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JUDICIARY OF
ENGLAND AND WALES

R (Chapti, Ali & Bibi) v Home Secretary [2011] EWHC 3370 (Admin)

16th December 2011

SUMMARY:

1. This summary of a judgment handed down today by Mr Justice Beatson in the Administrative Court sitting in Birmingham is provided to assist members of the public and the news media so that they have the salient points quickly available. However, the media in particular are requested to read the full judgment for a proper understanding of the issues and the decisions reached.
2. This judicial review challenged the introduction in paragraph 281 of the Immigration Rules of a pre-entry English language test for the foreign spouses and partners of British citizens and persons settled in the UK applying for “spouse visas”, that is leave to enter the UK with a view to settlement.
3. Hitherto, in all but a very limited category of case, spouses and partners were only required to demonstrate this knowledge two years after entering the United Kingdom. The level required by the new pre-entry test is lower than that required in the post-entry test for those applying for settlement, and it is subject to a number of exceptions. Notably, it does not apply to: (a) countries designated by the UK Border Agency as “majority English-speaking”; (b) to those having an academic qualification equivalent to a UK university degree provided it was taught in English; (c) those aged 65 or over; (d) those with a physical or mental condition that would prevent them from meeting the requirement; and (e) those in respect of whom there are “exceptional compassionate circumstances”.
4. The claimants maintained that the new rule is a disproportionate and unlawful interference with their and their spouses’ rights to family life and to marry under Articles 8 and 12 of the European Convention of Human Rights, and discriminatory, on grounds particularly of race and nationality. The Home Secretary maintained that the new rule was a justified means to promote integration and to protect public services.

5. The applications were dismissed by Mr Justice Beatson. He held:-
- a. The new rule does not interfere with the Article 12 rights of the claimants, since it does not prevent marriage within the United Kingdom where both parties are present, or prevent anyone within the United Kingdom from travelling abroad to get married.
 - b. The new rule impacts on the Article 8 rights of the claimants, but its aims, to promote integration and to protect public services, are legitimate aims within Article 8(2).
 - c. Taking into account all the material before the court, including the exceptions to the new rule, it is not a disproportionate interference with family life and is justified.
 - d. As to discrimination:-
 - i. The exemption based on nationality does not constitute direct discrimination because the “bright line” drawn between nationals of countries considered to be “English-speaking countries” and nationals of other countries is a rational one. Accordingly, those who are exempt are not in a relevantly similar situation to those who are not exempt.
 - ii. The new rule does not indirectly discriminate on the grounds of nationality, ethnic origins or disability.

ENDS.