

Rt Hon Theresa May MP
Home Secretary and Minister for Women and Equalities
Ninth Floor, Eland House
Bressenden Place
London SW1E 5DU

10 May 2011

Dear Home Secretary,

We are writing concerning recent changes to the Immigration Rules, which introduced a requirement that applicants for settlement under paragraph 289A (the domestic violence rule) be free of unspent convictions. The changes, laid before parliament on 31 March 2011 in the Statement of Changes to the Immigration Rules HC908, took effect on 6 April 2011.

The domestic violence rule offers a critical safety net to protect women from violence by enabling them to leave abusive relationships and regularise their status in the United Kingdom (UK). As you know, it was introduced to make sure that women who entered the UK on spousal visas and have been permitted to remain for two years before qualifying for permanent settlement are not trapped in abusive relationships because of concerns over their immigration status.

We represent organisations committed to the principles of human rights, equality and justice, including the right of all women to live their lives free from violence. We are deeply concerned that the requirement introduced by HC908 that applicants under the domestic violence rule must be free of unspent convictions:

1. Fails to reflect or address the realities that women who are eligible to apply under the domestic violence rule face;
2. Undermines the Government's commitments to eliminate violence against women; and,
3. Will result in women remaining in abusive relationships.

Deterring women from applying

Although we acknowledge that the number of women who will be directly affected by the change is likely to be very low, we stress as you have done in the Government's Call to End Violence Against Women and Girls, that no level of violence against women is acceptable.

The Immigration Rules already include a discretionary ground of refusal, which can be applied to any application, whereby a person can be refused settlement on the grounds of their unspent convictions. The change brought in by HC908 imposes a mandatory requirement and means that any applicant with an unspent conviction, however minor, will be refused settlement under the Immigration Rules. Although the UK Border Agency (UKBA) has stated that it will "continue to provide leave [outside of the Immigration Rules] when needed to help protect women and girls,"¹ we believe that such policy assurances outside of the rules will be insufficient: the rules themselves will deter women from coming forward and applying.

¹ Letter received by Rights of Women from the UK Border Agency on 6 April 2011, Ref: CPT – DV and ILR – 01/2011.

This deterrent effect defeats the very purpose of the domestic violence rule and renders the protection it offers illusory. We are also concerned that knowledge of this new rule will be used by perpetrators to continue their abusive control of women and further trap them in violent relationships.

The reality of domestic violence and criminal convictions

There are clear and yet complex links between experiences of domestic violence and criminal convictions. For example, more than half of women in UK prisons say that they have suffered domestic violence.²

Perpetrators of domestic violence often make false allegations about the victim of abuse to the police, which may result in criminal proceedings against her and even a conviction. Women in this situation can appeal against a conviction but may need to make an application for indefinite leave to remain while the appeal is pending. In response to this concern, the UKBA has stated that “in rare cases where there is a conviction that is related to the domestic violence they [the applicant] have suffered, UKBA will consider the case carefully to determine whether leave – including possibly indefinite leave – should be granted outside of the Rules.”³ This is of particular concern given the inevitable complexity of such cases, and real concerns about the quality of UKBA decision making under the domestic violence rule to date.⁴

We also have concern about the range of other situations which may lead to a woman obtaining a criminal conviction that is closely related to domestic violence. For example, a woman might be convicted for an act committed in self-defence, or for a minor offence related to her economic dependence on the perpetrator of abuse and poverty associated with the violence. A woman may be convicted of an offence closely related to domestic violence in her country of origin in circumstances where this would not occur in the UK (for example, because of the safeguards present in the British criminal justice system). Convictions from outside of the UK become spent after the same period of time that would apply if the victim of domestic violence had been convicted in the UK and could therefore act as a barrier for women who have experienced violence in their country of origin as well as violence following their arrival in the UK.

Evidence submitted by Southall Black Sisters (SBS) to the UKBA (1 April 2011) cited two cases where women had been falsely accused of violence and harassment by perpetrators. In one case, a vulnerable victim was charged with common assault when she pushed her abusive father-in-law away from her in self defence. Having being held overnight in a police cell, she was persuaded to accept a caution by a police interpreter, who said that she would not be able to leave the police station without doing so. In another case, the woman, initially forced to leave an abusive husband, received two harassment warnings from the police under the Harassment

² Office of the Deputy Prime Minister, Social Exclusion Unit, Reducing reoffending by ex-prisoners, 2002, p138, online: http://www.gos.gov.uk/497296/docs/219643/431872/468960/SEU_Report.pdf.

³ Letter received by Rights of Women from the UK Border Agency on 6 April 2011, Ref: CPT – DV and ILR – 01/2011.

⁴ Rights of Women recently made a freedom of information request to the UKBA to see what percentage of their decisions under the domestic violence rule were successfully overturned by the applicant on appeal. Between April 2009 and September 2010 the success rate on appeal ranged between 61-69%. See the full dataset in Rights of Women, *Focus on Women*, Issue 13, 2011, online: http://www.rightsofwomen.org.uk/pdfs/Focus_On_Women/focus_on_women_issue_13_2011.pdf.

Act 1997 when she attempted to contact her husband for reconciliation due to destitution. In its response to the SBS submission, the UKBA stated that while these cases would not be affected as the women in question did not have criminal convictions, they noted the 'general point ... and would expect that lessons learnt from dealing with cases similar to the examples... would help us [the UKBA] to identify victims of domestic violence'.⁵ Although neither of these cases led to a conviction, they nevertheless illustrate the potential for vulnerable victims to incur criminal convictions when either acting in self-defence or as a result of false allegations by perpetrators, and the complexity of these cases.

The new requirement is so wide-sweeping that a woman would not be deemed eligible to apply under the domestic violence rule if she were to receive a minor criminal conviction for fare evasion on public transport, or shoplifting even if given an absolute discharge (which remains unspent for six months). Research published by Refuge in 2008 has set out how financial abuse is a common feature of domestic violence situations. 89% of the respondents surveyed by Refuge reported "economic abuse"⁶ as part of their experience of domestic violence.⁷ The research found that in many cases economic abuse existed alongside verbal, emotional, sexual and physical abuse, reinforcing and overlapping with other types of control. The reality of domestic violence is that it is a key cause of women's poverty and economic marginalisation; women who experience domestic violence are likely to experience financial abuse which may force them to commit minor criminal acts, such as shoplifting, to sustain themselves and their children.

We understand that the above concerns were raised by a delegation comprising of representatives from Eaves, the Immigration Law Practitioners' Association, Rights of Women and Southall Black Sisters when they met with UKBA officials on 20 April 2011.⁸ The delegation reported back to us that the UKBA officials attending the meeting:

- Understood that at the crux of our objection to the rule was the fear that women would not come forward and make applications, and that the introduction of guidance would not prevent this. They did not dispute that this would be the effect of the changes, as the delegation did not dispute that the numbers of women affected would not be large;
- Accepted that there is an incompatibility between the absolute commitment to eliminate violence against women and girls which is expressed in the Government's Call to End Violence Against Women and Girls and Action Plan and the new requirement to be free from unspent criminal convictions at the time of applying under the domestic violence rule for settlement; and,
- Advised that the decision on how to resolve the incompatibility was for Ministers, and that the matter would be referred to the Home Secretary.

⁵ UKBA response to Southall Black Sisters submission, in a letter dated 6 April 2011.

⁶ This included interfering with education and employment, controlling access to economic resources, refusing to contribute towards economic costs such as household bills and generating economic costs such as through destroying clothes or property.

⁷ Sharp, N., *'What's yours is mine': The different forms of economic abuse and its impact on women and children experiencing domestic violence*, Executive Summary, Refuge, 2008, online: <http://refuge.org.uk/policy-and-research/research-and-publications/economic-abuse/>.

⁸ Delegates met with Nichola Smith (Immigration Policy, Permanent Migration), Anne Robertson (Immigration Policy) and Martin Stares (Immigration Policy, Criminality).

You have stressed your own and the Government's position that no level of violence against women is acceptable. We urge you to uphold this commitment and amend the eligibility requirements under paragraph 289A of the Immigration Rules to reflect the reality of domestic violence, by removing the mandatory requirement that applicants are free from unspent criminal convictions.

Yours sincerely,

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 30. Justine S Eardley-Dunn
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 31. Lee Eggleston
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 32. Jonathan Ellis
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33. Olvia Fellas
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35. Don Flynn
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36. Ruth Galwey
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37. Chris Green
UK Director, White Ribbon Campaign
38. Lily Greenan
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39. Mandy Green
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40. Rachel Halford
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41. Zoe Harper
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102. Dr Barbra Wallace
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