

Inconvenient marriages, or what happens when ethnic minorities marry trans-jurisdictionally

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1. Introduction

How do British officials and courts cope with the fact that marriages are taking place trans-jurisdictionally among members of Britain's minority ethnic communities? In particular, how do immigration officials and judges judge the validity of acts of marriage solemnisation which take place on trans-jurisdictional terms? How do we explain their responses? Are the types of response raised here merely unusual occurrences or are they reflective of a more generalised pattern of official behaviour when members of minority communities seek to rely on more than one legal order to arrange their lives and affairs? How much do we actually know about minority trans-jurisdictional practices and the responses of official actors? What reactions do official responses provoke when they judge minority legal acts? These are some of the questions either addressed directly, or at least raised for discussion, in this article.

It is increasingly recognized that members of some diasporic minority communities in Western European countries continue to marry trans-jurisdictionally and often in the countries of origin of those communities.¹ Some European political and legal systems have become more concerned with controlling the extent to which such marriages take place across state and continental frontiers. This concern is increasingly reflected in a series of similar restrictive norms and practices, not entirely new, applied across European states to ensure that members of such minorities rely less and less on established practices of marriage within their kin groups elsewhere.² Most publicised among such schemes is the enactment of a series of controls in recent years which premise the right to family formation and/or reunification upon prospective spousal entrants passing (European) language and culture 'integration tests'; measures which raise the eligible age for immigrant spouses and their sponsors as compared to the legal age for marriage *within* the legal systems concerned; or the increasing policing of marriages on the pretext of

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1 For an overview of the trends see E. Beck-Gernsheim, 'Transnational Lives, Transnational Marriages: A Review of Evidence from Migrant Communities in Europe', 2007 *Global Networks* 7, no. 3, pp. 271-288.

2 For an account of discriminatory immigration controls applied primarily to South Asian spouses, mainly husbands, see S. Sachdeva, *The Primary Purpose Rule in British Immigration Law*, 1993. For immigration restrictions on spouses and other family members through various other methods including questioning the veracity of family relationships, finding problems with documentary evidence, and casting doubt on the credibility of applicants, see S. Juss, *Discretion and Deviation in the Administration of Immigration Control*, 1997. Both writers demonstrate forms of 'othering' at the appellate and/or judicial review stages as well as during initial decision making at visa posts abroad. For more recent evidence, see G. Clayton, *Textbook on Immigration and Asylum Law*, 2008, pp. 295-316.

ensuring that such marital unions have been entered into by ‘free consent’ and are not a result of familial pressure nor ‘forced’ to any extent.³

Underlying such practices is the knowledge that trans-jurisdictional marriages add to the minority populations which are seen more and more as a liability to the cultural integrity of European states. Such concerns are then responded to by a reversion to, or the reinforcement or redeployment of, a notion of legality premised on methodological nationalism. The nation’s cultural integrity must be protected from the culturally and religiously ‘other’ non-Europeans. Multiculturalism, in so far as it has been pursued as a policy response to the consequences of post-war immigration, is now seen as having led to a divergence of norm patterns within European legal orders and as a *threat* to the cultural order of Europe.⁴ As Grillo suggests, there is widely considered to be an ‘excess of alterity’.⁵ It is relevant to also consider the extent to which the reaction to Europe’s cultural others is dependent on a long-standing process established by Christianity. Read in these terms, the xenophobic premises of new laws appear to be a latest manifestation of a Christian cultural order which has a long-established history of deflecting or converting cultural otherness because the latter is seen as rivalling the former’s own claims to dominance and universality. This *religious* standpoint of Europe’s dominant cultural and legal systems, however changed through secularisation, nationalism and individualism, therefore seems to have some explanatory value for theorising the widespread nature of the kinds of restrictions we witness today.⁶

Whatever the precise underpinnings of the presumed threat which Europe’s cultural others are seen as posing, it remains a fact that legal systems have been erecting various barriers to transnational family reunification and family formation. These affect less and less those who are brought within the scope of the EU/EEA legal order and are thus considered ‘legitimate’ migrants with wider rights of family reunification. Here, too, we must be careful to underline the fact that not all EU citizens are treated in the same way. And here I do not mean the staggered approach to the free movement rights extended to the citizens of the newer Member States which joined in 2004 and 2007, which of course remains a cause of some concern to those who would prefer the EU not to make such blatant distinctions.⁷ Rather, it is evident that holding European citizenship does not guarantee a right of family reunification, especially if one is of non-European descent and has chosen to marry someone outside Europe. It is not altogether surprising that legal battles to secure family reunification rights for members of minority communities often involve reliance on the more favourable rules of EU free movement law. This is certainly the case in the United Kingdom where lawyers’ groups have learnt well to exploit the advantages offered by

3 H. Wray, ‘Moulding the Migrant Family’, 2009 *Legal Studies* 29, no. 4, pp. 592-618, provides a detailed exposition of recent changes in the aforementioned ways to the family reunification rules in the UK which go against the corporate nature of many transnational families. See also K. McGauran, ‘Germany’s Immigration Amendment Act of 2007: Achieving Integration of Foreigners?’ 2007 *Journal of Immigration, Asylum and Nationality Law* 21, no. 4, pp. 295-310 for the language requirements for spouses in Germany. On the Netherlands and integration tests for immigrating spouses, see Human Rights Watch, *The Netherlands: Discrimination in the Name of Integration*, May 2008, <<http://www.hrw.org/legacy/backgrounder/2008/netherlands0508/>>, last accessed on 29 December 2009. These contemporary restrictions in several European countries are increasingly beginning to resemble racist immigration controls in the late 19th and early 20th centuries in South Africa and Australia where language tests were also being applied to reject non-European immigrants.

4 R. Grillo, ‘Backlash against Diversity? Identity and Cultural Politics in European Cities’, 2005 Working Paper No. 14, Centre on Migration, Policy and Society, University of Oxford. <<http://www.compas.ox.ac.uk/publications/wp-05-14.shtml>>, last accessed on 5 January 2010.

5 R. Grillo, ‘An Excess of Alterity? Debating Difference in a Multicultural Society’, 2007 *Ethnic and Racial Studies* 30, no. 6, pp. 979-998.

6 It is possible to argue that secularisation is itself an outcome of a process set up by Christianity because of its ‘dynamic of universalisation’. See S. Balagangadhara, *The Heathen in his Blindness... Asia, the West, and the Dynamic of Religion*, 1994; J. de Roover & S. Balagangadhara, ‘John Locke, Christian Liberty and the Predicament of Liberal Toleration’, 2008 *Political Theory* 36, no. 4, pp. 523-549. See H. Berman, *Law and Revolution: The Formation of the Western Legal Tradition*, 1983, pp. 1-46, generally on modern states assuming powers over areas of the law which were previously the domain of the Church.

7 H. Toner, ‘New Judicial Developments in EU citizenship: Solidarity, Security and Second-class Citizens’, in P. Shah & W. Menski (eds.), *Migration, Diasporas and Legal Systems in Europe*, 2006, pp. 87-106.

EU free movement law. The list of cases decided by the European Court of Justice (ECJ) which involve one family member who happens to hold an EU citizenship is fairly striking, as is the number of claims made domestically in reliance on them.⁸ But, as shown below, even here we continue to see some problems, as the filtering effect of the ECJ's decisions, mostly favouring rights of family reunification, and the discretion available to the domestic authorities to interpret EU norms, as well as the large measure of decision-making power otherwise available to national authorities, means that there is a considerable mismatch between the larger putative aims of integration in the EU and the evidently invidious, and not easy to monitor, agendas at play locally.

Given that the concern of this article is to evaluate how the *validity* of marriages conducted under a non-Western legal framework is judged within a European legal order, it may also be relevant to reflect on why, as will be shown, there are repeated official attempts to extinguish such marriages, either by mere allegation or by more sophisticated reasoning regarding their non-lawfulness. We can, on the one hand, adopt the hypothesis that the Christian background of European legal orders is at play here. This may be shown clearly by the manner in which the EU Directive on the right of family reunification for legally resident third country nationals obliges Member States to refuse entry to a wife in a polygamous marriage where one wife is already living with the sponsor in a Member State.⁹ Although the UK is not a party to that Directive, it has maintained the same position for some years.¹⁰ On the other hand, we can also hypothesise, as Berman argued a quarter of a century ago, that European legal systems are undergoing a crisis such that law is treated less as a matter of justice and more with a cynicism and an expediency which are tantamount to an attitude of generalised 'lawlessness'.¹¹ It is useful to bear in mind, in the present context, that the private international law rules which are called in aid to decide on the validity of foreign marriages are either clouded in mist or allow a great deal of interpretive leeway to officials and judges, while no effort appears to be made in the aforementioned Directive (or anywhere else) to set out clear rules by which those marriages can gain recognition in European legal systems. This is a serious case of official silence and neglect which results in those spouses who seek reunification experiencing the kinds of 'lawlessness' referred to by Berman.¹²

This article takes as its focus some immigration cases which have been decided 'domestically' by British officials. While such decisions are made in the name of the British state authorities, they are often first made at visa missions (or private sub-contracted agencies) abroad whence a spouse seeks entry to the UK/Europe. The geographical location will be relevant in influencing how a decision is made and in determining what happens factually both prior to and after that decision. Legal representatives, on the other hand, tend to be chosen by the 'sponsor' spouse located in the UK, who also interacts with those advisers more closely, and the quality

8 See Clayton, *supra* note 2, pp. 183-194.

9 Directive 2003/86/EC, OJ L 251/12, 3.10.2003, Art. 4(4) and preamble, Para. 10.

10 P. Shah, 'Attitudes to Polygamy in English Law', 2003 *International and Comparative Law Quarterly* 52, pp. 359-400.

11 Berman, *supra* note 6, pp. 39-41. The theme has been picked up by B. Tamanaha, *Law as a Means to an End: Threat to the Rule of Law*, 2006.

12 It is a matter of concern that the writing on various EU Directives relating to family-based migration shows no awareness of the potential problems concerning the recognition of foreign marriages, but concentrates on the more trendy, mainstream European concerns such as the recognition of unmarried cohabiting partners whether heterosexual or homosexual. More generally, see J. Murphy, *International Dimensions in Family Law*, 2005, p. 2 about the lack of recognition among academics teaching family law of the transnational reality of many families in the UK.

of such interaction can potentially influence the outcome of a case.¹³ As noted, the cases discussed here have also been selected on the basis that the contested issue in each is the *validity* of the ‘overseas’ marriage. This selection avoids a wider discussion of other technical requirements for entry as a spouse, of which there are many (some of which we will meet in passing).¹⁴ Although both EU law and the ‘domestic’ immigration rules allow for partners in durable relationships to be admitted, the concern here is about those who claim admission on the basis of marriage.

Although the key issue therefore is whether the marriage is considered valid for the purposes of the immigration rules or under the equivalent EU rules, it may be useful to set out the basic set of conditions for a spouse visa. A spouse visa may be issued to a person who is married to or is a ‘civil partner’ of a person present and settled in the United Kingdom, who is on the same occasion being admitted for settlement, or has a right of abode in the UK. Additional requirements include a sufficient knowledge on the part of the applicant of the English language and sufficient ‘knowledge about life in the UK’; that the parties have met; that each intends to live permanently with the other as his or her spouse or civil partner and the marriage or civil partnership is subsisting; that there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and that the parties will be able to maintain themselves and any dependants adequately without recourse to public funds.¹⁵ Except for the requirement to have met, similar provisions are set out for unmarried or same-sex partners whose relationship has lasted for two years or more.¹⁶ Further, similar provisions exist for the family members of the largely economic and educational migrants admitted under the so-called Points Based System.¹⁷ Specific rules also exist for persons reuniting with those recognized as refugees and these rules are different to the extent that the marriage or civil partnership must not have taken place *after* the person granted asylum left the country of his former habitual residence in order to seek asylum. Those rules also exempt the applicant from meeting the ‘no recourse to public funds’ requirement, otherwise applied to the spouses of others.¹⁸

For persons seeking admission to the UK on the basis of marriage or partnership with an European Economic Area (EEA) citizen, the applicable EU legislation is now Directive 2004/38.¹⁹ The Directive is silent on issues of the validity of marriage which are, as with the legislation it replaces, left to the national Member State authorities to decide. Another issue which has emerged in the UK is whether a non-EEA spouse or partner must already be lawfully resident in another Member State prior to seeking admission, or whether the spouse may be anywhere else in the world when applying for a spouse visa. The implementing measure at national level, the Immigration (European Economic Area) Regulations 2006,²⁰ takes the position that the spouse or partner must already be lawfully resident in another Member State, and this

13 There is not much research on the power equation between lawyers and the clients they advise in immigration contexts but, for a study of asylum applicants, see H. MacIntyre, ‘Imposed Dependency: Client Perspectives of Legal Representation in Asylum Claims’, 2009 *Journal of Immigration, Asylum and Nationality Law* 23, no. 2, pp. 181-196.

14 See Clayton, *supra* note 2, for details.

15 This description reflects the provision in Para. 281 of the Immigration Rules which sets out the conditions for leave to enter and presupposes that a person is issued with a valid visa having fulfilled those conditions. These conditions are mirrored elsewhere in the Immigration Rules *mutatis mutandis* for other situations including, importantly, the extension of leave to remain.

16 Paras. 295A *et seq.* of the Immigration Rules.

17 Paras. 319AA *et seq.* of the Immigration Rules.

18 Paras. 352 *et seq.* of the Immigration Rules.

19 Partners are recognised either as a ‘registered partner’ (Art. 2(2)(b)) or as a ‘partner with whom the Union citizen has a durable relationship’ (Art. 3(2)(b)).

20 SI 2006/1003.

position is also taken by several other Member States. Conversely, when a non-EEA national spouse or partner seeks entry from outside the EEA, UK policy is that he or she must qualify under the above-mentioned domestic immigration rules, which impose additional criteria, including an intention to cohabit and the need to demonstrate non-reliance on public funds. This interpretation has not been favoured by the European Court of Justice in the *Metock* case.²¹

In the UK, rule changes introduced in November 2008 raised from 18 to 21 the eligible age for the spouse seeking entry as well as for the resident spouse who ‘sponsors’ the entry.²² The declared policy reason behind this change assumes a direct correlation between younger age and the likelihood of forced marriages although whether the new rules would achieve the aim sought was contradicted by academic research commissioned by the Home Office but later overridden by it, as were a number of negative responses to the Government’s consultation on raising the age for those applying for a spouse visa.²³ In an initial judicial review challenge, the Administrative Court found that the rule change was lawful, even where no forced marriage was at issue in the individual case. Among the arguments raised was that the new rules violated Articles 8 (private and family life) and 14 (non-discrimination) of the ECHR. The judgement relies, however, on the often repeated freedom of the state authorities to regulate the entry and residence of spouses, there being no obligation on a State Party to respect their choice of residence.²⁴ This example indicates the marginal relevance of the ECHR in restraining states’ ability to control spouse entry and residence, constituting one of the failures of the European human rights protection system.²⁵ More specifically, in the present context, the decision to decide on the validity of a marriage seems to be proofed against human rights norms, the interpretation adopted by the UK’s Immigration and Asylum Tribunal being that the actual existence of family life in the form of cohabitation must be demonstrated.²⁶ Applicants relying on Articles 8 and 14 ECHR have similarly not met with success in cases of non-recognition by the UK immigration authorities of Hindu law adoptions taking place in India.²⁷

2. The cases for discussion

The selection of cases has a multi-level relevance. It helps us to focus on the core problem of how and whether marriages contracted abroad, or by recourse to a ‘foreign’ legal system, are recognised by the UK legal order. But we are also drawn to examine how the immigration control system is designed to, or in practice has the effect of, keeping certain forms of marriage, and those married persons, out of Europe. At issue here is how certain official practices, while operating at a rather low profile and largely out of the purview of the general legal community,

21 Case C-127/08, 25 July 2008.

22 Earlier, in 2002, the eligible age for sponsorship was raised from 16 to 18 and the same was done for entry in 2004, resulting in immigration law stipulating a higher age than the general English law for marriage: see Clayton, *supra* note 2, p. 310. The rise in the age to 21 in 2008 therefore only made the gap wider. The current provision appears at Para. 277 of the Immigration Rules (for spouses) and Para. 295AA (for an unmarried or same-sex partner).

23 See M. Hester et al., *Forced Marriage: The Risk Factors and the Effects of Raising the Minimum Age for a Sponsor, and of Leave to Enter the UK as a Spouse or Fiancé(e)*, 2008 for the research. For a more recent account of ongoing research see K. Chantler & G. Gangoli, ‘Protecting Victims of Forced Marriage: Is Age a Protective Factor?’, 2009 *Feminist Legal Studies* 17, pp. 267-288. For a critique of the Government’s approach to consultation, see Wray, *supra* note 3, pp. 605-608.

24 *Quila v. Secretary of State for the Home Department* [2009] EWHC 3189 (Admin). The principle that Art. 8 of the ECHR does not oblige a State Party to respect the choice of residence of the spouses has been cited frequently since the case of *Abdulaziz, Cabales and Balkandali v. UK* [1985] 7 EHRR 471, to which the court in *Quila* also referred.

25 See the special issue of the 2009 *European Journal of Migration and Law* 11, no. 3, especially the articles by De Hart and Farahat, on the shortcomings of the European Court of Human Rights’ jurisprudence in the field of family migration.

26 *J (Pakistan)* [2003] UKIAT 00167, discussed by Clayton, *supra* note 2, p. 124.

27 P. Shah, ‘Transnational Hindu law adoptions: Recognition and Treatment in Britain’, 2009 *International Journal of Law in Context* 5, no. 2, pp. 107-130.

and not necessarily reflected in widely reported legal decisions, act in invidious ways upon the individuals concerned. Although restricted to a consideration of cases emerging within the immigration control system, the selection may also have more general relevance for studying how the British legal order acknowledges the validity of non-European marriages and the salience of laws under which they are solemnised. At this more general level, the cases demonstrate how a form of Eurocentrism implicitly operates by keeping other rule systems and ‘distinct legal institutions’ at a distance through the application of European assumptions about legitimate familial relationships.²⁸

It is, however, important to remember that different parts of the British legal system often do not speak with one voice on the legal validity of overseas marriages. In an account of a Gujarati Hindu case, Menski shows that while immigration authorities might take one stand on the validity of a previous divorce and, hence, of a new marriage, the family courts might take another view.²⁹ It can work the other way too, for example, when the immigration authorities may have recognised a marriage prior to entry but, for social security or pension purposes, the issue of marriage is reopened for examination. This is apparently quite legitimate according to the English Court of Appeal.³⁰ It seems difficult to see which account of the legal position is authoritative in these situations, when different authorities maintain divergent views, perhaps for different underlying policy reasons. This again illustrates how contemporary law seems, for reasons of expediency, to be entirely subordinated to underlying policy goals at the expense of legal security or certainty for individuals.

In three of the cases discussed, I became involved as an ‘expert witness’ during the last 24 months when called upon by the legal representatives who were instructed by the spouse present in the UK as the ‘sponsor’ to provide a written reasoned report regarding the validity of the marriage according to Muslim law and under the law of the countries concerned.³¹ My position as an expert meant that I was able to have access to the various documents in the cases, including an account of the personal story of the couple and under what circumstances they became married in the form of witness statements, as well as the official documents setting out the (often very thin) reasons on which the refusal of entry was founded by the visa officer.

An expert is obliged to act bearing in mind that his primary duty is to the court hearing the matter and not to one or other side who is instructing him.³² I have never come across a case in the immigration context in which the Home Office instructs an expert, although it frequently relies upon its own Country of Origin Information (COI) reports drawn from publications written for official bodies and NGOs to back up its case. It is therefore probable that the expert in such cases is viewed as batting for one side in the legal challenge.³³ If a case goes to appeal, it often

28 I have adapted the phrase ‘distinct legal institutions’ from A. Hoekema, ‘Does the Dutch Judiciary Pluralize Domestic Law?’, in R. Grillo et al. (eds.), *Legal Practice and Cultural Diversity*, 2009, pp. 177-198, who uses the term ‘distinct cultural institution’.

29 W. Menski, ‘Dodgy Asians or Dodgy Laws? The Story of H’, 2007 *Journal of Immigration, Asylum and Nationality Law* 21, no. 4, pp. 284-294.

30 See *Shamsun Nahar* [2002] EWCA Civ 859, and my comment in P. Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law*, 2005, pp. 132-134.

31 The 24-month period is at the time of writing the final version of this article in April 2010.

32 The obligations of an expert in immigration cases were formerly set out in the Asylum and Immigration Tribunal’s Practice Directions, Para. 8A, but are now in the Practice Directions of 2010 of the Immigration and Asylum Chambers of the First-Tier Tribunal and Upper Tribunal, Para. 10, available at <http://www.tribunals.gov.uk/Tribunals/Documents/Rules/IAC_UT_FtT_PracticeDirection.pdf>, last accessed on 26 February 2010.

33 For accounts of anthropologists as experts in the legal process, see R. Ballard, ‘Common Law and Common Sense: Juries, Justice and the Challenge of Ethnic Plurality’, in P. Shah (ed.), *Law and Ethnic Plurality: Socio-Legal Perspectives*, 2007, pp. 69-105 and A. Good, *Anthropology and Expertise in the Asylum Courts*, 2007. Both writers discuss the problem of experts being seen and treated as partial advocates, as does the recent report by N. Tsangarides, *The Refugee Roulette: The Role of Country Information in Refugee Status Determination*, 2010.

happens that the Home Office will not defend its position at the hearing, or it may shift the ground of refusal before or during the hearing, thus setting up a moving target for the appellant. It is not always possible for the expert to know the outcome of the cases since the instructing legal representatives will generally settle for a report but not necessarily communicate back the results of the legal challenge.³⁴ The evidence presented here therefore remains inconclusive, but nevertheless not without value for identifying the kinds of visa refusals which are coming up and how applicants are treated. The resulting legal decisions may also not be reported in the officially available sources, so what happens in this field often occurs below the radar of those researchers focusing only on the reported legal sources.

The fourth case discussed is one such reported case from the Asylum and Immigration Tribunal (AIT). The reporting of cases is managed by judges at various levels in the judicial system and those decided by the AIT also go through a non-transparent process of selection. The reported cases are selected from those at the 'reconsideration' stage, while first instance decisions are never reported. We cannot therefore know about how representative a reported case is. It may well be chosen for the impact it can have in signalling particular lines of refusal, or for its impact on certain types of claims made during a particular period. Meanwhile, those decisions which might support applications by intending migrants may not turn out to be so in general practice so that the same issue may have to be frequently litigated. In its recent mailing to members, the Immigration Law Practitioners Association (ILPA) expressed a similar observation:

'ILPA has long protested that all too often members are forced to litigate the same point again and again, because the UK Border Agency does not apply the precedents established by our successes in the courts, or by the Agency's settlement of cases, to subsequent cases.'³⁵

This could be a situation of bad management or, perhaps more likely, simply refusing first and then leaving those refused to find ways to challenge the refusal, if they can.³⁶ This then leaves much to the fate of the parties, what sort of 'connections' and support they have within society, and what kind of legal advice they can secure. As we see below, the UK Border Agency (UKBA) often maintains a refusal doggedly up to the point of appeal even where ways could be found to settle a case, saving everybody's time and money.

In all four cases under consideration, the countries from which the spouse seeks entry range across Ethiopia, Kenya, India and Iran, and the ethnic/national origin of the couples varies across Somali, Kashmiri/Bangladeshi and Iranian. All the cases concern Muslims. This does not mean that only Muslim marriages are somehow 'problematic' for the British legal system. It remains

34 This is confirmed by an expert interviewed for the study by Tsangarides, *supra* note 33, p. 72.

35 ILPA mailing, October 2009, in response to the proposed Government restriction of legal aid to 'residents' following the European Legal Aid Directive 2002/8/ESC of 27 January 2003.

36 One can find all kinds of stray comments made by judges and even some officials at different levels critical of the practices employed within the UK Border Agency. In a determination promulgated on 25 November 2008 concerning an appeal against a refusal of a post-study work visa, the Immigration Judge said, 'That these documents [concerning evidence of funds] were submitted at the time she appealed the decision of the Secretary of State and clearly understood by the case worker dealing with the case indicated to me an extraordinarily petty and stupid decision on the part of the respondent to continue the appeal (...). This was a case of an appellant who had submitted documents two days short of a required cut off date and common sense should have prevailed on the part of the case worker to enable the appellant to provide updated documents (which she did in any event) and for her application to have been accepted without the waste of time and resources of forwarding the appeal to the Immigration Tribunal to decide such a basic matter.' More prominently, on 13 May 2006, while giving evidence to the House of Commons Home Affairs Committee, the then Secretary of State for Home Affairs, Dr. John Reid, stated to some media attention that, '(...) in the wake of the problems of mass migration that we have been facing our system is not fit for purpose. It is inadequate in terms of its scope; it is inadequate in terms of its information technology, leadership, management, systems and processes (...)' See <<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/775iii.pdf>>, at Ev 155.

a fact, though, that many cases concerning Muslims and interpretations of Muslim laws from various parts of the world continue to emerge prominently in European legal systems.³⁷ While this focus and academic attention to it may not be welcomed by some Muslims, and even resented by some non-Muslims, it remains legitimate to speak about and discuss the kinds of cases we are confronted by as operators within legal systems and as observers concerned about what official legal systems are doing. We ought to bear in mind, however, that research concerning some ethnic minority communities takes place in an increasingly difficult atmosphere as the people in question feel that they are under the microscope, resent intrusion into their lives, are suspicious of the uses to which information will be put, and are not happy about the portrayal of their religion.

2.1. A telephonic marriage

The first case concerns a Somali couple. At the time of the marriage ceremony, A, the husband, was in Saudi Arabia as an irregular migrant, having escaped the fighting in Somalia. His wife, B, was meanwhile in Mogadishu, Somalia at the time. The marriage had been arranged by the respective families of the couple. Given that it was dangerous for A to have gone back to Somalia to marry, the relatives organised that a marriage would be conducted over the telephone with the loudspeaker on. A was subsequently expelled by the Saudi authorities and the couple then lived together at A's mother's house in Mogadishu before he left Somalia again to come to the UK, where he successfully claimed asylum. Given the deteriorating situation in Somalia, B subsequently went to Ethiopia from where she was applying to join A. B was refused on the ground that the entry clearance officer (ECO) felt that the marriage was not valid, although this was not reasoned to any extent in the visa refusal. I was therefore brought in as an expert prior to the appeal hearing to provide a report about the validity of this transnational telephonic marriage.

As I subsequently wrote in my report, a telephonic marriage is acceptable under general Islamic law and also in Muslim countries where Islamic family law is recognized. The basic contents of a valid Islamic marriage or *nikah* are the making of an offer of marriage (by the groom or his representative) and its acceptance (by the bride or her representative). From the way the ceremony had been described to me, these elements appear to have been present. Muslims are obviously a global community of believers and members of individual Muslim communities originating from one part of the world, in this age of migration, now find themselves dispersed across the world. Somalis have been particularly subject to uprooting and dispersal in recent decades. This dispersal has given rise to innovative methods of marriage solemnisation by the use of means available through new technologies. Telephonic marriage is one such innovation known to be present for a number of decades among Muslims. It would not be surprising if web-based marriages will soon require decisions by courts around the world. Further, since Islamic law, in its classical sense, is not territorially confined, the more recent division of the world into nation states has not conceptually prevented the application among Muslims *inter se* of the Islamic law of marriage. The in-built flexibility and minimal formality that the Islamic law of marriage provides to Muslims has also allowed the development of new forms of marriage solemnisation, provided they comply with the minimal *nikah* formalities. Therefore, in my view, there was nothing inherently implausible or unlawful about the way in which the parties had gone about solemnising their marriage.

37 See M. Rohe, *Muslim Minorities and the Law in Europe – Chances and Challenges*, 2007.

However, I also had to address the question whether such a marriage would be valid in Saudi Arabia and in Somalia as territorial entities. In Saudi Arabia, the law of marital status remains uncodified and therefore Islamic law is applied in an ‘unreformed’ state, with precedence being given to the Hanbali school of Islamic law.³⁸ If there was a dispute about the validity of this marriage in a Saudi court, I said that it would probably be upheld as a lawful marriage since it appeared to conform to the basic requirements of Islamic law. In Somalia, meanwhile, the situation has been in a state of flux since the collapse of the Somali state and the ensuing civil war. There was a Somali Family Code enacted in 1975, but it was difficult to argue that this continued in force and even that there is any degree of stable state enforcement of laws. Thus local legal orders based on a mixture of local clan or tribal customs and Islamic law appear to have prevailed, while the exact extent of application of any particular form of law by quasi-state authorities remained open to question.³⁹ Interestingly, a UNDP job vacancy for a legal expert on Somali law, advertised prior to my writing the report, stated as follows:

‘The Somali legal system consists of three different and often contradictory sources of law: customary, Shari’a and secular. The majority of cases are dealt with through the customary and Shari’a legal systems. The practice of these different sources of law has created inconsistency in the application of the rule of law in Somalia.’⁴⁰

Under these circumstances, I argued that the marriage between A and B would be considered valid as under custom and Islamic law, although the enforcement of any rights and duties in courts would depend on the local prevailing situation in any particular part of Somalia. My overall conclusion was that in any part of the world where Islamic law is recognised, including Saudi Arabia and Somalia, the marriage would be considered valid.

The case reveals the complexity of the Somali migrants’ situation, caught up as they are in the cauldron of conflict in their home country, and as they navigate through various legal systems in order to arrange their affairs. It also reveals how a simple refusal can be issued without much understanding or sympathy on the part of a British ECO who appears to act to refuse recognition when in any doubt about the validity of the marriage, although we do not know this in any detail because of the paucity of the official reasons given. We may guess, however, that the more complex or ‘unusual’ the trans-jurisdictional marriage arrangements, the more likely it is that a marriage will not be recognised as valid. Certainly, no attempt appears to have been made by the official to find a reason to uphold the validity of the marriage, even though such marriages are recognised as valid from an Islamic understanding of marriage. In the event, the parties are compelled to take their case to appeal although the result is still unknown to this writer. Despite inquiries, I never found out what actually occurred in the appeal. This is one of those cases in which the expert has to take a back seat after providing his report and does not know what happens afterwards.

2.2. A proxy marriage

In the second case, I was asked to advise specifically on whether a ‘proxy marriage’ between Muslims is recognised under the law of Kenya. This case therefore also falls into the ‘unusual’

38 L. Welchman, *Women and Muslim Family Laws in Arab States*, 2007, p. 16.

39 Welchman, *supra* note 38, p. 17, for example, states that for her study she was unable to access information on current family law practice in Somalia.

40 <<http://unjobs.org/vacancies/1220904512059>>, last accessed on 16 October 2008.

marriage category, although it appears that the visa officer's interpretation made it look more 'unusual' than it actually was! The husband, C, of Somali origin, already held Dutch citizenship and was then living in the UK. His marriage had been arranged to take place to D, also of Somali origin, who was living in Kenya. The arrangements for the marriage to take place in Kenya included the presence of close relatives who were flying in from various other countries. However, C's employer did not allow him to take time off work so that he could attend his own wedding in Kenya, and it was decided that a relative would stand in as a proxy for him for the marriage to take place. This occurred and the marriage was then registered as 'confirmed' by a *sheikh*, who is also recognised officially by the Kenyan authorities to supervise marriage contracts and to register them. After the marriage, and when C was eventually given some time off work, he too went to Kenya to spend a few weeks with D, now his wife. When D applied for a spouse visa, however, she was refused. The ECO claimed that the marriage was not valid. He further claimed that the couple did not satisfy the requirements under the 2006 EEA Regulations (putatively applying the EU rules on free movement domestically) to maintain and accommodate the incoming spouse without recourse to public funds. This latter ground of refusal was later contested once the lawyers were consulted. It was argued that D was joining her EEA national husband and therefore did not have to meet the public funds requirements under a true construction of EU law.

By the time I was contacted, the legal representatives were of the view that the time limit for appealing had expired so that they would initiate another spouse visa application in Kenya. My instructions were restricted to the question of the validity of the proxy marriage under Islamic law as recognised in Kenya, and my report was to be transmitted to the visa office in Nairobi. To put it more accurately, my instructions were to address the ECO's doubt about whether the husband would have to be physically present in Kenya for a valid marriage to have been contracted. In fact, the ECO also appeared confused about the documentary evidence, which included an official 'marriage certificate' issued by the *sheikh*. The ECO's interpretation was that the husband was stated in the certificate to have been present during the marriage ceremony even though he claimed not to have been actually there, an inconsistency which was used to throw further doubt on the validity of the marriage. While that issue was easily dealt with by a proper reading of the marriage certificate, the proxy marriage issue needed further clarification. In fact, I was instructed to focus on clarifying the question of the validity of the marriage, and C stated that, otherwise, he was prepared to go to Kenya and marry again to ensure that his wife got her visa.

In my report, I pointed out the general context of the recognition of Islamic law officially in Kenya, which in any case dates back to pre-colonial times. The British colonial authorities in Kenya made specific provision for the application of Muslim law in matters of personal status – in particular for marriage and divorce – by the Marriage, Divorce and Succession Act (cap. 156) of 1920. This statute today remains the main authorising instrument for the official recognition and application of Islamic law in Kenya, and provides in general terms that 'Mohammedan marriages' are valid and in fact defers to 'Mohammedan law' to decide on the validity of Muslim marriages. From there it was simple enough to consult some authoritative texts on Islamic law which refer to the acceptance among Muslims of a marriage by an agent or proxy, who acts on behalf of the principal.

Because of some confusion about the validity of the procedure used by the parties, I also had to comment on how the parties had solemnised the contract. In fact, there had been a two-stage process. Under Muslim law, as applicable in Kenya, two Muslims can validly enter into a marriage by observing the Islamic formalities of an offer and an acceptance of the marriage i.e.

a *nikah*. In Kenya, a Muslim marriage ceremony of this type is valid without any more formalities since Kenyan law does not predicate the validity of marriage upon an act of registration (an issue which comes up in a case further below). However, there is a facility for registration made under the Mohammedan Marriage and Divorce Registration Act (cap. 155), under which registrars are also authorised to provide marriage certificates. The *sheikh* who issued the certificate in the present case was one such registrar. The actual *nikah* had taken place in a suburb of Nairobi, the capital city of Kenya. The *sheikh*'s role was therefore merely to 'confirm' that such a marriage ceremony had taken place and that it had taken place validly. The role of the *sheikh* is a double one. He acts as an officiant in contracting marriages between Muslims, but he has simultaneously been given the official 'secular' role of a marriage registrar. It is in the latter capacity that he had issued a marriage certificate and a letter confirming that the marriage had already taken place.

I also pointed out that this fact should have been known to the officials at the British High Commission in Nairobi, since they have developed a practice over the previous few years of asking applicants for official marriage registration documents even though it is known that these are not required under Kenyan Muslim (or Hindu) law for validity.⁴¹ Thus those prospective applicants concerned to ensure that visa issuance is problem-free tend to go to registrars to obtain the relevant certificate of marriage. Hence the two-stage process involved in a case such as this. I argued that, in my view, there was nothing irregular about the way in which the marriage was contracted, and concluded that it appeared to be in conformity with Muslim law as recognised and applicable in Kenya.

When I recently inquired about how the case was going, the legal representatives told me that, on a reapplication by D for a visa, she was again refused, but this time on the ground that the visa officer was not satisfied that C was a Dutch national. It was alleged that the picture in his second passport did not have the same likeness to the picture in his first passport! The legal representatives informed me that, in fact, C had lost considerable weight since he had obtained his first passport, having travelled back and forth to the Netherlands, Kenya and the UK. It was not therefore surprising that his new passport photo made him appear much thinner. Again, the time limit for appealing against the second refusal had expired and D applied in June 2009 and a new visa decision was being awaited.

The most striking part of this case is the fact that, despite the intervention of lawyers and an expert witness secured by the spouses to make sure that all the possible hurdles and doubts motivating the initial refusal were successfully met, the overseas spouse still ends up with a further refusal on different grounds. Both times, the refusals indicate a high level of suspicion against the Somali spouses and it appears that all efforts were being made to find a way of refusing the application. Certainly, no real efforts were made to find a way of sensibly upholding the relevant marriage relationship and, despite its putatively 'unusual' features, plausible explanations were provided by the parties for their having to go through a proxy marriage. We await to see whether the Somali couple, C and D, are third time lucky.

2.3. An unregistered *nikah*

The next case involved a *nikah* contracted in Delhi, India and takes an even odder turn since it concerns a refusal to recognise an unregistered *nikah* in a country with which the British authorities should be more than familiar, while the marriage solemnisation was hardly unusual.

41 R. Shah, 'The Phenomenon of the (UK) Officially Inspired Forced Marriages', 2005 *Journal of Immigration, Asylum and Nationality Law* 19, no. 3, pp. 195-198.

E, a Bangladeshi woman, was working in the UK, having entered under the so-called High Skilled Migrant Programme as a psychiatrist. She was very well paid for her job, and presumably a high-rate taxpayer. On a trip to India, she met F, a businessman from Kashmir. The two liked each other, and they decided to marry. She returned to India for the marriage which took place in a mosque in Delhi in the presence of relatives, including E's parents who had come from Bangladesh for the occasion. The couple were provided with a 'nikah certificate' by the mosque where the marriage took place, a kind of standard-form *nikah* which appeared to be taken (torn) from a book of many such standard *nikah* certificates. When F applied for a spouse visa to join E in Britain, he was refused. The ECO alleged that the *nikah* certificate was torn on one side and therefore he entertained some doubts about its authenticity. He refused F's application on the basis that the marriage was not valid. The couple saw each other again when E took a trip to India once more to be with F.

I was contacted by the legal representatives sought out by E to write a report on the validity of the marriage. However, when I was called, the legal representative was attending the first appeal hearing and told me over the telephone that the Home Office Presenting Officer (HOPO) had, just prior to the hearing, raised the issue of why the marriage had not been registered. I was therefore requested to write a report on the need (or otherwise) for the official registration of a Muslim *nikah* in India. Since I could not prepare a report immediately that afternoon, the appeal had to be adjourned while I wrote the report. It appears that the Immigration Judge was not prepared to rule on the issue, even though it would not have taken much effort or research to find out whether *nikahs* must be registered in India to be valid, even if the published guidance issued by the UKBA does not explicitly consider this issue. Presumably, if such a momentous change in Indian Muslim law had occurred, it would have been well publicised and known to the British diplomatic and visa authorities in India. It may be that the Judge considered that his hands were tied since he could not reach his own conclusions as to validity without evidence proffered and evaluated by both sides. Neither the legal representatives instructing me, nor the barrister who they had engaged for the appeal hearing, were sure about the legal position.

The matter had actually already begun to become slightly more complex at the first hearing. The HOPO was arguing that marriages must be registered according to a new 'marriage law' in India. Her source of information was the latest Country of Origin Information (COI) report issued by the UKBA which cited the US State Department (USSD) Report of 2008 as follows:

'On March 17, the All India Muslim Personal Law Board released a new Shariat nikahnama (marriage laws), applicable to both Shias and Sunnis, that makes registration of marriages compulsory and expands the rights to women. For example, the new marriage law prohibits divorce via text message, e-mail, or telephone, and the wife can file for divorce if her husband forces her to have sex.'

I was informed by the legal representatives that this alleged position was actually a misquote from the original USSD report of 2008 which in fact states:

'On March 17, the All India Muslim *Women* Personal Law Board released a new Shariat nikahnama (marriage law), applicable to both Shias and Sunnis, that makes registration of marriages compulsory and expands the rights to women. For example, the new marriage law prohibits divorce via text message, e-mail, or telephone, and the wife can file for divorce if her husband forces her to have sex.' (Emphasis added.)

So we had a misquotation of the position in Indian Muslim law by the HOPO, citing a UKBA report which, in turn, cited an official report issued by the United States Government! The only difference between the two quotations is the word ‘Women’ which qualifies the type of personal law board being referred to.

In my report, I first stated that Muslim marriages remain valid if celebrated in India in any accepted form under the general Muslim personal law. This legal position derives from an early period in South Asian history but is ratified by a piece of British colonial legislation in India – the Muslim Personal Law (Shariat) Application Act 1937.⁴² The form taken by the marriage ceremony in question was not unusual and complied with the practice of Sunni Muslims of the Hanafi school which I assumed both parties to be. The ‘*nikah* certificate’ issued by the mosque reflected all the basic issues of concern to Muslims for a valid marriage. The fact that the certificate looked torn was easily explained by the fact that it could have been taken from a book containing such standard certificates. The twist given by the HOPO’s citation of the US State Department report required some more clarification, however.

I argued that regardless of which body actually issued the ‘Shariat *nikahnama*’ we had to be sure about what the value of such a *nikahnama* was under Muslim law as understood in India. First, the translation of the *nikahnama* as a ‘marriage law’ was incorrect. A *nikahnama* is merely evidence in writing of a marriage contract. Both the Personal Law Boards mentioned have no official status although they do act as consultative bodies which represent the interests of Muslims particularly on matters of personal law before the Indian state authorities. The issuing of a standard *nikahnama* is not a unique attempt for such Muslim non-state organisations,⁴³ nor was it likely to attain the assent of the majority of Muslims since it is thought of as going against some essentials of a Muslim marriage. The Muslim bodies favouring the adoption of such *nikahnamas* as standard contracts have in mind the improvement of protections for women in particular, but that does not make them binding by any means; instead it often has the result of putting many conservative Muslims off because of their seeming liberality. The mentioned ‘Shariat *nikahnama*’ did not alter the legal position that unregistered *nikahs* continue to remain valid in India, and this situation was not likely to change anytime in the near future.⁴⁴

At the rehearing of the case a few weeks later, it proved fairly easy for the sponsor and the legal representatives to make their point regarding the validity of the marriage. As part of the evidence, E and F had a declaration from the Imam who had ‘officiated’ at the wedding and from a High Court Advocate in India stating that the marriage certificate was valid in India.⁴⁵ The Immigration Judge was, I was later told, critical of the ECO and the HOPO’s treatment of the case and advised that the matter be reported to the Ombudsman. It was clearly one of those cases where the indefensible was initially being defended by the Home Office, which had, however, not bothered to send any representative to the rehearing to defend its position. Still, the case must have proved fairly expensive for E and F who were not legally aided and had to wait for longer than a year to be reunited in Britain. At the end of the hearing the Immigration Judge gave his

42 D. Pearl & W. Menski, *Muslim Family Law*, 1998, p. 41.

43 There have been such examples in Britain also.

44 It is interesting to note that recent state-specific legislation in India designed to encourage the registration of marriages specifies that non-registration does not invalidate a marriage. See, for instance, Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998, Sect. 10 and the Gujarat Registration of Marriages Act, 2006, Sect. 13. This indicates that the various Indian legislatures remain conscious of the potential havoc which compulsory registration would cause. Instead they appear to be legislating to facilitate the production of evidence of marriage, but not to take charge of solemnisation itself.

45 My evidence differed from the Indian Advocate’s in that I did not say that the certificate itself was valid since there is no requirement for such certificates in Indian law. Rather, I had said that the marriage was itself valid. In the event, the Immigration Judge gave more prominence in his written determination to my report.

verbal assurance indicating that the appeal was successful, and that was confirmed in the written version of the decision sent about two weeks later.

2.4. A temporary marriage

The final case is one which is already reported on the website of the Asylum and Immigration Tribunal (as LS (*Mut'a* or *sighē*) Iran [2007] UKAIT 00072) and it does not take long for the reader to understand the impression that we are meant to receive about the importance of the decision, as it is flagged up right at the start of the determination of the AIT. The 'headnote' states:

'The Islamic institution of *mut'a* or *sighē* is in its essence neither permanent nor exclusive. It is not marriage within the meaning of the Immigration Rules, and its existence does not imply a relationship continuing or intended to continue beyond its termination.'

This gloss on the decision does not reveal the full reality of the case, which concerned an Iranian couple who had gone through a temporary marriage, also known as *mut'a* or *sighē* and recognised by some Shia Muslims, and in Iran, for just over a three-year period. The husband, G, left Iran within about three months of contracting the marriage with H, came to the UK and, within a month after that, was recognised as a refugee. G could not set foot in Iran and the couple therefore tried to arrange to meet outside Iran. Apparently, however, H was not able to obtain a visa to leave Iran. On a visit to Turkey by G, the parties again failed to meet but spoke on the telephone and agreed to extend their marriage, which took place by proxy and was registered just a few days after the expiry of the first term of the marriage for one more year.

H then applied for admission under the general rules on the admission of spouses and under the particular rules relating to spouses of refugees. As already noted, under these latter rules, there is no test of accommodation and maintenance without recourse to public funds. This became important because G was actually ill and could not work, while H could not prove prospects for work in the UK. However, the reunification rules for refugees also stipulate that the spouses in question must have been married prior to the refugee spouse leaving the country of origin.⁴⁶ H was refused a spouse visa both on the general spouse reunification rules because of the public funds requirements, and also because the ECO could not be satisfied that the proxy marriage in question was valid or that the three years of their separation showed a genuine subsisting relationship.

In the two-stage appeal, first to an Immigration Judge and then for a reconsideration of that decision by a three-person bench of the AIT, the issue of the temporary marriage received greater attention. The Immigration Judge took the view that:

'Whilst there was a relationship and temporary marriage before the sponsor's flight I am not satisfied that forming a temporary marriage is indicative at the time of an intention to live permanently together and therefore to form a new family unit. No explanation has been offered as to why only a temporary marriage had been entered into and I am not therefore satisfied that the appellant and sponsor formed a family unit prior to the sponsor's flight.'

⁴⁶ This stipulation seems unreasonably restrictive in light of the dispersal of refugee communities and the higher likelihood of marriages taking place other than in the country of origin.

It seems that those preparing the case do not appear to have provided, at least on a reading of the AIT's determination,⁴⁷ as much of the detail as might have been important, especially about the reasons why the parties had chosen a temporary marriage. Could it have been the unknown territory into which G was going by leaving Iran and seeking asylum abroad that the couple had decided not to go through a full-blown *nikah*? Or was it just the 'done thing' among younger people in Iran who wish to have a relationship with each other but may not wish to have a *nikah* marriage?

The Deputy President of the Tribunal, Judge Ockelton, went into a little more detail regarding the background to the institution of the *mut'a*, while remaining critical of the appellant's side for not bringing forward any evidence as to the validity of such a marriage. He also noted that there was a gap in the two periods of temporary marriage and it was irrelevant how long that gap might be. In fact, the gap was less than two weeks and explained by the fact that there had been some difficulties in getting it properly registered, but it was enough for both the Immigration Judge and the AIT bench on reconsideration to conclude that, because of the expiration of the first term of marriage, the parties had not been married before G had left Iran. Further, the non-permanence of the *mut'a* and the fact that the husband (but not the wife) remained free to enter into other such marriages as well as a *nikah* meant, according to the Deputy President, that it was not a qualifying 'marriage'. He said:

'Notions of marriage naturally vary between cultures, but we do not think that it would be wrong to regard permanence and exclusivity as essential features of the institution. Both may be subject to variable understanding or even undermining. Rules allowing restricted polygamy, and rules permitting divorce, are found in many societies. But it does not seem to us that an institution which by its nature is neither permanent or exclusive can properly be regarded as marriage. If we had had to decide the issue, therefore, we should have further held that *mut'a* is not marriage for the purposes of the Immigration Rules.'

Although this paragraph is couched in somewhat cautious language, since the AIT was not called upon to express its view on the matter of the qualifying nature of all *mut'a* marriages, it is interesting to see that the statement in the 'headnote' quoted above gives the impression that the Tribunal has conclusively decided this point! There seems to be an attempt to get hold of this case as a way of clearly signalling that such marriages will not be considered as eligible in future applications at all. Meanwhile, the benchmarks for 'marriage' being applied seem to be the Christian ones of sacrament and monogamy.

3. Conclusion

From the evidence presented in this article, it seems that British officials and courts working in the immigration context do not cope particularly well with the fact that marriages are taking place trans-jurisdictionally among members of Britain's minority ethnic communities. This is especially so in those cases where the features of the marriages in question tend to be further removed from European norms. Such departures are far more likely because of the trans-jurisdictional nature of the marriages, which means that the parties rely on legal systems, in these cases Islamic

⁴⁷ It is important to note that there may well be differences in the manner in which a case is presented and how it ends up looking on paper and the alleged lack of detail from the representatives of the appellant may not be the full story here. As an 'expert' I sometimes experience the feeling that my words too are being 'twisted' within the legal process.

law as applied in various countries, which do not resemble European legal systems. Departures from the European norm is demonstrated in the cases discussed because, for instance, they do not involve both parties being present at the same time and place at the marriage ceremony, they are not registered officially, or the marriage is not conceived of in (Christian) sacramental terms assuming the permanence of the relationship. Decision making appears to be performed without any particular guidance as to which rules of recognition should be applied and this leaves much room for manoeuvre and discretion to official actors to rule against the validity of the marriages. The fact that such decision making takes place in an immigration context, where hostility against non-European immigrants is increasing, makes the rejection of applicants more likely. However, this does not mean that other sectors of the British legal system are not dismissive of non-European marriage practices. Whether these types of response are merely unusual occurrences or they are reflective of a more generalised pattern of official behaviour when members of minority communities seek to rely on more than one legal order can still be as an open question, but the cases cited here do open room for argument and highlight the need for further research about the Eurocentric nature of decision making which results in the spouses experiencing 'lawlessness' at the hands of British officials.