not have testing centres.

We should also welcome information about how English skills are to be assessed for spouses/partners/fiancé(e)s. Will they, for example, be assessed through attendance and speaking exercises at testing centres, on-line tests, testing over a phone? If different testing centres adopt different modes of testing how will these be compared and assessed to show that people meet the requirements of the rules?

We should also be interested to learn what discussion the UK Border Agency has had with language teaching providers, the British Council or any other relevant organisations about the materials which have been prepared to assist applicants with their tests, and what the anticipated costs of preparatory material and of the tests are expected to be. We trust that there will be a formal power of waiver of test fees for impecunious applicants/exceptional circumstances, following the decision of the House of Lords in *R(Baiai et ors) v SSHD*[2008] UKHL 53. We are aware that the Government has laid a remedial order before parliament to ensure compliance with that judgment by removing the Certificate of Approval scheme,² and are pleased to see that the Government has taken action to implement a judgment that has been unattended to for so long, but the point made in the judgment about fees and their potential to interfere with, for example, the right to marry and found a family enshrined in Article 12 of the European Convention on Human Rights is, of course, of more general application.

We are unclear about what effects in immigration status are intended to flow from failure to pass an English language test, for either in-country applicants or out-of-country applicants. Will potential applicants who fail tests in the UK be able to apply for temporary leave either to remain in the UK or to return to the UK to learn the language and retake the test? If an applicant in the UK cannot pass the test but meets all the other requirements of the rules, will an extension be granted for her/him and any dependants, in the same way as an extension may be granted for those who have not taken the Life in the UK test now, to avoid the risk of splitting up families for an unnecessary reason and, indeed, generating applications on the basis of the right to respect for private and family life and for the right to marry and found a family?

² The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010, draft.

We hope that you can confirm that the new measures will be applicable only to those people with applications that are submitted after, rather than pending at, 29 November 2010?

Professor Alderson, Professor of Linguistics and English Language Education linguistics at Lancaster University, observes of the August 2010 list appearing on the UK Border Agency website that a number of the tests have been developed by unknown agencies with 'absolutely no evidence of their validity, reliability etc'. His professional view is that these tests 'have not been produced or validated for the said purposes'.³ We understand that there is no direct empirical evidence of any linking of the Cambridge exams to the CEFR, merely an attempt to link self-assessment statements and that evidence for linkage of IELTS is virtually non-existent. We should be grateful if you would confirm what verification/assessment process has been undertaken in relation to tests to ensure both their suitability for this purpose and their reflection of A1 CEFR levels, and to know what monitoring mechanism is to be put in place to monitor the suitability of these tests.

The Home Office and the previous government have acknowledged concerns about English language tuition capacity throughout the world, and had indicated that it would need to generate a supply of sufficient English tuition before the date of implementation in order to meet the requirements. For example in *Marriage Visas: The Way Forward*⁴ the response to the consultation paper on introducing such as test, it was stated:

"...there is not currently sufficient access to English language classes overseas, especially in rural areas, and to introduce the requirement in a dogmatic way immediately would simply keep British citizens apart from their loved ones, breaking up families....

We will establish a cross-Government group

including FCO, DFID, DIUS and the British Council to explore:

- Benchmarks that would trigger implementation of this new requirement.
- Monitoring and reporting arrangements.
- Measures to improve English services in priority areas.

Bringing forward the implementation without any evidence of increased supply of language teaching leads us to fear that people in many countries will not be able to access the teaching and tests required. What steps have been taken in this respect in particular with regards to those people living in poorer parts of the world/rural areas?

We also fear that the requirement leaves itself open to abuse and exploitation of would-be spouses and partners, in that commercial providers may set up and advertise courses specifically aimed at this market, which may not be of use to those who pay for them. We should be grateful to know how the UK Border Agency proposes to ensure that overseas English language tuition providers are regulated to minimise exploitation of applicants. Even in the short time that passing the Life in the UK test or rising an ESOL level has been required for settlement applicants, the UK Border Agency has detected fraud in those providing the tuition and tests; we fear the growth of exploitation of worried applicants

Our concerns about these proposals

ILPA and JCWI are deeply concerned about these measures. As you know, they were first proposed under the Labour Government in the context of its consultation *Marriage Visas: pre-entry*

³ Direct communication from Professor Alderson to the Joint Council for the Welfare of Immigrants.

⁴ UK Border Agency, July 2008.

*English requirement for spouses.*⁵ A number of groups with a wide range of expertise responded to this.⁶ The overwhelming view of approximately 68% of respondents to the Consultation was that they were not in favour of these tests. It is regrettable therefore that these views and the wide experience they represent appear to have been discounted in the decision to implement these measures.

The arguments against these proposals are multiple. They are detailed in the consultation responses referred to above. In short, the key objection is that it will affect applicants from different countries unfairly. Significant global disparities mean that access to opportunities to learn the English language at even a basic level is uneven. The opportunities for certain groups – in particular those in non-OECD countries - to acquire basic English language skills and pass a test will be few. Yet those people might have tremendous capacity to learn the language once in the UK.

Given that a high proportion of spouses applying for entry clearance are women, and are from South Asian countries, the change will disproportionately affect the ability of these groups to enjoy family life in the UK. The change can also potentially be expected to operate in a similar way for those for example with learning difficulties, disabilities and mental health problems as they may face added difficulties in learning and in accessing education. The measure raises serious questions on discrimination.

Aside from the principled arguments, we simply do not accept that these measures are a cost-effective way of achieving the Government's aims and the current public policy objectives of significantly cutting public expenditure. Indeed according to the UK Border Agency's own estimates when the requirement was first proposed, implementation costs of the scheme are expected to be in the region of £26.9-51.1 million.⁷ This is likely to be considerably higher given that the measures can be expected to generate a number of human rights appeals with appellants relying on Articles 8 (right to private and family life) and 12 (right to marry and found a family) of the European Convention on Human Rights.

English language requirements already form part of the existing scheme for settlement in the UK, and research by Human Rights Watch in the Netherlands⁸ shows that these tests are hindering integration there through keeping families apart for long periods, and through reinforcing stereotypes. Introducing a further language test for a partner before entry is likely to keep families from non-majority English-speaking countries apart for longer, thus meaning that children lose out on time in a school in the UK and will face greater difficulties in participating in British society.

A far more cost effective way for the Government to achieve its objectives would be to encourage language learning after arrival and to remove the existing restrictions that limit access by recent migrants to English language classes at home fee rates.

Accordingly for the foregoing reasons we would urge you to give very serious consideration to dropping these measures, or at the very least delaying their implementation until it is clear that this can be done in a non-discriminatory way.

Yours faithfully

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JCWI

ILPA

⁵ December 2007, Border and Immigration Agency.

⁶ *Marriage visas the way forward, op. cit.*

⁷ Impact assessment of pre-application English language requirements, UKBA, 27.7.2009

⁸ *The Netherlands: Discrimination in the name of integration* Human Rights Watch May 2008.