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# Displaying Genuineness: cultural translation in the drafting of marriage narratives for immigration applications and appeal

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## Abstract

This article uses Finch's idea of 'display' (2007) to analyse the process in which autobiographical statements for family immigration applications and appeals are drafted in the UK. I argue that Legal Representatives play a key role in 'translating culture' (Good, 2011) in relation to both content and form, a process which is primarily driven by the need to demonstrate compatibility with the cultural assumptions of ethnocentrically-conceived Immigration Rules. These Rules act as 'moral gate-keepers' (Wray, 2006) to set limits on the conceptual structure of 'family' and to outline what a 'genuine' marital relationship looks like, thereby excluding cultural Others. The findings show that Legal Representatives translate the experiences, norms and values of their clients' relationships using authorial devices to make the account ring true within a commonsense understanding of British culture. I suggest that Legal Representatives thus contribute to a successful outcome for those lacking in cultural capital.

## Introduction

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The Immigration Rules require those wishing to enter the UK from outside the EU on the basis of marriage or civil partnership<sup>1</sup> with a British citizen or refugee, demonstrate that "each of the parties intends to live permanently with the other as his or her spouse or civil partner and the marriage or civil partnership is subsisting" (HC395: 281(iii), 352A(iv); and 2.6, 2.10 of E-ECP Appendix FM). Unlike other parts of the same paragraph (which relate to English-language ability, financial circumstances,

accommodation, proof of the marriage and identity) intention and subsistence cannot be readily evidenced by documentation. Instead, the applicant and their UK-based sponsor must attempt to prove their relationship as genuine through a narrative display detailing how they met, how they married, and how they remain in contact. For those on a low income and eligible for Legal Aid such a statement is usually drawn up with a Legal Representative or solicitor (hereafter Representative), through semi-structured interviews with the sponsor of the marriage.

In 2010, the government announced plans to curtail Legal Aid for immigration applications and appeals. From April 2013, applicants will be left to their own devices to prove the genuine nature of their relationship unless they pay for representation. Research on the effectiveness of Immigration Tribunals prior to Legal Aid funding found that those provided with representation without charge saw an increase in the probability of success from 20% to 38% (Genn and Genn, 1989:87).<sup>2</sup> The loss of representation is therefore likely to have significant prejudicial impact on the chances of transnational couples being able to settle in the UK. The Judges, Representatives and Home Office officials interviewed for Genn and Genn's study complained repeatedly of the proliferation of case law and legislation which meant managing without representation was "impossible" for the ordinary person who presented their story "in an undifferentiated stream of information" (1989:184-198). Some twenty years, ten Acts, and several thousand reported cases later, immigration law is now so extensive that it is considered specialist even for those trained in the law.

I use the term 'displaying genuineness' drawing on Finch's work who has argued that "*families need to be 'displayed' as well as 'done'*" (2007:66). Finch's focus is primarily on social display whereby members seek "meaningful" (2007:79) recognition as a family unit from the wider cultural group. However, she observes that display can be aimed at public agencies, a point expanded upon by Haynes and Dermott who note that family display can be externally or internally driven (2011:145). This concept of 'display' is a useful lens through which to consider family migration: the statements created for right of entry into the UK are an externally-driven conscious 'display' of family and relationship for the purpose of registering them as meaningful within a UK cultural framework.

Drawing on a sample of seven observations of Representatives in the process of drafting statements with sponsors, analysis of those statements, and interviews with seven Representatives, I shed light on the process of turning an "undifferentiated stream" into a structured personal statement displaying cross-cultural and transnational relationships.

## Background

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Academics have convincingly demonstrated the link between non-white migration to the UK and legislative response in the form of limiting and controlling that migration (Castles and Miller, 1998; Wray, 2006). The 1971 Immigration Act brought into play a notion of patriality which gave British-born citizens an unrestricted right to live, work and study in the UK through the concept of 'right of abode'. Those without the right of abode had to qualify for permission to enter under one of the categories in the Immigration Rules.<sup>3</sup> The Rules were born of, and drafted within, a perceived challenge to an imagined cultural or ethnic national identity. Family law is a frontier post of this outward-facing presentation of the national collective because of its "peculiar power" as a tool of "political expression of the group's power to determine its (non-territorial) membership boundaries" (Shachar, 2001:54). The Rules for foreign nationals who wish to join a UK-based spouse contain an element of 'rite-of-passage', a cultural content which seeks to both eliminate cultural-Others from the contest, and smooth out cultural differences amongst the nominally eligible.

The most obvious embedded culturally-specific aspect to the Rules in relation to family is the defining of group membership (Kofman, 2004). For spouses, this includes same-sex couples, but not additional wives of polygamous marriages.<sup>4</sup> More controversial has been the repeated engagement with "moral gate-keeping" (Wray, 2006:303) through the defining of what makes a 'genuine' marriage. A major example of this was the Primary Purpose Rule (1985-1997) which required couples to prove a negative: that the primary purpose of their marriage was not to obtain admission to the UK, which effectively discriminated against arranged marriages and thereby limited entry of those from the Indian subcontinent (Sachdeva, 1993). Upon the abolition of this rule, 'intention and subsistence' became the key test of genuineness (Wray, 2006:309). However, during the course of research this test was overtaken by more overt "political expression" of ethnocentric boundary-defining with the complete redrafting of Part 8 (Family Members) of HC395 and its replacement with Appendix FM on 9<sup>th</sup> July 2012. Most notoriously Appendix FM requires that transnational couples demonstrate a high income threshold if they wish to reside in the UK (the sponsor must have a minimum annual income of £18,600 which is nearly £7,000 higher than someone working a 37.5 hour week on the minimum wage).<sup>5</sup> Appendix FM also makes explicit the role of the Rules as moral gatekeepers, with sections entitled 'Suitability' (which lays out who is to be excluded or considered 'unsuitable' as a partner for a British citizen<sup>6</sup>) and 'Eligibility' (which lays out the required assets for suitable partners<sup>7</sup>). In this manner the aspiring spousal immigrant is set on a pathway to an imagined (and aspirational) 'Britishness' even before arriving on UK soil.

Appendix FM was accompanied by a Guidance Note (Annex FM 2.0) instructing Entry Clearance Officers (ECOs) on how to assess genuineness. The guidance states that such an assessment “is not a checklist or tick-box exercise” but then provides a checklist of six factors associated with genuineness and twenty-two factors associated with ‘sham’ marriages. Of the six positive factors, five hold that genuineness is demonstrated through practices which might be commonly associated with a secular modern couple: evidence of a long-term relationship, cohabitation, having children together, sharing a mortgage, or visiting each other’s home countries. One relates to arranged marriages and focuses on consent. Of the twenty-two negative factors, six relate to ‘forced marriages’<sup>8</sup> and five to immigration history, including having previously sponsored a spouse or having been sponsored in this category: the implication being that ‘genuine’ transnational (and arranged) marriages last a lifetime. Also included are not sharing financial or domestic responsibilities, not knowing much about the life of the UK spouse, not having “a shared understanding of the core facts of their relationship”, or having few people at the wedding: all factors which might be common for the newlyweds of an arranged marriage. The guidance acts both to exclude, by defining some culturally different practices as ‘sham’, and to reify, by limiting arranged marriages as those to which “the couple both consent to the marriage and agree with the plans made by their families”. ‘Genuine’ arranged marriages are those arranged by families rather than through marriage-brokers, friends, the Internet, or the couple themselves. This guidance sets up traps for those who do not fit neatly into prescribed cultural practices.

In common with a general academic neglect of family migration as a topic of study (Charsley *et al*, 2012; Kofman 2004), there has been little work on how the cultural content of the Immigration Rules is negotiated within legal practice. An exception is Holden’s edited volume on “cultural expertise” in litigation in the West involving South Asian migrants (2011), which concentrates on the relatively rare occasions when academics are enlisted to explain ‘culture’ to the court. With the exception of Good (2011), whose empirical work covered the UK asylum process, Representatives are given scant attention. Good demonstrates the clear need for what he terms ‘cultural translation’ (2011:114), and notes that “the processes whereby asylum lawyers structure their clients’ statements to maximise their impact as evidence have received little attention up to now,” (2011:100).<sup>9</sup> He suggests that Representatives play a crucial role in structuring “their clients’ accounts according to the common sense expectations of western legal culture” (2009:83); and in converting those accounts from what Conley and O’Barr call ‘relational mode’ – in which claims are framed in relation to notions of morality or fairness – into ‘rule-oriented mode’ – in which claims are framed in relation to specific rules or law (2006:67-74). Good notes this difference in approach as a fundamental difference between non-represented and represented people (2011:119).

Building on the theoretical insights of Wray (2006, 2009) into cultural definition of 'genuine' marriage and Good's empirical work (2011), this study investigates the mechanisms of how transnational marriages are 'displayed' as "meaningful" (Finch 2007) to the UK official. 'Culture' is used throughout in a 'commonsense' understanding in order to examine its use as 'actant' in legal discourse (Holden, 2011:7-8) where it is often "loosely understood as the 'tradition of the other'" (Bouillier, 2011:54) and defined externally. The study focuses on two aspects – the cultural translation of norms and values (rather than jurisdictions) at their most apparent; and cultural translation in its most hidden guise, storying a life to make it 'genuine'.

## Methodology

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Access to Representatives was made through a combination of my own contacts gained working within the field from 2001-2011 and through cold-emailing/calling. Three of the participants were ex-colleagues; two were acquaintances and two were unknown to me prior to this research. Three were male and five were white. Six of the participants worked in law firms which held a Legal Aid contract to supply immigration advice and representation. One Representative worked in private practice.

Access to the sponsor participants came through the Representatives, who having agreed to take part in the project, either directly approached suitable clients or allowed me to approach them at the start of their scheduled interview. This resulted in seven observations of five of the Representatives. My previous experience was invaluable in gaining access: I was perceived as a trusted insider by the Representatives and was presented by them to their clients as such. Five of the sponsors were refugees, and all bar one had complicated history with the UK Border Agency (UKBA). The observations covered both applications and appeals being made under Appendix FM, Rule 281, and 352A.

The interviews and two of the observations were recorded and transcribed using naturalised transcription (Davidson, 2009). In the five observations where permission to record was declined the English-speaking elements were transcribed as the observation progressed.

The study considers 'culture' as it is understood, translated, and (re)produced by the Representatives through conversation and then displayed in narrative form. Thus both conversation analysis and narrative analysis were used to gain insight from the data. The words of the legal interviews which I observed are the primary site in which the content-to-be of the statement is extrapolated, negotiated and translated. Conversation analysis as an analytic tool (Ten Have, 2007) allows cultural translation

to be seen *in process*. The theoretical assumptions of conversation analysis are also pertinent: social interaction requires participants to understand culturally-specific meaning-frames, and it is this aspect of the role of the Representative which is under the microscope here.

Clandinin draws a distinction between narrative inquirers who focus on the *telling* of narrative and those who focus on the *living* (2007:xi). This study is situated in the former camp, however it differs from the majority of such sociological inquiries since I have interviewed my participants about how *they* elicit narratives, and observed them in this process. This research is a study of “lived textuality” rather than “lived experience” (Denzin, 1997:33);, it is an examination of how “lived textuality” is produced as a right of entry (and rite-of-passage) requirement and the belief systems that operate around that.

## Translating Culture

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In order to demonstrate genuineness, Representatives are aware that the relationship must be displayed using descriptive categories that resonate (i.e. are meaningful) within the perceived culture of the decision-maker. Some culturally-Other practices are excluded as too ‘Other’, whilst some are permitted but require translation into frameworks that are recognisable to the imagined decision-maker. The Representatives remained open-minded and accepting of their client’s accounts, but nonetheless repeatedly challenged those accounts for the purposes of achieving a successful outcome.

In the interviews, Representatives highlighted cultural practices to which they were accustomed to setting in context. For example, LR4 commented “and then we have to explain a lot of details [...] why there are no letters, which is you know in that case, Somali they don’t write, so explain that.” Similarly, LR7 stated:

I have a batch of clients which I call my African men clients ((R: Ok.)) who don’t do emails and love letters and, all that sort of thing, ((R: Ok.)) so obviously with refusals it’s, and with statements, it’s really important to put the cultural context to it. [...] It’s so important to actually translate that to the Immigration Judge, the decision-maker who’s actually looking at the refusal.

*LR7 Interview*

In several of the observations however, Representatives struggled in order to fully comprehend their clients' explanations for why things had happened in the way they had and hence be able to explain it fully through the tool of the statement.

For example, Sponsor B, a British Citizen, had married her Egyptian husband in an Islamic ceremony which was subsequently formalised in an Egyptian court. He remained married to his first wife, despite the complete breakdown of the marriage, in order that he could continue to visit his children without restriction. Following the principles of private international law, the marriage is valid if it is conducted in accordance with the law of the place of its celebration. In Egypt, polygamy is permitted, so the marriage is valid. However, the capacity of the parties to marry is established by the law of the country where they are domiciled (Clayton, 2008). As a person domiciled in the UK, B did not have the legal capacity to enter into a polygamous marriage, which makes the marriage invalid for immigration purposes. B and her husband are in a Catch 22 situation: stuck, not just between national jurisdictions, but between one part of the UK state (UKBA) and another (a registry office). The husband cannot now divorce his first wife (even if he now chose to) and remarry B in Egypt, or apply to come to the UK as a fiancé to marry B, because they are already married. There is, no way to bring the application within the Rules.

During the observation, LR2 asked B to explain the circumstances around her marriage (how they met and decided to marry) and was directly typing B's statement to accompany the application. The statement itself will be the evidence that the relationship is genuine, accompanied by photographs and communication records. In communication with B, LR2 situates the non-comprehension on the part of the eventual reader ("embassy or Judge") rather than positioning herself as disbeliever. She also makes repeated use of a rising inclination and ellipsis to minimize the potentially offensive 'hearable meanings' (Mason, 2009).

### ***Extract of Observation of LR2 with Sponsor B***

- LR2: Is this, um, the way that that happened, is that (.) a kind of, is that coz of your Islamic faith that, that they could arrange that marriage, coz it's not kind of, well not arrange it but ask someone to find you a husband [isn't a typical kind of
- B: [Yeah, It is yeah it is it's just that it would usually be my dad or my brother that would do it, and I don't have, so we did the normal thing -hhh except for two different points, is one it was a friend because I didn't have anybody else -hhh (LR2: Ok.)) and two coz of my age and because of my circumstances they put like long engagements and all that are kind of not relevant↑ ((LR2: Ok.)) Coz my first marriage was exactly the same, was arranged in exactly the same way and we were only engaged for a week before we got married as well.
- LR2: That's, now, is that this one you are talking about, the one, ((C: Yeah.)) the nine years↑ Ok. So. Coz obviously it's a very, I'm writing this, and I'm just wondering



- when the embassy or the Judge reads it, they'll be like what↑ really↑ Without the background ((C: Yeah)) explanation as to why (.) going through a divorce you just kind of just ask a friend I'd like to get married and then they go and find someone seems (.) you know from a normal British culture, it's=
- B: =Ye-as, it's not done.
- LR2: No.
- B: Because that was one of the things I was afraid, coz it says ((on the application form)) was it an arranged marriage and technically in some respects you could say it was, but it wasn't, (.) it wasn't in that APPLICANT wasn't in, because FRIEND didn't know that APPLICANT's relationship had broken down as well (.)
- LR2: So (.)
- B: Coz APPLICANT had kept that (.)
- LR2: *In some<sup>10</sup> respects it was an arranged in that erm, in that FRIEND had asked APPLICANT to find me a suitable husband, but in others, it wasn't* ↑
- B: Because we didn't have APPLICANT, APPLICANT wasn't on the list.
- LR2: [APPLICANT wasn't
- B: [he was only ever supposed to be the middle man.
- LR2: Ok, *then he*. Er:m. ((typing)) Ok great. So September 2011 is when you started speaking face to face. ((C: Yeah.)) 'k. How (.) in Islam, again, is there any, I mean, when you first saw him what were your initial thoughts, great you'll do, he's lovely↑
- B: [Well, err
- LR2: [did you like the look of him↑
- B: The video thing is a bit rubbish anyway↑ ((LR2: Ok.)) So he looked like a bit of a monster. ((LR2: Ok.)) It was all pixelated and ((LR2: Yeah)) poor quality anyway.

B accepts the intended meaning of the question on the 'normality' of her marriage but with reservations ("Ye-as" rather than an affirmative "Yes" or agreeing "Yeah"). She rejects LR2's attempt to explain the marriage through visual attraction, though is happy to embrace physical attraction once they are formally engaged ("but you've seen pictures of him, so once I did actually see him physically, face to face it was just like Ohmygod,"). She is able to explain the circumstances of her marriage within her understanding of her religious culture, because she is both aware of how it differs from a perceived cultural norm (Islamic arranged marriages) and conversant in the same discourse of 'cultural normality' as that of LR2. For example, later in the conversation she describes finding her first husband as "a bit like speed-dating" which LR2 puts into the statement as "It's a bit like Islamic speed dating." LR2 is searching for cultural overlaps between the arranged marriage where the woman is not alone with her fiancé or without hijab (as the client later reminds LR2) until after the marriage, and the importance of 'looks' within Western love matches. Both LR2 and B are aware that the marriage is cross-cultural, not just transnational, and they have therefore transgressed the 'norms' of British, British Islamic, Egyptian, and Egyptian Islamic cultures. The marriage cannot be 'boxed' into any comfortably recognisable cultural practice and is pushed literally outside the rules and figuratively to the fringes of plausibility. This couple will clearly fall short of the guidance on what makes a 'genuine arranged marriage': the marriage was partly arranged by a friend, and partly by themselves; there

were no guests at the wedding; they have no shared financial or domestic responsibilities; and both parties have been married previously (UKBA, 2.0). The marriage is too culturally 'Other': monogamy in spirit is not sufficient, and they cannot display genuineness, having not followed the unwritten rules of 'normal' cultural practice.

I observed LR4 interviewing two Somali clients through an interpreter. LR4's considerable experience with Somali clients was an important factor in her interviewing technique. She did not present herself, as LR2 did, as an unaware but interested acquaintance, but rather as an experienced expert, directing the interview straight to the complicating factors surrounding Somali marriage such as the marriage certificate (its characteristics and form, how and when they came by it), how the couple kept in touch, and how the husband was supporting his wife. Early in the observation she explained to Sponsor F why it is a problem that he stated (when he claimed asylum) that he had a child as a result of a one-night stand with a UK-Somali woman on holiday in Djibouti: because he must now prove a negative, that he is not married to the mother of his child. She spoke in brief segments allowing for interpretation, but not permitting F to respond until she had finished explaining. She builds alternative scenarios into her presentation of the facts thereby allowing F an opening in which he could admit that he had actually married the woman in question, a technique which she used earlier in relation to the suspect marriage certificate showing her awareness of the importance of the interviewee maintaining 'face' and also the potential of the interviewee merely to provide agreement with the interviewer.

Like LR2, LR4 begins by softening the discrediting by attributing outright disbelief to external others (The Judge[is] going to find it very difficult to believe that the mother of your child had a child without being married to you."), but then strengthens her confrontation by moving her previously neutral self to a position of alignment with this view ("It's very uncommon in Somali society"). F defends his position (and honour) both in relation to his culture (by stating that he was "escorting" someone who was not well, i.e. being a good Muslim and dutiful clan-member, and "I was not in financial capability to look after myself" – financial support of a wife usually being a requisite of Somali marriage) and in terms of his temporary membership of a refugee diaspora with uncertain final destination ("If I had known that one day I would be going to the UK and I would be seeing her again, of course I would have took our relationship more seriously"). LR4 does not overtly accept or reject F's defence of his actions (although some degree of opinion could be read into the pause before "woman" below), but presents her objections in relation to the difficulty of displaying genuineness given an apparent cultural abnormality ("There's no issue with you taking it casually, the issue is with her being a Muslim Somali (.) woman.") LR4 then looks for a cultural explanation which might have resonance with a UK

decision-maker – if the woman in question is UK-born, or has lived in the UK all her life, it might be possible to consider her as having UK morals rather than those perceived to be held by a Muslim Somali woman.

The aim of these legal interviews is to produce a narrative which explains the actions and beliefs of the sponsor within the framework of an imagined reader, the decision-maker (ECO or Judge). Thus descriptive elements to the narrative must include categories which are recognisable to the reader:

If a speaker is to describe a scene so as to enable co-participants (which include not only the witness, but also, of course, members of the Tribunal, etc.) to recognise a particular import or 'sense' of the scene he is describing, the selection of categories from the alternatives available cannot be an arbitrary (subjective, individual) matter.

(Atkinson and Drew, 1979:121)

LR2 and LR4 are looking for descriptive categories that are familiar to the UK official by which means the actions and beliefs of the sponsor might be explained. The role of cultural translator here is based on a commonsense understanding that hearers/readers of the narrative will only understand (and therefore accept as genuine) that which resonates with their own experience. Descriptions will neither be heard, or if heard will not be accepted as 'correct', if the categories are too alien to the experience of the reader. Only if these two conditions are in place, can inferences be drawn from those descriptions (Atkinson and Drew, drawing upon the work of Sacks, 1979:121). Whilst Lord Bingham has cautioned judges against using themselves as the "reasonable man" against which to compare other men's actions and beliefs (*Kasolo*), Representatives are routinely setting the Judge as a benchmark.

The extracts and analysis above illustrate both the need for cultural translation and the difficulties encountered in enacting that translation. It is hard to see how, without the assistance of a 'cultural translator', the sponsors would have been able to explain (and through this, to display genuineness) to the Tribunal the circumstances of their marriages. It seems likely, given these examples above, that the loss of Legal Aid will result in higher failure rates. Further, the dangers of reification of culture become particularly apparent if we focus on the sponsors from one particular 'cultural' group, the Somalis. E, an apparently doting father and husband, who proudly showed pictures of his children and wife and explained the complicated process of how he had supported them financially throughout his years in the UK whilst his asylum case went from appeal to appeal, failed to accurately remember (during the observation, when filling in the application form, and when he claimed asylum) the dates of birth of his children or when he married. In his case, the ECO refused the application – with implicit

reference to UK cultural norms – because he did not believe that E is married to his wife or that his children are his/legitimate because otherwise he would know such dates. E asserted his marriage to be genuine through reference to Somali culture: such a thing (having children out of wedlock) does not happen. The observation with F, which took place immediately after that of E, centred on the reverse premise. The ECO had refused the application of F's wife because F had a child with a Somali woman who must, by the norms of Somali culture, have been married to F, and since no divorce certificate was supplied with the application, his marriage to the applicant is polygamous. F demonstrated his cultural hybridity as he asserted his account as truthful, referencing Islamic, Somali, and youth culture in his explanation of his "casual" one-off affair. In the former case, the ECO fails to consider his own beliefs and behaviour as "culturally coded" (Ballard, 2009:311) and universalises a Western cultural norm in the Refusal: birthdays and anniversaries are celebrated and remembered. In the latter case, the ECO applies a fixed and rigid application of a supposed cultural norm (Somali women do not have children out of wedlock) using culture as a determinant of behaviour.

These examples show the dangers of reifying a culture or cultural practice – the sponsors may have acted with some degree of accordance with *their* conscious and unconscious perceptions of their religious and cultural norms, but such norms remain unwritten and unspecified precisely because they are somewhat fluid; in any case norms are not strict rules. Further, these sponsors have all experienced the conflicts and opportunities of transnational identities which can free them to act in ways that might not be expected (see Parekh, 2006). The observations also challenge Ballard's finding that lawyers are complicit in failing to see their own outlook as culturally coded. The Representatives demonstrated constant awareness of this as they negotiated the real and perceived cultural assumptions of the ECOs and (imagined) Judge and sought to embed arguments against such assumptions within the statement, even as they (re)produced such cultural assumptions as part of their institutional interaction.

## Truth as narrative

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If narrative is seen as "the fundamental unit that accounts for human experience" (Pinnegar and Daynes, 2007:4), then the cultural barriers between a city high-court judge and "a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker" (Bingham in *Kasolo*, 1985) can be overcome in the same manner as the high-court judge overcomes the differences between him, and less often her, and a British pregnant shoplifter: by reading and taking account of the information in the Equal Treatment Benchbook. Freeman reminds us that whilst narrative is by no means unique to the West, in other cultures it is more a public and collective affair and that autobiographical understanding – the

narrative most commonly used in sociological narrative inquiry – “may be virtually nonexistent” outside the West (2007:121-2). The difficulties demonstrated above could be only indicative of culturally-different but explainable practices, but I want to consider whether it is form as well as content that requires translation. In this section, I will begin by considering why Representatives choose to display their client’s evidence in the form of an autobiographical narrative, and look at what cultural assumptions are being made through this. I will then look at the authoring of these *autobiographical* statements and consider the constant friction between the form and its authoring.

The Civil Procedure Rules give the following description of a witness statement:

“A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.”

(CPR 1998: 32.4(1))

A witness statement is a required document for an Immigration Appeal and its presentation usually formal and stylised. It must be formally adopted by the signee at the outset of the Tribunal hearing and acts as a substitution for the giving of evidence-in-chief. Thus the form is in part prescribed by procedural rules. There are obvious time-saving advantages to this method, but it also allows sponsors/appellants to overcome the more restrictive elements of case-presentation that are found in a criminal court where witnesses can only supply responses to examiner’s questions (Atkinson and Drew, 1979:34-81). In response to questions on why and how they draft statements, six of the Representatives made repeated reference to the point and style of construction in relation to it being ‘believable’. At one level, for the Representatives (and certainly the law) the relationship between the narrative of the event and the actual event is iconographic, which is to say “narratives are seen as verbal icons of the events they recount” (Bauman; 1986:5). “Real couples”, argued LR6, can write an account of their relationship history because it occurred in ‘real life’. At a second level the drafting of statements, like the writing of history and fiction for White, “presupposes a notion of reality in which “the true” is identified with “the real” only insofar as it can be shown to possess the character of narrativity” (1980:10). Genuineness comes in narrative form: “thinking if I give a history behind it, the story behind it then it makes it more believable” (LR4).

Finch argues that display is crucial to families because “relationships are both defined and experienced by their quality – not simply their experience” (2007:79). Applicants and their sponsors may have their own *lived* experience of family life, but in order to demonstrate its genuineness, Representatives believe they must display not just fact (such as marriage certificate), but ‘quality’:

“Ah, I miss her,” and ok, you miss her, but how do you miss her, what do you miss of her, and sometime with (.) women you get lovely statement, you know I miss his smell, I miss you know, some, and others are more, you know, I just miss the company↑

*LR4 Interview*

It is only through a Western understanding of autobiographical narrative that the ‘quality’ and therefore the ‘genuineness’ of the relationship can be displayed. This is both actively pursued by Representatives and expected within Immigration Tribunals as part of legal convention. It is entirely externally driven and the external agents involved have a strong degree of control (see Haynes and Dermott, 2011) over what is said and how it is said.

The statement must be “verified by a statement of truth” which is to be signed by “the maker of the statement” (CPR 1998:22.1). Practice Directions on the same matter instruct that the statement “must, if practicable, be in the intended witness’s own words” (CPR 1998, Practice Direction 18.1). As noted above, the law operates within the realms of positivistic assumptions – ‘facts’ are real and exist independently from the discoverer;<sup>11</sup> ‘truth’ (on the ‘balance of probabilities’) can be established – but how can such a set of assumptions be happily demonstrated by reliance on a method (narrative inquiry) which is fundamentally post-positivist in its embrace of the relationship between teller and listener in the creation of the told (see Pinnegar and Daynes, 2007)? And how is ownership taken up effectively by the sponsor when they have not ‘authored’ the text?

Representatives were shown the ‘transcriber – ghost-writer – author’ line (shown below) and asked to place themselves, as Representatives, on that line, having debated and reached common understanding of the terms involved.

Insert diagram here

Although the diagram shows the participants locating themselves across the range from ‘transcriber’ to ‘author’, when asked to describe their actual approach there was little difference between them. Thus, their position on the line reflects not so much what they actually do, but rather their perception of their approach to drafting the statement. LR1, however, was an exception. He declared himself an author without hesitation and stated his approach to be rule-based or refusal-led. The language used in the final statement was formal and legalistic and did not reflect the language used by Sponsor A or the interpreter: “I would like to confirm that my husband NAME is validly and legally married to me, that we have met each other, that we intend to live permanently with one another as husband and wife, [...]”. During the interview with A, he typed the statement and read out what he was typing as he went along. The client listened and supplied confirmation in relation to names and dates. The

resulting statement is more declaration than narrative, and the advantages to this method – especially when interpreters are involved (see below) – are clear in that there is no conflict over (re)storying events. The disadvantages relate to the sponsor's involvement in the process. Throughout the interview A made jokes in English and Somali which perhaps reflected discomfort at her lack of involvement. At the end of the interview she had to be persuaded that the statement should be read back through to her indicating indifference to 'ownership' of the statement.

LR6, in private practice, who was very aware of authorial conflict, was able to side-step the issue somewhat due to the nature of his largely articulate and literate client-base. He directed his clients in the drafting of their own narratives for application stage and complemented their personal statements with a more formal 'authored' witness statement for any appeal arising. LR2, LR3 and LR5 also instructed their clients to write their own statements for applications when they were sufficiently articulate, albeit for them this was a relatively rare occasion.

At the other end of the scale was LR7, who responded to the chart in the first instance by saying she was merely the person who typed the narrative. She saw herself as a conduit for her client: "I mean I literally climb inside the minds of my clients to actually experience, you know to get that experience written down." Despite her repeated insistence that the statement is owned by her client throughout (at nine points in her interview she stated "it's the client's story"), when challenged she confirmed that *she* supplied the structure: which is to say chronology, logic, and paragraph-content. LR2, LR3, LR4, and LR5 described a similar template to that of LR7.

These Representatives begin by giving the narrator authenticity as a character (making them 'reliable'), using descriptive categories such as background and education (from which, for example, class might be inferred), even when they were aware that it was surplus to requirements. LR7 asked her clients to "explain to me where you come from, [...] what's your background, where did you go to school even if it's not relevant in a spouse application because you know your education is not, but it needs to have context so the Judge actually understands". LR6 stipulated that his clients (sponsor and applicant) write their narratives separately in order to "reflect the two of them as individuals," and commented in relation to the observation "I want his individuality to come out and I'm not really bothered if that doesn't really fit with everything else." LR4 felt that using formal language "distorts their voices and therefore it distorts who they are." With the exception of LR1, all the Representatives tried to use their clients' words.

Using an interpreter could make the paradox of displaying authenticity through character more evident as it adds a further layer of distance between the events and their final representation.

However, Representatives who saw themselves as ‘transcribers’ had frequently been caught up in the powerful realist assumption of language as a “culture-independent entity” (Mason, 2009:55). When explicitly questioned about how they capture the client’s voice through the interpreter, several participants were unsettled and questioned their previous assumptions. But these same Representatives also showed awareness of the paradox through their difficulties with sponsors who do not ‘give’ the response they are looking for, particularly in relation to emotions. To some extent this is a question of interview technique – the less experienced Representatives (LR2, LR3, LR5) spoke about their fears of being reduced to leading questions; the more experienced were confident in their abilities to extract emotional displays relating to the Rules. However, the majority were also aware that this was not just a question of skill. Atkinson and Silverman have argued that in the West we live in an ‘interview society’ where the interview is a “social technique” for the “construction of the self” (in Kvale, 2007:7). The majority of the sponsors reliant on Legal Aid are not experienced in producing their ‘selves’ for display through the forum of an interview and/or narrative (whether native English-speakers or not). Representatives’ role in drafting the statement involves translation into this culture: they aid in the production of a ‘self’ (the narrator) with which to display the sponsor and the relationship as genuine. This is done firstly through presenting an ‘authentic character’ using descriptive categories that resonate in a UK-cultural forum such as family background and education. It is then maintained by giving the character a narrative ‘voice’ in which to present the story.

## Conclusion

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Previous studies have conclusively demonstrated the ethnocentric cultural content of UK family immigration law and how this plays out in appeal determinations (Menski, 2011; Shah, 2011; Woodman, 2009; Wray, 2006, 2009), but have not analysed of how these cultural assumptions are negotiated in the day-to-day application of the law. The findings of this study show that Representatives play a key role in translating culture in relation to both content and form. The content of the statement is that which has significance to UK culture as defined by the Immigration Rules and guidance, not that which has significance to the applicant or sponsor. The form of the statement is prescribed by the culture of the (rule-orientated) legal procedure and expanded upon by the Representative. Where experts are called in to explain jurisdictional obscurities (Menski, 2011; Woodman, 2009), Representatives must grapple with “misunderstandings over subtler and less tangible cultural matters – such as norms and values” which “may be far harder to address” (Good,



2011:115). The Representatives interviewed for this study showed explicit awareness of their role as cultural translators in relation to content or the practice of culture (both their own and that of their clients), and implicit understanding of their role as cultural translators in relation to form. Previous studies have shown that representation is a key factor in the realisation of a successful outcome (Genn and Genn, 1989; Conley and O'Barr, 2006). Up until April 2013, access to Representatives who could transform and translate norms and values into the appropriate rule-oriented display (and thereby contribute to a successful outcome) was provided without charge to those eligible for legal aid.

The study takes up Finch's call to use the concept of 'displaying families' (2007:65) and concurs with Dermott and Seymour's finding that it is a useful sociological tool (2011). This paper has focused on families for whom display is an externally-driven requirement; and for whom failing to get display 'right' has more severe consequences than the examples of 'displaying families' discussed hitherto in research: the penalty for a 'display failure' for these families results in the inability to have family life in the UK. The state is increasingly formalising what constitutes an acceptable family at the point of entry. Display is a legal requirement for cross-border families not only because they are frequently deemed 'non-conventional' – Finch argues that the onus on such families for display is greater (2007:71) – but also because of their lack of power, as Heaphy notes, "those at the bottom of social hierarchies continue to be subjected to intense surveillance" (2011:26). Finch observes that we live in "a world where families are defined by the qualitative character of the relationships rather than by membership" (2007:71). This study illustrates that cross-border marriages are defined by both rigid family membership criteria, and also through the couple's display of the 'qualitative character' of their relationship; judgement of which is used to award and limit potential membership of the nation-group. As long as the Rules and Guidance continue to enact a form of "moral gate-keeping" (Wray, 2006) then spouses will continue to be judged in relation to how well they measure up to invisible and fixed notions of cultural norms: how well they display 'genuineness'.

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<sup>1</sup> For ease of reference I refer to 'marriages' and 'spouses' throughout.

<sup>2</sup> A study of asylum in the U.S. found success rates are three times higher for those with representation (Ramji-Nogales *et al* quoted in Good, 2011:219).

<sup>3</sup> EEA nationals are exempt from these restrictions

<sup>4</sup> See Charsley and Liversage (2011) on the interface between polygamy and migration.

<sup>5</sup> Minimum wage calculated at April 2012 rates.

<sup>6</sup> A lengthy list including convicted criminals, the unhealthy, those who knowingly or unknowingly submit false documents, those who fail to supply information when requested and more generally when exclusion "is conducive to the public good or because [sic], for example, the applicant's conduct [...] character, associations, or other reasons, make it undesirable to grant them entry clearance." (HC395, Appendix FM: S-EC.1.5).

<sup>7</sup> Such as English language ability and those who practice monogamy.

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<sup>8</sup> Southall Black Sisters (see *Quila*) argue that there is no evidential basis for linking forced marriage to immigration policy, a stance supported by empirical work undertaken Gangoli, Razak and McCurry (2006) and Hester *et al* (2007).

<sup>9</sup> See also Barsky (1994) who argues the successful refugee in Canada is one who 'constructs a productive Other'.

<sup>10</sup> Words in *italics* denote when the Representative is typing at the same time as speaking.

<sup>11</sup> See Sweeney, 2007.

## Bibliography

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### Cases

*R (on the application of Quila and another) (FC) (Respondents) v SSHD (Appellant)* [2011] 45 UKSC 2011/0022

*Kasolo [1996] (Marjorie Kasolo v SSHD)* 13,190-HX-70,731-95 (01/04/96).

Atkinson, J. and Drew, P. (1979) *Order in Court: the Organisation of Verbal Interaction in Judicial Settings*, London: Macmillan.

Ballard, R. (2009) 'Human Rights in Contexts of Ethnic Morality' in Grillo *et al* (eds.) *Legal Practice and Cultural Diversity*, Farnham: Ashgate.

Barthes, R. (1975) 'Introduction to the Structural Analysis of Narrative' in *New Literary History*, 6(2):237-272.

Barsky, R. (1994) *Constructing a Productive Other*, Amsterdam: John Benjamins.

Bauman, R. (1986) *Story, performance, and event*, Cambridge: CUP.

Bouillier, V. (2011) 'French law courts and South Asian litigants' in Holden, L. (Ed.) *Cultural Expertise and Litigation*, New York: Routledge.

Castles, S. and Miller, M. (1998) *The Age of Migration*, London: Macmillan.

Charsley, K. and Liversage, A. (2013) 'Transforming polygamy' in *Global Networks*, 13(1):60-78.

Charsley, K., Van Hear, N., Benson, M., and Storer-Church, B. (2012) 'Marriage-related migration to the UK' in *International Migration Review*, 46(4):861-890.

Clayton, G. (2008) *Textbook on Immigration and Asylum Law*, Oxford: OUP.

Conley, J. and O'Barr, W. (2006) *Just Words*, Chicago: University of Chicago Press.

Davidson, C. (2009) 'Transcription' in *International Journal of Qualitative Methods*, 8(2):35-52.

Denzin, N. (1997) *Interpretive Ethnography*, London: Sage.

Dermott, E. and Seymour, J. (Eds.) (2011) *Displaying Families*, New York: Palgrave Macmillan.

Finch, J. (2007) 'Displaying Families' in *Sociology*, 41:65-81.

Freeman, M. (2007) 'Autobiographical Understanding and Narrative Inquiry' in Clandinin, D. (Ed.) *Handbook of Narrative Inquiry*, London: Sage.

Genn, H. and Genn, Y. (1989) *The Effectiveness of Representation at Tribunals*, London: University of London and Lord Chancellor's Department.

Gangoli, G., Razak, A. and McCarry, M. (2006) 'Forced Marriages and Domestic Violence Among South Asian Communities in North East England,' Newcastle and Bristol: Northern Rock Foundation and University of Bristol.

Good, A. (2011) 'Witness statements and credibility in the British asylum courts' in Holden, L. (Ed.) *Cultural Expertise and Litigation*, New York: Routledge.

Haynes, J. and Dermott, E. (2011) 'Displaying Mixedness' in Dermott, E. and Seymour, J. (Eds.) *Displaying Families*, New York: Palgrave Macmillan.

Heaphy, B. (2011) 'Critical relational displays' in Dermott, E. and Seymour, J. (Eds.) *Displaying Families*, New York: Palgrave Macmillan.

Hester, M., Chantler, K., Gangoli, G., Devgon, J., Sharma, S. and Singleton, A. (2007) 'Forced marriage: the risk factors' Bristol and Manchester: Universities of Bristol and Manchester.

Holden, L. (Ed.) (2011) *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives*, New York: Routledge.

Judiciary, (updated January 2012) Civil Procedure Rules  
<http://www.justice.gov.uk/courts/procedure-rules/civil>, accessed August 2012.

Judiciary, (updated 2011) Equal Treatment Benchbook, <http://www.judiciary.gov.uk/publications-and-reports/judicial-college/Pre+2011/equal-treatment-bench-book>, accessed August 2012.

Kofman, E. (2004) 'Family-Related Migration', in *Journal of Ethnic and Migration Studies*, 30(2):243-262.

Mason, I. (2009) 'Role, Positioning and Discourse in Face-to-Face Interpreting' in de Pedro Rico, R. Perez, I. and Wilson, C. (Eds.) *Interpreting and Translating in Public Service Settings*, Manchester: St. Jerome.

Menski, W. (2011) 'Life and law: Advocacy and expert witnessing in the UK' in Holden, L. (Ed.) *Cultural Expertise and Litigation*, New York: Routledge.

Parekh, B. (2006) *Rethinking Multiculturalism*, New York: Palgrave Macmillan.

Sachdeva, S. (1993) *The primary purpose rule in British immigration law*, Stoke-on-Trent: Trentham.

Shachar, A. (2001) *Multicultural Jurisdictions*, Cambridge: CUP.

Shah, P. (2011) 'When South Asians marry trans-jurisdictionally' in Holden, L. (Ed.) *Cultural Expertise and Litigation*, New York: Routledge.

Sweeney, J. (2007) 'The Lure of 'Facts' in Asylum Appeals' in Smith, S. (Ed.) *Applying Theory to Policy and Practice*, Aldershot: Ashgate.

Ten Have, P. (2007) *Doing Conversation Analysis*, London: Sage.

UKBA, (updated September 2012) Immigration Rules HC395, as amended.

<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>, accessed September 2012.

UKBA, (undated) 'Annex FM 2.0' in *Immigration Directorate Instructions*

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/IDIs/>, accessed September 2012.

White, H. (1980) 'The Value of Narrativity in the Representation of Reality' in *Critical Inquiry*, 7(1):9-27.

Woodman, G. (2009) 'The Challenge of African Customary Laws to English Legal Culture' in Grillo *et al* (eds.) *Legal Practice and Cultural Diversity*, Farnham: Ashgate.

Wray, H. (2006) 'An Ideal Husband' in *European Journal of Migration and Law*, 8:303-320.

Wray, H. (2009) 'Moulding the migrant family' in *Legal Studies*, 29(4):592-618.