

considered the needs of both the brethren and wider worshipping community and granted the faculty. [RA]

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Aguilar and others v Secretary of State for the Home Department

Court of Appeal: Sedley, Pitchford and Gross LJJ, December 2010

Immigration rules – foreign spouses – right to family life – proportionality

Diego Aguilar, aged 20, was refused leave to remain in the UK as a spouse of a UK citizen on the basis that both he and his wife were under the age of 21. The refusal was made under paragraph 277 of the Immigration Rules, which requires both the incoming and the sponsoring spouse to be aged over 21 years before a visa would be granted. Mr Aguilar challenged the legality of the paragraph. The Home Secretary defended it on the basis that it was a proportionate response to the problem of forced marriage. Mr Aguilar's application for judicial review was unsuccessful, and he appealed to the Court of Appeal.

Paragraph 277 was challenged on three bases: first, that the rule was irrational in that its objective had nothing to do with immigration and that it was therefore an abuse of the prerogative power of immigration control to use the rules for that purpose; secondly, that the rule was a disproportionate inhibition on the right to private and family life and on the right to marry under Articles 8 and 12 respectively of the European Convention on Human Rights; and thirdly, that the rule was discriminatory in that it makes an illogical exception in favour of service personnel who may be granted a visa where one party to the marriage is over 18 years of age.

On the basis that about one-third of all forced marriages were thought to include spouses aged 21 and under, the court held that it could not be said that the rule was irrational. The Home Secretary had reached a tenable (but debatable) view that the rule would reduce the incidence of forced marriage in the UK. The court held that paragraph 277 represented a direct interference in common law and Convention rights to marry and to respect for family life. Further, the court held that the paragraph was a disproportionate response to the problem of forced marriage and that that policy imperative was only obliquely, partially and in large part speculatively related to paragraph 277. The court held that the arguments about discrimination were essentially already addressed in the ruling on proportionality. The appeals were allowed. [RA]

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