



QUEEN ANNE'S GATE LONDON SW1H 9AT

18 March 1986

Dear Wilkie

PROPOSED CHANGE IN THE IMMIGRATION RULES TO PREVENT
THE ADMISSION OR STAY OF CHILD SPOUSES UNDER 16

In my letter of 12 March to the Lord Chancellor and colleagues on the Family Law Bill and the admission of second wives, I referred to my intention to deal with the problem of child brides by an early change in the Immigration Rules. The purpose of this letter is to seek the urgent agreement of H Committee in correspondence to the changes I propose below.

The present Immigration Rules provide no basis for refusing admission to spouses however young who meet the relevant requirements of the Rules; (spouse - or wife - means someone whose marriage is recognised as valid under our family law). The case of the Iranian student and his 12 year old wife to whom the visa officer in Tehran was obliged to issue a visa has highlighted the unacceptable state of our provisions. Although the number of cases are small David Waddington and I consider it politically imperative to take early action to deal with the problem of child brides. To be wholly comprehensive, revision of the family law to deny recognition to overseas marriages involving a partner under 16 would be necessary, but I think that we can deal adequately with the problem, at least for the moment, by a relatively simple change in the Immigration Rules.

It seems to us that there are two options. One could delay admission or stay to someone applying as the spouse of somebody here if they are under 16 at the relevant date. The rule change would be on the following lines.

"A person (other than a person referred to in section 1(5) of the Immigration Act 1971) shall not be granted entry clearance, leave to enter or remain or variation of leave as a spouse of another if he or she will be aged under 16 on the date of arrival in the United Kingdom or (as the case may be) on the date on which the leave to remain or variation of leave is granted."

This would deal with the under-age spouses of people settled here and wives of students and workers. It would not however prevent the admission of under-age spouses coming in as visitors. If we left the gap we might find ourselves in the ludicrous position of being able to keep out a student's under-age wife but not that of his brother-in-law if they visited him as a couple. A more wide-ranging amendment that would prevent the admission of

/anyone who was

The Rt Hon Viscount Whitelaw, CH, MC

anyone who was married and aged under 16 is necessary. It would be achieved by a new paragraph 1A in the Immigration Rules as follows:-

"Nothing in these Rules is to be construed as permitting the admission into the United Kingdom of a spouse (other than a person referred to in section 1(5) of the Immigration Act 1971) who is aged under 16 or the grant of leave to remain or variation of leave to such a spouse, if the other party to the marriage is to be in the United Kingdom at the same time."

Such a change would without the proviso at the end prevent the admission of anyone under 16, perhaps even somebody settled in the United Kingdom, who had married in their country of origin - whether or not they were travelling together with their spouse as man and wife. While it would be possible to exercise discretion to grant admission outside the Rules in individual anomalous cases, in our view it would be preferable to make an explicit proviso so that under-age spouses would only be caught if they were going to be in the country at the same time.

A change in the Immigration Rules alone cannot prevent the admission of spouses aged less than 16 who are themselves British citizens or persons benefitting from the protection of section 1(5) of the Immigration Act 1971. It is however unlikely that such a person would have a domicile in a country overseas that permitted them to marry under 16. Our analysis of the few known child bride cases suggests that nearly all would be caught by the rules change. We must acknowledge too that any under-age spouse of EC workers could not be kept out under the new rule.

There is of course the possibility of challenge in an individual case under the European Convention on Human Rights. It is possible that someone settled here whose under-age spouse was refused admission might claim a violation of the right to respect for family life under Article 8. Our primary defence would be that our rules were necessary in a democratic society for the protection of health and morals. Moreover, we could also argue that marriage involving a child bride does not have the same claim to family life. (It is perhaps also worth noting that with the passage of time, an applicant at Strasbourg would probably gain the relief sought before their claim was concluded.)

I should be most grateful if colleagues could agree by Monday 24 MARCH to my laying a Statement of Changes in the Immigration Rules before Parliament before the House rises for Easter.

Yours,
Douglas.

26. #



FCS/86/080

SECRETARY OF STATE FOR THE HOME DEPARTMENT

The Admission of Child Spouses

1. I am grateful to you for extending the deadline for replies to your letter of 18 March, to allow me to consider this on my return from Greece and Yugoslavia.

2. As I mentioned after Cabinet, the international legal position on child spouses is complicated. Quite apart from the Islamic countries, Belgium, Luxembourg, the Bahamas, Mexico, the Philippines, some Latin American countries and a number of states in the USA (including New York and New Jersey) all allow marriage under 16 years of age. Further research may reveal additions to this list. It is therefore clear that any change to the Rules might have consequences which have not been considered so far in correspondence on this subject. We shall also have to think harder about the possibility of a challenge under the European Convention on Human Rights.

3. I also have doubts about the enforceability of a change in the Rules along the lines which you have proposed, particularly in relation to those who come as visitors and therefore do not need prior entry clearance.



4. Against this background I am sure that we should not rush to introduce changes before Easter, but should take care to study the problem in all its aspects. Given that there is some linkage, at least in the popular imagination, between this issue and the problem of polygamy, I hope you will agree that both should be examined in H Committee.

5. I am sending copies of this minute to the Prime Minister, members of H and L Committees, and to Sir Robert Armstrong.

A handwritten signature in black ink, appearing to be 'G. Howe', written in a cursive style.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
26 March 1986

IMMIGRATION

RUSSIA

PT 2

