ILPA MONTHLY

JULY 2020

On Being an Immigration Lawyer in the Era of the Pandemic

Random Reflections

These are, I suspect, awkward times for all of us. Preconceptions about how the current phase in our lives would unfold and carefully laid plans for the next stage have necessarily fallen away in the face of the Coronavirus (COVID-19) pandemic.

IN THIS ISSUE

Not only has the pandemic raised fundamental public health concerns on a global scale, but its aftershocks are likely to include economic depression of a magnitude most of us have never witnessed and a possible seismic shifting of the tectonic plates of the world's geopolitical order as some nations, under cover of the current crisis and sensing a vacuum of leadership at the top, seek to improve their own positions in that order.

It would be a foolish person who didn't treat this crisis, particularly given the unexpected vagaries with which the virus has targeted its victims, as an appropriate moment to confront one's own mortality: to weigh up what one has achieved in terms of personal fulfilment and in terms of making the world that slightly bit a better place for one's fellow human beings before passing out of it.

In my own case, this process has if anything been given a bit of a booster shot since a direct personal effect of the pandemic has been a decision to expedite my retirement, to ensure the continued viability of the firm I helped to create through the pandemic and into the as yet uncharted status quo to follow.

Calm before the storm

Each of us no doubt has his or her own story how they became aware of the enormity of the changes to be wrought by the pandemic. No one could be immune to all that has been going on, at best only blissfully unaware. In my own case, as the crisis began to gather heat earlier this year, I found myself on what was meant to be a six week mini-sabbatical in the US, arriving initially in mid-February for a four week stint in Key West which, for those who don't know it, is the southernmost outpost of the continental US, 90 miles north of Havana and 110 miles south of Miami.

From mid-February until mid-March it seemed almost untouched by the evolving world crisis:- record high winter temperatures, uncrowded beaches, delicious food (including its signature key lime pie and conch fritters), the customary friendliness of the place and, in a final quirky touch, roosters, hens and chicks wandering freely as 'wild birds'. The only discordant note in paradise was the nightly news featuring Donald Trump dismissing the virus as 'fake news'. (See a sample on the political news site The Recount:- https://therecount.com/watch/trump-coronavirus-calendar/2645515793.)

End of an idyll

This idyll ended abruptly on Saturday 14 March. Returning from the beach, I switched on the news while preparing to go to my favourite fish restaurant, Seven Fish. The attraction there was that many members of its bar and waiting staff were Lithuanians, who during the previous decade had taken a decision that the threat of Russia to the future of their home country was too great and, by some means, transplanted themselves to Key West where they were particularly welcoming to the grandson of four Polish immigrants.

But I had no chance to say farewell to the Lithuanians. Trump's travel ban was to be extended to the UK in two days. Having no intention of finding myself trapped in Trump's America, I spent four hours on hold until I was able to book one of the last scheduled flights to the UK.

This rapid exit proved fortuitous. I had planned to spend the last week of my stay in New York which could well have been calamitous.

Early weeks of the crisis for immigration practitioners and ILPA's key role

So I returned to the chaotic world facing all of us immigration practitioners a chaos which continues, final destination unknown.

Key changes in the daily functioning of the firm had already been taken by my partners, Alison Hunter, Barry O'Leary and Diana Baxter. While all three are 20-30 years younger than myself we go back a long way. The firm just celebrated its 25th birthday. Alison and Barry have been part of the team for 23 and 20 years respectively, with Diana joining in 2008. The firm's new incarnation operated with a skeleton crew in the office daily and everyone else working from home. Client appointments were by telephone or Skype/Zoom type connections. Documents travelled via scanning and e-mailing. Twice weekly virtual meetings were held to share information and maintain morale. These arrangements continue and no doubt are similar to those we have all made to function safely and effectively.

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ILPA FOREWORD *continued*

Early on during the maelstrom of confusion as to changing Home Office procedures in the face of the pandemic ILPA took the decision that someone had to 'take charge'. Using the credibility it has worked effectively to establish over the years with the Home Office, it took on the role of intermediary in voicing the concerns faced by its members and then doggedly pushing for solutions and relaying the results to its membership.

Immigration lawyers talk a lot about how the pace of change in our area of law is unlike any other, partly moaning but partly with some pride that, somehow, we manage to digest and cope with its implementation. Immigration remains constantly at the forefront of political discourse leading to a barrage of policy and guidance updates, new Acts of Parliament and Rules, and new targets, all tied to the political rhetoric of the government of the day. During my three decades working in the system, however, there has never been anything like the current pace of rapid change at every level of immigration procedures. Many issues remain unresolved and more will arise. It is difficult to fathom how, without ILPA playing the role of clearing house, our profession or the Home Office would have been able to cope.

Mind you, there was a period when one was receiving 30-40 e-mails in the space of 15 minutes and I for one often found myself at the end of a 12-hour shift with a backlog of 200 unopened e-mails, a situation which I always sought and generally managed to avoid in 'normal times'.

Facing the tough economic realities of the crisis

The greatest uncertainties of all faced by us are what our caseloads will look like in the medium to long term and the extent to which we will return to operate with similar staffing levels as in the past. For most of us, some part of our work involves helping individuals from abroad to obtain visas. All Visa Application Centres closed for a period. While they are reopening, no one is forecasting an upsurge in visa applications to previous levels anytime soon. The reduction in visa work will in turn have the likely knock on effect of fewer in-country applications.

For the time being, firms have been cushioned from taking the really hard decisions through the implementation of the government's furlough programme. Like most service industries, most of us are not massively capitalised and as the programme scales back, many of us will understandably be reluctant to assume large loan obligations on speculation that things will return to normal.

A personal decision: early retirement

For me, these concerns led to serious reflection on my own future. I had in fact told my partners earlier in the year of my plans to retire on 31 March 2021. Then, when discussing with Alison Hunter in late March how we might most appropriately and fairly implement the furlough programme, it occurred to me that the best contribution I might make to the firm at this critical moment would be to step down early to free up work for the younger generation. In the end I took the decision to expedite my plans, retiring on my 71st birthday, 12 May 2020.

I found it difficult to justify 'soldiering on' when I 1) was fortunate enough to be able to afford to retire, 2) was of an age when many if not most people would feel it the sensible thing to do, 3) had three young partners with proven track records in developing the firm, and where 4) most importantly, my retirement would unlock a substantial caseload hopefully making it possible to avoid the furloughing or indeed the redundancy of a talented young lawyer

So far, no regrets, and watching my former partners working to ensure the firm's future, I feel the optimism and excitement which young Barbara Coll and I felt when we first set up the practice in those three rooms over a Balti House on The Strand 25 years ago, had the telephones installed and then waited patiently for them to ring.

Writing this article

In May, ILPA's Legal and Parliamentary Officer Charles Bishop approached me to write an article on the occasion of my retirement. Charles had, in fact, in a previous life served for a very productive year as my paralegal before going off to study for the bar. I have felt a bit the 'proud dad' (apologies to Mr Bishop Sr, a very nice man) to see the role he has played in developing ILPA's strategy as the profession's Home Office intermediary during the pandemic. Typically, I agreed to write the article without having quite thought it through but fastened upon the vague idea of addressing the effects of the pandemic on our profession.

Several days ago, however, after writing my initial thoughts as to the 'challenges of the pandemic', I found myself afflicted with perhaps the worst case of writer's block I have experienced in a lifetime. Why so? I suppose because the challenges outlined do not have easy solutions. This was never destined to be a well-rounded story with a happy ending, the challenges outlined in section one neatly resolved by the conclusion of the piece. All I am able to offer is a bit of personal history as to how a major global crisis has affected one person and his firm. While this approach may seem self-indulgent, history is after all made up of the compilation of many such individual stories and there is some worth in recording them contemporaneously to inform the experiences of others either today or in the future.

Final reflections: Confronting one's mortality

Perhaps one area where I can offer a modicum of comfort relates to whether in retrospect, having now come to the end of my professional life in immigration, I feel that it has been a worthwhile endeavour and will remain so for those still toiling in the field.

My answer on both points is affirmative. Before taking undue comfort from that, however, remind yourselves that my ambitions are for personal fulfilment based upon a moral code which is satisfied simply by 'making the world that slightly bit a better place for one's fellow human beings before passing out of it'.

I have never had a doubt during my more than three decades in this field of work that whatever accomplishments I've managed to achieve have made important differences in individual's lives.

Most obviously, of course, there are **the clients**. My colleagues to liven up my Zoom 'going away drinks' formulated a quiz of various information titbits. One was that, during 25 years of the firm's existence, I had opened up files on behalf of 3,000 individual clients and their dependants, for some of whom I acted on immigration 'journeys' which lasted a decade or more. I feel confident that, for most, the results brought not only betterment of their own lives but, very probably, important changes for the prospects of their family for generations to come.

Then there are **one's colleagues**. Here I can divide the positive role which one can play into three categories:-

1. Training the next generation

I have always thought it a key role to encourage bright idealistic youngsters to appreciate our work's importance and to acquire skills to do it effectively. While some have remained with us, others have gone on to excel elsewhere. To pluck three examples out of a myriad of possibilities:-

a) I take quiet pride that my very first work experience person while practising at B M Birnberg & Co (now Birnberg Peirce) was none other than Raza Hussain QC (and now can publicly confirm that, contrary to the teasing that I have mercilessly dished out to Raza on every possible occasion during the intervening 30 years, his pagination and preparation of appeal bundles was 'reasonably good' back then!).

b) Barbara Coll followed. Her excellent work and dedication were my catalysts to set up a firm at the ripe age of 46 when a training contract failed to materialise. She left to make a broader global footprint, working with the respected Norwegian Refugee Council, her most recent posting inside the Syrian border to protect displaced Syrians until Trump's regional troop withdrawal made the mission too dangerous. Next stop:- Sixth tour in Myanmar protecting internally displaced people and returning refugees.

c) Jumping ahead over two decades and skipping over many other worthy candidates, the chain leads to ILPA's own Charles Bishop, for whom I know first hand that knowledge of the pragmatic realities of working as a solicitor has informed his work at ILPA and will make him a better barrister at Landmark Chambers.

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2. Creating a supportive group of like minded people

Another route to making a significant improvement to the individuals around us arises from the very act of creating mutually supportive teams of like minded people to do our work, sharing basic moral values and principles. Particularly during these recent divisive years of Brexit debate, all of us in such collectives have needed such protective and comforting cocoons from the harsher realities around us, something which all of us can benefit from on occasion.

3. Collegiality of our profession

On a larger scale, this creation of such an affinity group carries over to our branch of the legal profession generally. I have always felt that individuals practising immigration law seem a group of lawyers more collegial and generous than, perhaps, one finds in other branches of the law. It may be because we are all effectively dealing with the same 'adversary', the Home Office, and recognise that a collective approach, sharing information and developing common strategies is most effective. Perhaps it is also because, at least in some areas of immigration law, the problem is not that clients are scarce but, rather, too plentiful to be accommodated by the limited number of good lawyers available. Or, who knows, maybe immigration law just attracts nice people?

While issues around immigration are politically charged it is a relatively rare occurrence that, in working to achieve our modest goal of improving the lives of our individual clients, we can **effectuate change which can improve the lot of large groups of individuals**. When one has the good fortune to accomplish this, by winning a key case or by persuading the Home Office to change their policies, it is necessarily a moment of great satisfaction. I really have had the good fortune to play a role in one such major breakthrough -- the recognition of same sex couples for immigration purposes in October 1997, which in fact was the first recognition of same sex couples anywhere in British law. As described in this blog post (https://www.gryklaw.com/https-www-gryklaw-com-lgbt-history-month-coming-of-age-same-sex-relationship-immigration-rights/), however, this change of such magnitude arose from a handful of affected individuals fighting their individual cases who only decided to work collectively for when it became apparent that collective action was more powerful.

Finally, on occasion, even when political winds blow in a direction other than one had hoped for, we can play a role in **assuaging the detriment faced by individuals as a result**. We could do nothing, for example, to hold back the political forces which propelled this country to Brexit. The response by my colleagues and myself was, from the time of the referendum, to set up a series of pro bono outreach sessions around London and as far afield as Norwich and Eastbourne to ensure that Europeans were aware of their rights to remain and how to exercise them. It was an approach we had the tools to implement, allowing us to change the lives of individuals affected, many of whom had no idea whether or how they might be able to remain in the United Kingdom, Brexit notwithstanding.

If anything, to the extent that the world situation deteriorates as a result of the pandemic and its aftermath, the importance of damage limitation through such actions to address the effects of what is happening to individuals is probably the best contribution that those working in fields such as ours can hope to achieve. Furthermore, the camaraderie and generosity which for the most part exists amongst those doing this work carries with it the comfort of knowing that one is not alone in trying to do the right thing. So I can only conclude by urging comrades to keep up the struggle on all fronts in the hope that the accretion of our many small acts will bring about better lives for those we seek to help as well as for ourselves. A happy ending of sorts?

Wesley Gryk, former Partner at Wesley Gryk Solicitors.

ILPA ACTIVITIES

Each month, the ILPA Activities section highlights what the Secretariat and members have been up to recently. It features meetings we have attended and work undertaken to advance the interests of members.

Coronavirus Work

We have continued to have regular meetings with the Home Office and continue to update members on information we get from those meetings. We have also been raising issues with the Home Office and Sopra Steria when they have been arising, such as in relation to registering with UKVCAS, confusing messages relating to biometric enrolment, and switching. We are continuing to press on the long list of issues that remain outstanding. We have also raised the urgency of formal guidance being published as soon as possible in relation to how periods of unlawful residence will be treated.

FTTIAC and UTIAC procedures

Sonia Lenegan provided a witness statement in support of JCWI's challenge to the UTIAC's new guidance permitting error of law decisions to be made on the papers. We recently attended the UTIAC user group meeting where we raised various concerns about the gradual opening up of more face-to-face hearings. We also raised similar points in a meeting with the FTT, which we have fed back to members through the Courts and Tribunals Working Group. We have also been raising concerns about the inconsistent treatment of Appeal Skeleton Arguments. We continue to monitor all developments within the tribunals. Please do get in touch if you encounter issues that go against the guidance.

ILPA ACTIVITIES

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

We sent our briefing on the second reading of the Bill to a variety of politicians and we were referred to at the despatch box by Holly Lynch MP, the Shadow Immigration Minister. We also held meetings with Holly and Kate Green MP (then Shadow Minister for Child Poverty Strategy, now Shadow Education Secretary) to explain our concerns and discuss amendments and strategy. We had further exchanges as the Bill progressed. Adrian Berry, our Chair of Trustees, gave evidence on the Bill to the Public Bill Committee. We also provided a further written briefing. A number of our suggested amendments were tabled or were discussed as part of debates on particular provisions in the Bill.

The Bill passed its third reading in the House of Commons without amendment (save for some amendments tabled by the government in relation to the application of the social security powers in Scotland). We are continuing to work with colleagues across the sector now that the Bill is in the House of Lords.

Simplification of the Immigration Rules

We have been continuing to feedback your comments on the Home Office's draft Rules to the Simplification of the Immigration Rules Taskforce. In particular, we have sent comments on the draft rules on adoption, statelessness and introductory matters. Please continue to look out for emails asking for further input.

Family reunion after Brexit

The House of Lords EU Security and Justice Sub-Committee recently held an evidence session discussing the government's draft agreement on the transfer of unaccompanied asylum-seeking children. Prof Elspeth Guild of Queen Mary University (and co-convenor of the ILPA European Working Group) gave evidence. ILPA also liaised with others in the sector in relation to concerns around family reunion after Brexit. The transcript of the oral evidence session can be read here.

Strategic Legal Fund

The Strategic Legal Fund supports grantees to achieve successful strategic litigation and interventions with the aim of improving the implementation and enforcement of policies for vulnerable young migrants in the UK.

As a result of the Covid-19 outbreak, the SLF is currently not running regular funding rounds. Please note that we still accept out-of-rounds funding proposals where the urgency can be demonstrated. If you have an urgent proposal please contact ILPA via our email info@ilpa.org.uk and we will contact you as soon as possible.

We expect the SLF to be back up and running with regular funding rounds from autumn onwards when it will also be expanding its eligibility criteria. Please bear with us in the meantime.

www.strategiclegalfund.org.uk

STRATEGIC LEGAL FUND FOR VULNERABLE YOUNG MIGRANTS — Managed by ILPA

Legal aid changes

The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020 came into force on 8 June. In the last Monthly we provided a copy of our statement, which can be accessed here.

We have been coordinating the sector and supporting other organisations who have also been lobbying and campaigning in relation to the Regulations. Sonia Lenegan, our Legal Director, has provided a detailed witness statement in support of a legal challenge against the Regulations.

The Ministry of Justice will soon be launching a consultation on the longer term solution and we will be providing a full and comprehensive response. Members should look out for calls for evidence on this.

Public Accounts Committee inquiry on Immigration Enforcement

The National Audit Office recently published a report in the activities of Immigration Enforcement and whether it is achieving its aims. The Public Accounts Committee is holding an inquiry into this and taking evidence from senior Home Office officials. We provided a short written submission highlighting the problems defining the "illegal population" and resisting the suggestion that legal challenges are problematic.

Indefinite Leave to Remain Victory

for legacy cases granted "old style" Discretionary Leave to Remain

Obtaining indefinite leave to remain (ILR) sooner rather than later is the understandable objective of individuals with limited leave in the UK who intend to make their lives here. But the current rules make it a long haul for people granted leave for non-standard reasons, for example on human rights grounds. They face multiple expensive applications for further leave. Having settled status here helps stable planning for the future, making travel arrangements and job applications more straightforward.

The July 2012 reform of human rights applications ended the previous regime whereby two spells of discretionary leave to remain (DLR), each of three years, gave a six year route to ILR. Under the new (and current) system there was to be a ten-year route to ILR under the various Immigration Rules addressing private and family life.

But there was transitional protection. Those granted leave before 9 July 2012 continued on the speedier track to ILR. So too did people who received a written commitment to consider their case before 9 July 2012 which had not been honoured, and also those whose grant of leave followed a reconsideration of a pre-July 2012 refusal.

In JR/3371/2019 the UT considered a case where an asylum appeal had failed; further representations had then been rejected. Then DLR was granted under the legacy programme, after the July 2012 changes. Once six years of DLR had been clocked up, the applicant sought ILR. But this was refused. The Home Office argued throughout the proceedings that the date of decision was the critical issue, and that a legacy grant did not represent any acknowledgment that the earlier decision was mistaken.

The judicial review claim was granted permission and succeeded at the final hearing. The UT found that the legacy grant represented a finding that the earlier fresh claim refusal had been wrong, based on the same evidence as was previously available. Accordingly the transitional protection applied, even though the decision post-dated July 2012. The very fact that periods of 36 months, rather than 30 months, of leave had been granted in the past, strongly suggested that the applicant was on the old, rather than the new route to settlement.

This decision will hopefully help many other cases still in the system. Notably many legacy grants of leave were based on the same information that had previously been on file: to that extent they were usually reversals of earlier decisions based on the same evidence.

Whilst the decision is presently unreported, such decisions are perfectly citeable, as all substantive immigration judicial reviews are treated as "reported", whether or not they have been given a formal headnote by the UT: see Nawaz [2017] UKUT 288 (IAC).

The judgment is available for download here.

Article by Mark Symes who was instructed in this case by Joshi Advocates Ltd.

Mark Symes is a Barrister at Garden Court Chambers, London.

The practical impact of the changes to the representatives of overseas businesses category

In the midst of a global pandemic causing a plethora of unresolved UK immigration issues for individuals and businesses alike, the Home Office decided to publish a statement of changes. Other than the proposed widening of the EU Settlement Scheme, the majority of these changes clearly aimed to tighten the Immigration Rules for some of the categories which are perhaps anticipated to receive a higher volume of applications once free movement ends on 31 December 2020.

One of the most noteworthy (yet underreported) set of changes was for the representatives of overseas businesses category – commonly referred to as the sole representative category. This article will consider what an application under this category involves and what changes have been made.

Sole representative category

Located in Part 5 ('working in the UK') of the Immigration Rules, the purpose of the sole representative category is to enable individuals to apply for UK immigration permission to enter the UK as a representative of an overseas business. Employees of overseas newspapers, news agencies or broadcasting organisations may also be eligible under this category, however, we shall not explore this further as there have been no changes for applicants of this nature.

Applicants are eligible if they are a 'senior employee' of an overseas business which does not have an active branch, subsidiary or other representative in the UK at the time of the application. Another key mandatory requirement is that the applicant must demonstrate that the overseas business has and will continue to have its headquarters and principal place of business outside of the UK. Helpfully, the evidence which is required to be supplied by the employer for the application is expressly detailed in the rules.

The conditions imposed on successful applicants are generally favourable – the primary restriction being no employment other than working for the relevant overseas business. This route avoids the onerous record-keeping and reporting duties associated with Tier 2 sponsorship, in fact there is no requirement at all to update the Home Office on the activities of the business or the nature of the employment until, if applicable, an extension application is made.

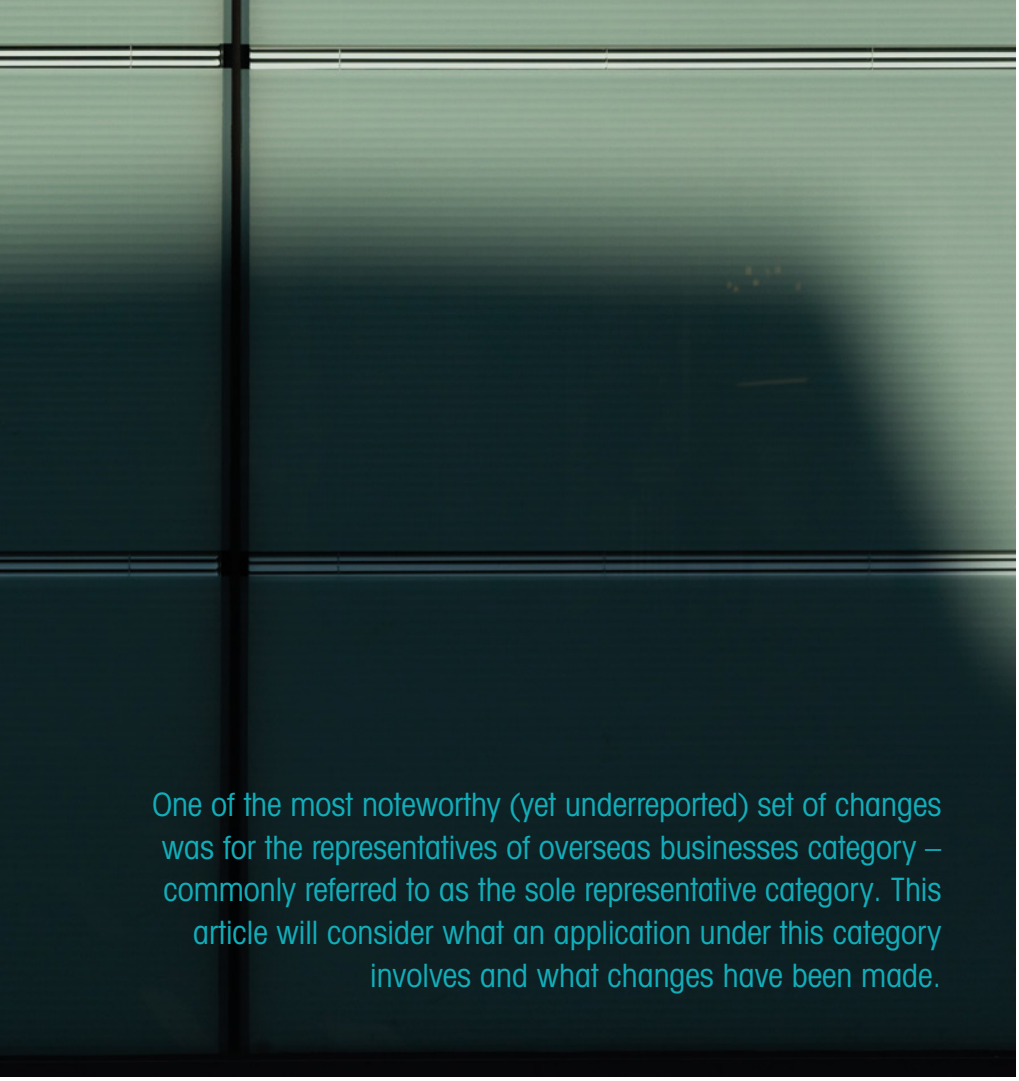
It should also be noted that the sole representative category is a path to settlement and citizenship in the UK. The initial grant of leave is for three years, which may be extended for a further two years, at which point an individual may apply for indefinite leave to remain (ILR) in the UK. The requirements for the extension and ILR applications were, until the recent rule change, relatively straightforward. For extension applications, the applicant must show: they have set up a branch or subsidiary in the UK which has since generated business in the UK; their employment is still required by the overseas business; and they have received a salary for the past 12 months. ILR applicants must meet the same requirements and also demonstrate that they have not been absent from the UK for more than 180 days during any 12 month period in the continuous five year qualifying period and that they have sufficient knowledge of English language and life in the UK.

Looking beyond the permission granted to the initial applicant, the sole representative category can be highly beneficial to overseas businesses from a long-term and strategic perspective. Once the representative entity has been set up in the UK, it is possible for the entity to then apply for a Tier 2 sponsor licence. This is arguably one of the easiest and cheapest ways for an overseas business to establish a sponsoring entity in the UK, avoiding the difficulties of navigating the Appendix W categories and the expense of the Tier 1 (Investor) route. It is also possible for sole representative migrants to switch to a number of immigration categories from within the UK, including Tier 2.

Statement of changes and guidance update

ILPA members have recently reported incidents of sole representative applications being heavily scrutinised and refused by the Home Office for perplexing reasons, despite the applications seemingly meeting all the mandatory criteria. The Home Office's underlying thought process became apparent when, on 14 May 2020, the Home Office published a statement of changes which included amendments to increase the eligibility threshold for sole representative applications. These changes and the accompanying updates to the Home Office guidance for this category (which was published on 4 June 2020) will be considered below.

The first set of amendments creates a new genuineness requirement - applicants must now 'genuinely' meet all the requirements for leave to enter the UK as a sole representative and the UK entity being set up must not be 'established for the sole purpose of facilitating the entry and stay of the applicant'. The creation of this requirement is initially alarming; UK immigration



One of the most noteworthy (yet underreported) set of changes was for the representatives of overseas businesses category – commonly referred to as the sole representative category. This article will consider what an application under this category involves and what changes have been made.

law practitioners will have relatively fresh memories of the difficulties involved to satisfy the 'genuineness test' for Tier 1 (Entrepreneur) applications. The updated guidance confirms that a new genuineness test is indeed established, but this test will only become applicable if the caseworker has a reason to doubt the applicant's eligibility. The guidance provides some non-exhaustive examples of where this doubt may arise, which includes some common situations such as: only having a small number of staff or trading premises, only having a trading presence in one country and only having been set up recently. Whilst initially appearing helpful, this list could have the unwanted effect of caseworkers questioning the genuineness of all businesses that have a factor detailed within it, such as a small number of staff, rather than considering the wider business circumstances. It is somewhat reassuring that the guidance advises caseworkers to give applicants a reasonable opportunity to address any genuineness concerns rather than outright refusing an application, for example by requesting additional evidence or requesting that an applicant attends an interview. However, how this will work in practice, remains yet to be seen.

The next set of amendments focuses on the applicant themselves. The applicant is now required to be an 'existing' senior employee who possesses the 'skills, experience and knowledge of the business necessary to undertake the role'. In addition, the updated guidance now includes greater detail which clarifies the required employment status of the applicant. The applicant is not permitted to be self-employed but may be a director or even the founder. All applicants must be subject to an employment contract which complies with employment rights under UK law and the employment must possess the majority of an express list of characteristics, e.g. minimum number of working hours, remuneration, management hierarchy, holiday pay. The evidentiary impact of the first two amendments are spelt out in the rules - a letter must be provided from the employer confirming that the applicant has the skills, experience, knowledge and authority for the role. Hopefully the Home Office will steer clear from making the assessment themselves regarding whether an individual has the required skills.

Perhaps the most significant amendment is the increased restriction on the relationship an applicant (and now also partners who are applying to accompany/join an individual under this category) may have with the business. Previously, applicants were ineligible from applying if they were a majority shareholder i.e. if they were a shareholder, their share must have been smaller than 50%. Now, applicants may not 'have a majority stake in or otherwise own or control' the overseas business by means of a 'partnership agreement, sole proprietorship or any other arrangement'. The updated guidance usefully explains what this amendment means: essentially applicants may not own (via shareholding or partnership agreement) or control (via voting rights) more than 50% of the business and are not permitted to be self-employed owners or sole proprietors. This is also not permitted via 'any other arrangement' – whilst this wording is initially vague, the guidance seems to suggest that it relates to situations whereby there are 'silent' partners/directors of the business who act according to the applicant's instructions and/or give the applicant the majority of the profits. Frustratingly, the guidance also states that applicants with substantial stakes under 50% may still be requested to provide additional information or attend an interview in line with the new genuineness requirement.

Impact

A common theme which can be observed is the vague and seemingly discretionary nature of all the amendments to the sole representative category. Not including the second set of amendments described above, the Home Office now seemingly has the power to delay the processing of applications in any situation which they consider are not genuine even if they otherwise satisfy both the rules and the guidance. Whilst applicants can be reassured that they should be provided with an opportunity to rebut any concerns, legal representatives may struggle at this stage to be able to provide applicants with a clear idea of the additional evidence they may be requested to provide. It is also particularly worrying that applicants (especially those without legal representation) may have to attend interviews, especially when a Home Office caseworker is not often best placed to assess the genuineness of a business.

The changes came into effect on 4 June 2020 and it may take some time until word spreads between legal practitioners about their experiences of the practical impact of these changes. In the meantime, the smartest approach to prepare for these changes may be one of caution. If any of the non-exhaustive examples indicating a lack of genuineness as listed in the guidance apply to your client, this should be addressed and explained in the application. Transparency is also advisable – even if the applicant's personal interest in the business is not explicitly restricted by the rules, the Home Office are likely to look more favourably upon these interests if they are disclosed and explained at the point of submission rather than if they discover them at a later stage in the processing of the application.

It appears from the Home Office's latest set of quarterly statistics that in 2019 there were only 188 sole representative applications submitted from overseas by main applicants. This is a relatively low figure and it can be anticipated that the changes will cause this number to decrease further. In view of this, and considering the continuing failure of the Appendix W categories, the upcoming end of free movement and the inevitable growing pains of the new points-based system once it opens in Autumn 2020, the Home Office's decision to make these changes seems bizarre.

Article by Francesca Sciberras (below left) and Joshua Hopkins (below right).

Francesca Sciberras is a Senior Solicitor and Joshua Hopkins is PSL Team Co-ordinator at Laura Devine Immigration.

Hong Kong's New Security Law:

why Hong Kong residents are worried and the UK's plans

On 30 June 2020, the Chinese government imposed a new security law[1] in Hong Kong that strips Hong Kong people of their freedom. This note looks at some of the draconian provisions of the new security law and the UK response to this.

The Sino-British Joint Declaration and the Basic Law

Hong Kong was a British colony. The Sino-British Joint Declaration[2] is a treaty signed between the UK and China on Hong Kong. Signed on 19 December 1984 in Beijing, it stipulates the administrative arrangements of Hong Kong after 1 July 1997, when sovereignty of Hong Kong returned to China. The declaration stipulates:

The Hong Kong Administrative Region will enjoy a high degree of autonomy (Article 3 (2)).

The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including final adjudication (Article 3 (3)).

The current social and economic system in Hong Kong, including rights and freedoms of persons, of speech, of press, of assembly, of association, of travel, of movement will remain unchanged (Article 3 (5)).

This is reinforced by the Basic Law, which sets out China's basic policies on Hong Kong in accordance with the Joint Declaration and its commitment to the principle of 'one country two systems'. Article 27 states that Hong Kong residents shall have freedom of speech, of the press and publication, freedom of association, of assembly, of procession and demonstration.

Hong Kong new security law

On 28 May 2020, the China's National People's Congress voted in support of the establishment of national security legislation in Hong Kong. The law was drafted and approved swiftly in Beijing. The text of the new legislation was issued by the Hong Kong Government at 11:00pm on Tuesday 30 June 2020, after weeks of secrecy surrounding its details and came into effect immediately.

Provisions of the New Hong Kong Security Law

In addition to terrorism offences, the new security law introduces the offences of secession, subversion and collusion with foreign countries or elements.

Secession: Article 20

Secession includes a person who organises, plans, commits or participates in separating the Hong Kong Special Administrative Region (HKSAR) or any other part of China from the People's Republic of China.

The offence carries a maximum sentence of life imprisonment or fixed term imprisonment of not less than 10 years.

Subversion: Article 22

Subversion includes a person who organises, plans, commits or participates in overthrowing or undermining the basic system or the central power of the People's Republic of China.

The offence carries a maximum sentence of life imprisonment or fixed term imprisonment of not less than 10 years.

Article 29: Collusion with a Foreign Country or with External Elements to Endanger National Security

This includes anyone who conspires with foreigners to provoke hatred of the Chinese government or authorities in Hong Kong.

A person who commits the offence shall be sentenced to a fixed term imprisonment of not less than 3 years, but not more than 10 years.

Article 41: Trials can be held in secret

Article 41 provides for all or part of the trial to be closed to the media and the public where it involves state secrets or public order. The terms, state secrets or public order, are not clearly defined.

Article 44: Judges to be chosen by the Chief Executive

Under Article 44, judges will be designated by the Chief Executive to handle cases concerning offences endangering national security.

A person will be disqualified if he or she is regarded as having made any statement or behaved in any manner which endangers national security. This opens up the real possibility of excluding human rights lawyers who advocate for civil and political rights in Hong Kong.

Article 46: Trial Without A Jury

Under Article 46, a person can be tried without a jury on grounds of involvement of foreign factors in the case

Article 42: No presumption of bail for suspects

There is no presumption of bail for suspects. Article 42 does not specify a time limit for detention, only that cases concerning offences of national security will be handled in a 'fair and timely' manner.

Article 46: Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region

Under Article 46, the Central People's Government will establish in the Hong Kong SAR an Office for Safeguarding National Security. The staff of the office will be dispatched by the Central People's Government.

Article 55: The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region can take over the investigation of a case

Under Article 55, the Office for Safeguarding National Security of the Central People's Government in the Hong Kong SAR can, upon approval by the Central People's Government, exercise jurisdiction over a case concerning an offence endangering national security.

Article 56 and Article 57: A Case can be tried in China under Chinese law

In exercising jurisdiction over a case concerning an offence endangering national security, the Office for Safeguarding National Security will initiate an investigation into the case, the Supreme People's Procuratorate will designate a prosecuting body to prosecute it, and the Supreme People's Court will designate a court to adjudicate it.

Under Article 57, the criminal procedure law of the People's Republic of China will apply to cases which are taken over by the Office for Safeguarding National Security. This includes all procedural matters relating to the criminal investigation, the examination and prosecution, the trial as well as the execution of the penalty in such cases.

Article 36 and Article 37: Scope of its Application

The law applies to offences committed by any person in Hong Kong, including those who are permanent residents of the Hong Kong SAR, as well as companies and organisations which are set up in Hong Kong.

Article 38: Offences can be committed outside Hong Kong

Under Article 38, the law can also apply to offences committed against the Hong Kong SAR by those outside Hong Kong.

Article 16: Police Force to be Staffed by Personnel from China

Under Article 16, the Police Force of the Hong Kong SAR is required to establish a department for

[1] In full Official English Translation of the Hong Kong National Security Law https://hongkongfp.com/2020/07/01/in-full-english-translation-of-the-hong-kong-national-security-law/

[2] The Joint Declaration https://www.cmab.gov.hk/en/issues/jd2.htm

[3] National Security legislation I Hong Kong: Foreign Secretary's Statement in Parliament: https://www.gov.uk/government/speeches/foreign-secretary-statement-on-national-security-legislation-in-hong-kong

[4] Hong Kong: China threatens retaliation against UK for offer to Hong Kongers https://www.theguardian.com/world/2020/jul/02/china-could-prevent-hongkongers-moving-to-uk-says-dominic-raab

safeguarding national security law with enforcement capacity. The department may recruit professionals and technical personnel from outside Hong Kong Special Administrative Region to provide assistance in the performance of their duties.

The term 'professionals and technical personnel from outside the Hong Kong Special Administrative Region' is not defined. However, this opens up the possibility of incorporating personnel from the People's Liberation Army stationed in Hong Kong, who are not supposed to interfere with local affairs or have any dealing with the maintenance of public order in Hong Kong.

The British Government's Response to the New Security Law in Hong Kong

In response to the imposition of the new security law in Hong Kong, the Foreign Secretary Dominic Raab reported to the House of Commons on 1 July 2020 that the enactment constitutes a clear and serious breach of the Joint Declaration and a flagrant assault on "Hong Kongers'" right to freedom of speech and freedom of peaceful protest. In light of the British historic commitment to the people of Hong Kong, the British Government will develop an immigration route for all British Nationals (Overseas) Citizens (BNOs) in Hong Kong (i.e. not just those with a BNO passport) and their dependants, to enable them to live and work in the UK and to give them the opportunity to apply for British Citizenship after 5 years. The proposals are:

i) BNOs and their dependants to be given 5 years limited leave with the right to work and study

ii) After 5 years, they will be able to apply for settled status/indefinite leave to remain and

iii) After a further 12 months with settled status/ indefinite leave to remain, they will be able to apply for citizenship.

British National (Overseas) Citizens (BNOs) in Hong Kong were former British Overseas Territories Citizens who had a connection with Hong Kong, and who were able to register as BNOs before 1 July 1997, when the sovereignty of Hong Kong returned to China. As of 24 February 2020, it is estimated that there are currently 2.9 million BNOs in Hong Kong.

It remains to be seen what the precise scope will be of who will be treated as a dependant. It also remains to be seen what conditions will be placed in order to acquire indefinite leave to remain, and what happens if someone fails to make such an application or fails to meet those conditions.

China's Response

China reacted angrily to the British proposals. It accuses the UK of gross interference over Hong Kong and threatens retaliation. The fear is that it will refuse to recognise the rights of BNOs and impose travel restrictions. If this occurs, it will truly mark the end of Hong Kong that we all know.

Article by Agnes Lai.

Agnes Lai is Solicitor Principle at Just Immigration Solicitors in Guildford.

ILPA LEGAL UPDATE

The Legal Update provides a regular snapshot of key legal developments over the past month.

UK points-based immigration system: further details statement (13 July 2020)

The government has published 'The UK's Points-Based Immigration System, Further Details' which sets out how the immigration system will operate after freedom of movement is ended on 31 December 2020. Unless otherwise stated in the paper, the routes will be open by January 2021. The paper covers the main economic migration routes for those wishing to apply to work or study or set up a business in the UK. The government intends to confirm the final details later via guidance, Immigration Rules and secondary legislation. Some of the main points set out in the paper are as follows:

Paragraph 5: all applicants will receive written confirmation of immigration status

Paragraph 6: an online right to rent check process is planned for later this year, online right to work checks introduced in January 2019 will be expanded

Paragraph 8: self-enrolment of biometrics will be available to most EU citizens from January 2021

Paragraph 13: a discounted rate of the Immigration Health Surcharge will be introduced for children, and further details of the exemption for frontline NHS workers will be published shortly

Paragraph 15: a sponsorship requirement will apply to the Skilled Worker route, the Health and Care Visa, and the student route. Existing sponsors will automatically be granted a new Skilled Worker licence of Intra-Company Transfer licence (para 19)

Paragraph 16: the RLMT and cap on the number of skilled workers will be removed

The Skilled Worker points system is set out at paragraphs 36 to 43, see particularly para 38

Paragraph 49: pro rated salaries for part time workers must continue to meet the minimum general salary threshold which will not be pro rated

Paragraph 56: sets out the requirement for new entrants, who will benefit from a reduced salary threshold for three years. This includes those switching from the Student route

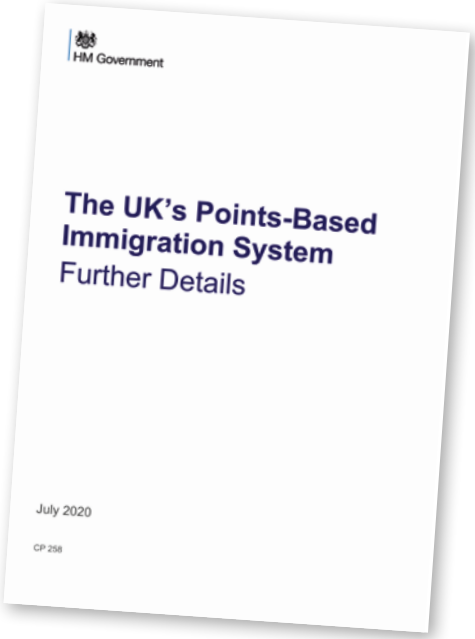
Paragraphs 60 to 64 sets out the detail of the new Health and Care Visa which is part of the Skilled Worker route and provides for reduced application fees and fast-track entry for those with a confirmed job offer in one of the defined health professions

Paragraph 79: in Summer 2021 the Graduate route will be launched for those who have completed a degree at a UK Higher Education Provider with a track record of compliance to stay in the UK for two years and work at any skill level

Paragraph 108: the cooling off period for intra-company transfers is to be adjusted

Paragraph 145: EU citizens will no longer be able to travel to the UK using their national ID card, but will instead require a passport

An indicative view of application fees is provided at Appendix A



BH (policies/information: SoS's duties) Iraq [2020] UKUT 189 (IAC)

The Upper Tribunal provides guidance on Home Office policies and the application of the duty (put very broadly, to disclose relevant policies) set out in *R v Special Adjudicator, ex parte Kerrouche* [1997] Imm AR 610.

The headnote reads:

(a) The Secretary of State has a duty to reach decisions that are in accordance with her policies in the immigration field. Where there appears to be a policy that is not otherwise apparent and which may throw doubt on the Secretary of State's case before the tribunal, she is under a duty to make a relevant policy known to the Tribunal, whether or not the policy is published and so available in the public domain. Despite their expertise, judges in the Immigration and Asylum Chambers cannot reasonably be expected to possess comprehensive knowledge of each and every policy of the Secretary of State in the immigration field.

(b) In protection appeals (and probably in other kinds of immigration appeals), the Secretary of State has a duty not to mislead, which requires her to draw attention to documents etc under her control or in the possession of another government department, which are not in the public domain, and which she knows or ought to know undermine or qualify her case.

(c) There is a clear distinction between information and policy: the fact that country information is contained in a COI (country of origin) document published by the Secretary of State does not, without more, make that information subject to the duty in sub-paragraph (a) above.

Legal Update continued...

ILPA TRAINING

For full details and booking go to: www.ilpa.org.uk/events.php

At the outset of the coronavirus pandemic we recognised that our training programme would need to be radically transformed following the introduction of social distancing measures and the suspension of mass gatherings. In response to our changing environment we rapidly developed a new webinar programme to ensure our members stayed informed of the latest developments in immigration, asylum and nationality law.

ILPA is dedicated to providing the highest quality training to our members and the wider legal community, and will continue to deliver this throughout this testing time.

Our tutors are known for their experience, for keeping up to date with the continuing developments in immigration legislation and case law, and for their involvement in landmark cases. You can meet our tutors **here**.

We now record all free ILPA webinars and you can find our free webinar archive **here**.

ILPA is a charity and all profits from ILPA training go towards supporting work to fulfil ILPA's objectives.

FREE TRAINING

WEB 1052 Immigration Detention Latest Caselaw (FREE Bitesize Webinar)

Monday 28 September 2020, 11:00 – 12:00, 1.0 CPD Hours

Tutor: Rory Dunlop QC, 39 Essex Chambers

This webinar is FREE and you can book your place HERE.

This webinar will provide an update on the latest caselaw and the forthcoming issues in immigration detention from one of the authors of the OUP textbook – Detention Under the Immigration Acts: Law and Practice.

Topics:

- AC (Algeria) – grace under fire;
- DN (Rwanda) – res judicata not yet judicata;
- Adults at Risk – a policy at risk?
- Interim relief, bail and COVID19

This webinar will comprise of a 40 minute presentation followed by a 20 minute Q&A

Webinars continued overleaf...

Legal Update continued below...

SC (paras A398 - 339D: 'foreign criminal': procedure) Albania [2020] UKUT 187 (IAC)

This case deals with convictions outside the United Kingdom.

The headnote reads:

1. *Paragraph A398 of the immigration rules governs each of the rules in Part 14 that follows it. The expression 'foreign criminal' in paragraph A398 is to be construed by reference to the definition of that expression in section 117D of the Nationality, Immigration and Asylum Act 2002: OLO and Others (para 398 - 'foreign criminal') [2016] UKUT 56 affirmed; Andell (foreign criminal - para 398) [2018] UKUT 198 not followed.*
2. *A foreign national who has been convicted outside the United Kingdom of an offence is not, by reason of that conviction, a 'foreign criminal' for the purposes of paragraphs A398-399D of the rules.*
3. *In the absence of a material change in circumstances or prior misleading of the Tribunal, it will be a very rare case in which the important considerations of finality and proper use of the appeals procedure are displaced in favour of revisiting and varying or revoking an interlocutory order: Gardner-Shaw (UK) Ltd v HMRC [2018] UKUT 419 followed.*

August 2020

WEB 1040 Age Assessments: recent developments and best practice

Wednesday 12 August 2020, 14:00-17:15, 3 CPD Hours

Tutors: Vijay Jagadesham, Barrister at Garden Court North Chambers and Laura Gibbons, Public Law Solicitor at Greater Manchester Immigration Aid Unit

This webinar will undertake a refresher of the underlying legal principles in age assessment challenges, as well as addressing recent developments and best practice.

Topics:

- Scope of the judicial review
- Requests for reconsideration
- Interim relief and responsible local authority
- Appearance & demeanour
- Holistic and thorough age assessments that incorporate the informed views of others
- The benefit of the doubt
- Issues with appropriate adults
- Issues with witness statements
- Making good use of documentary evidence
- Targeted disclosure requests and challenging restricted disclosure

ILPA members £100.00
ILPA Concessionary members £50.00
ILPA non-members £180.00

WEB 1032 Sponsor Licences and compliance: obtaining and keeping your licence

Tuesday 18 August 2020, 14:00-17:15, 3 CPD Hours

Tutors: Chetal Patel, Bates Wells, Sam Ingham and Francesca Sciberras, Laura Devine Immigration

Practitioners and HR specialists will receive an in-depth look at sponsor licences. This will not only include practical advice on how to obtain a sponsor licence but also how to ensure effective compliance and retain the licence. We will advise upon the HR practices necessary to ensure sponsor duties are met and other factors that the Home Office would be looking for at a compliance visit. We will also discuss our experience with sponsor license refusals, downgrading and revocations – providing tips for avoiding these and challenging them where necessary.

ILPA members £160.00
ILPA Concessionary members £80.00
ILPA non-members £240.00

WEB 1038 Sole Responsibility and the Immigration Rules

Thursday 20 August 2020, 14:00-17:15, 3 CPD Hours

Tutors: Nath Gbikpi, Wesley Gryk Solicitors LLP and Adam Cotterill, Penningtons Manches Cooper

The course will review the Immigration Rules relating to sole responsibility for family members of PBS migrants and British and settled citizens; caselaw relating to the concept of sole responsibility, and the practical application of the Rules. We will also think of alternative options for families who cannot meet the strict Immigration Rules relating to sole responsibility.

ILPA members £100.00
ILPA Concessionary members £50.00
ILPA non-members £180.00

September 2020

WEB 1045 ILPA Sponsor Licence Conference

Wednesday 09 September 2020, 10:00-16:30, 3 CPD Hours

Chairs: Nichola Carter, Carter Thomas Solicitors and Joe Middleton, Doughty Street Chambers.

Keynote Speakers: George Shirley, Head of PBS, Citizenship and the Windrush Taskforce

Panel: Jonathan Kingham, Lexis Nexis, Natasha Chell and Nicolette Bostock, Laura Devine Immigration, Tom Brett Young, Veale Wasbrough Vizard, Natasha Gya Williams, Gya Williams Immigration, Simon Kenny, Eversheds Sutherland

What does the future hold for sponsorship? The next couple of years may very well bring about bigger changes to the UK's work-related immigration routes than we witnessed in 2008, when the Points Based System was introduced.

UKVI's George Shirley, Head of PBS, Citizenship and the Windrush Taskforce, has agreed to be our guest speaker.

In addition, we have an excellent array of speakers from a number of leading UK immigration law firms and the conference is being chaired by Nichola Carter of Carter Thomas and Joe Middleton of Doughty Street Chambers.

Topics will range from practical tips on sponsor licence law to in-depth analysis of complex legal issues. There will be a detailed examination of the current system of sponsorship for businesses, primarily relating to Tier 2 (General and ICT) and Tier 5, and a look at what the future may hold. The speakers will provide highly practical insight and tips from their extensive experience.

This annual conference provides a space for immigration experts across the UK to share experiences and tips on dealing with this complex area of law.

ILPA members £180.00
ILPA Concessionary members £90.00
ILPA non-members £360.00

WEB 1024 How to prepare fresh asylum and human rights claims (WEBINAR)

Wednesday 16 September 2020, 15:00-18:15, 3 CPD Hours

Tutors: Gabriella Bettiga, MGBe Legal and Bojana Asanovic, Lamb Building

This course will focus on the legal framework, procedure and practical steps in preparing further representations.

Topics:

- Legal framework
- Standard of proof
- Advice to clients
- Pitfalls and common errors

- Procedure
- Overview of post-refusal remedies

ILPA members £100.00
ILPA Concessionary members £50.00
ILPA non-members £180.00

WEB 1039 The Phenomenon of Transnational Marriage Abandonment (Bitesize Webinar)

Thursday 17 September 2020, 14:00-16:00, 2 CPD Hours

Tutors: Pragna Patel, Southall Black Sisters and Nath Gbikpi, Wesley Gryk Solicitors LLP

The webinar will look at the phenomenon of transnational marriage abandonment, a form of domestic abuse which involves migrant women being deliberately stranded abroad, and how immigration lawyers can assist stranded spouses to return to the UK.

Topics:

- The phenomenon of transnational marriage abandonment: what is it and what common experiences are reported by stranded spouses
- Litigation relating to the phenomenon of transnational marriage abandonment: what has been done in family law and what needs to be done in immigration law
- Assisting victims of transnational marriage abandonment to return to the UK: theory and practice

ILPA members £60.00
ILPA Concessionary members £30.00
ILPA non-members £100.00

WEB 1050 Arguing Insurmountable Obstacles under Appendix FM (Bitesize Webinar)

Thursday 24 September 2020, 16:00-17:30, 3 CPD Hours

Tutor: Priya Solanki, One Pump Court Chambers

In this webinar, we will look at the harsh test that applies to foreign nationals who are here as overstayers and make applications as partners under Appendix FM EX.1(b) and EX.2 of the Immigration Rules. We will consider recent authorities and how these have clarified the test. There will be a detailed look at policy guidance, practical tips and examples. This webinar will allow more effective applications to be submitted and for better challenges to adverse decisions.

In this webinar, we will cover the following:

- The test of insurmountable obstacles under EX.1(b) and EX.2
- A detailed look at UKVI Policy Guidance and how this can best be used to assist applications under EX.1(b)
- The current authorities, how these have explained this test further, with examples of the circumstances the courts and Tribunals have found unconvincing
- A discussion on useful evidence and arguments to advance in applications and appeals
- Challenges to clearly unfounded certificates, under s.94 of the Nationality Immigration and Asylum Act 2002, in EX1(b) decisions by way of judicial review proceedings
- Case Activity / Group Discussions

ILPA members £50.00
ILPA Concessionary members £25.00
ILPA non-members £80.00

October 2020

WEB 1042 Immigration Judicial Reviews for OISC practitioners

Tuesday 06 October 2020, 10:00-13:00, 3 CPD Hours

Tutors: Samina Iqbal and Kezia Tobin, Goldsmith Chambers

The 2017 Guidance on Competence permits OISC advisers authorised at "Level 3" to apply for an additional category of authorisation: Judicial Review Case Management (JRCM). This course intends to guide OISC advisers through how to undertake Judicial Review claims from pre-action conduct through to seeking costs when a case is "won".

Topics:

- Assessing merits of pursuing a Judicial review application and alternative remedies
- Complying with pre-action protocol
- Lodging claims
- 'Ins' and 'outs' of conducting judicial review claims
- Outcomes in the Upper Tribunal
- Consent orders and Costs
- Remedies
- Urgent applications and injunctions

ILPA members £100.00
ILPA Concessionary members £50.00
ILPA non-members £180.00

WEB 1047 Immigration and Asylum Judicial Review in the Upper Tribunal (Bitesize WEBINAR)

Tuesday 13 October 2020, 14:00-16:00, 2 CPD Hours

Tutors: Tim Buley QC and Ben Fullbrook, Landmark Chambers

The Upper Tribunal has had a judicial review jurisdiction since its creation. "Fresh claim" judicial reviews have been required to be brought in the Upper Tribunal (Immigration and Asylum Chamber) (UTIAC) since late 2011, and age dispute judicial review claims are now also routinely dealt with by the UTIAC. Since November 2013, the majority of all immigration related judicial reviews are required to be heard in the Upper Tribunal. This session will consider practice and procedure on judicial review in the UTIAC, including the transfer process, what claims should or should not be brought in UTIAC, and what kind of arguments can be made for claimants in such cases, as well as addressing issues on the cutting edge of legal developments in this area. It will also provide practical insights into tactics and presentation of claims to maximise chances of success.

- Jurisdiction of the Upper Tribunal in relation to judicial review
- Practice and procedure in the Upper Tribunal when hearing judicial review claims
- Practicalities of JR in the Upper Tribunal

The tutors are barristers at Landmark Chambers specialising in public law and immigration, who have been involved with many significant developments in immigration judicial review, and with very extensive experience of bringing successful judicial review claims against the Home Office.

ILPA members £80.00
ILPA Concessionary members £40.00
ILPA non-members £160.00

WEB 1036 Applications and appeals under paragraph 276ADE(1) (iv) of the Immigration Rules ('7 Year Applications')

Thursday 15 October 2020, 14:00-18:15, 4 CPD Hours

Tutors: Lucy Mair, Garden Court North Chambers and Sumita Gupta, Islington Law Centre

This course is a practical guide to preparing successful applications for leave to remain for children (and their families) who have lived in the UK for 7 years or more, and challenging negative decisions on these applications.

The course will provide an overview of law and practice in relation to these applications, and will also address fee waivers and No Recourse to Public Funds Conditions and their relevance in applications. The course will also address the benefits of taking a Child Rights based approach to evidence and legal argument when preparing applications and appeals.

Access to legal aid for these applications will also be addressed in brief.

Topics:

- Paragraph 276ADE(1) (iv) of the Immigration Rules
- Policy in relation to Private Life Applications
- Fee Waivers
- Taking a Child Rights based approach to evidence and legal argument
- Preparing appeals
- Legal Aid (including Exceptional Case Funding)

ILPA members £120.00
ILPA Concessionary members £70.00
ILPA non-members £200.00

WEB 1051 FGM Claims

Thursday 29 October 2020, 15:00-18:15, 3 CPD Hours

Tutor: Priya Solanki, One Pump Court Chambers

In this webinar, we will look at how to successfully argue claims based on Female Genital Mutilation (FGM). We will discuss the need for expert medical and country evidence and what this should address. We will have a detailed look at various country guidance decisions and useful Policy Guidance documents. There will also be a consideration of the link between asylum and immigration law and FGM protection orders.

In this webinar, we will aim to cover the following:

- An understanding of what FGM is, including the types of FGM, the prevalence of the practice globally, cultural underpinnings and motives, consequences of FGM, issues relevant to risk
- A quick overview of the Female Genital Mutilation Act 2003 and the mandatory reporting duties
- FGM Protection Orders (FGMPO) and the link between these and asylum law
- A look at relevant UKVI Policy Guidance
- Useful country guidance decisions to discuss risk factors, how to address arguments on credibility, state protection and internal relocation
- Dealing with practical issues such as anonymity and vulnerable applicants
- Expert evidence
- Practical tips and examples
- Case Activity / Group Discussions

ILPA members £100.00
ILPA Concessionary members £50.00
ILPA non-members £180.00

November 2020

WEB 1048 Domestic Violence in Immigration Law

Wednesday 04 November 2020, 15:00-18:15, 3 CPD Hours

Tutor: Priya Solanki, Barrister at One Pump Court Chambers

In this webinar, we will consider the difficulties that can arise with the requirements for indefinite leave to remain for victims of domestic violence, how clients who do not meet the Appendix FM DV immigration rules can be assisted, we will discuss challenging adverse decisions for these Applicants and also making applications for victims under the EEA Regulations.

In this webinar, we will cover the following:

- The destitution domestic violence concession application process, the authorities on this and how this concession might be used to assist credibility
- Appendix FM DV-ILR, including the finer requirements on the relevant date of violence, domestic violence being the causative force of the breakdown, the evidential requirement and the suitability requirements
- Challenging adverse decisions by appeal (with a detailed look at the case law on rights of appeals against these decisions), administrative review and judicial review
- Detailed consideration of UKVI Policy Guidance on Domestic Violence
- Assisting Applicants who do not meet the requirements of DV-ILR
- Applications for victims under EEA law, with a consideration of case law and making applications for unmarried partners
- Funding in domestic violence cases

ILPA members £100.00
ILPA Concessionary members £50.00
ILPA non-members £180.00

ILPA MEMBERSHIP

This month the ILPA Monthly focuses on three aspects of ILPA membership to make sure you're getting the most out of your ILPA membership!

Membership Directory

Members have you checked your entry in our directory of members recently?

It is a really useful resource for members of the public looking for immigration advice, or for anyone wondering who is a member of ILPA, and is in fact one of our most frequently visited areas of the site. You can highlight your areas of work and contact details, key people, languages spoken, link to your website…it is up to you - you can complete it and update it as you wish.

It is arranged by region for ease of use by those seeking advice and for this reason we are keeping it as a clear and simple resource. We do have plans to make it a better resource with phase two work on the website and if you have any suggestions of how you would change it then please get in touch. helen.williams@ilpa.org.uk

For reasons of data protection we don't automatically add all members: you have to create your own entry and please keep it up to date. All individual members can create and update an entry in the directory, and we allow the contact who is designated as the primary contact for an organisation to manage this – you'll see the options under MY ACCOUNT once you are logged in as a member, and if you need to know who is the primary contact, or if you need any help at all then get in touch.

NEW all members Google group

Do you know we have an ILPA members Google group? You can find more information about it here on our website, including how to sign up and some guidelines for use.

At the start of the coronavirus lockdown we set up a Google group to work as a forum for member to share questions and information. We have now expanded the scope of that group so that **it no longer relates to just coronavirus issues**, so that it can now cover the broader spectrum of immigration and nationality law as well. This change has been motivated by the fact we think the group format is working very well and we have received a lot of positive feedback about it, and the line between "coronavirus" issues and general issues is now increasingly blurred. Give it a go, and please do keep giving us any feedback about this and any other way in which we communicate with members, we want to make it work for you: helen.williams@ilpa.org.uk

Emails from ILPA

A lot of our work is still shared through email, so please do check that we have your up to date email addresses and that you are receiving the emails you think you should be – we would not want to be sitting in your spam boxes!

We use a package called Campaign Monitor to manage our mass emails, so although you will see emails coming from an ILPA address we sometimes hear that your firewalls are not letting the emails through or have incorrectly unsubscribed you from an email list – if you think you are not receiving emails then do get in touch and we can check it out for you. helen.williams@ilpa.org.uk

All ILPA member contacts are automatically put on our 'All Member' email list where we will email, usually a couple of times a week, with updates of information that we think is relevant to all members, and notices about our work for example training and well-being highlights, upcoming meetings etc.

We also work through our Working Groups and will share items of relevance specific to those topics. You can subscribe to these lists through our members' area of the website here and you can of course unsubscribe from any list at any point.

ILPA WHO'S WHO

ILPA's Board of the Directors is its Committee of Trustees which is elected annually by the membership. All members of the Committee of Trustees are members of ILPA. All aspects of ILPA's work are supported by its Secretariat of paid staff. ILPA's work is organised into working groups.

The Committee of Trustees of ILPA

To get in touch with members of the Committee of Trustees, please get in touch with the ILPA Secretariat.

Chair: Adrian Berry, Barrister, Garden Court Chambers

Secretary: Ayesha Mohsin, Solicitor, Kalayaan

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David Ball - Barrister, The 36 Group

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Sophie Barrett-Brown - Solicitor and Senior Partner, Laura Devine Immigration

Hazar El Chamaa - Solicitor and Partner, Penningtons Manches Cooper LLP

Helen Johnson - Head of Children's Services, British Refugee Council

Grace McGill - Solicitor, McGill and Co. Solicitors

Julie Moktadir - Solicitor, Stone King

Daniel Rourke - Solicitor, Migrants Law Project

ILPA Working Groups

ILPA organises its work into working groups which are shown below. To subscribe to a working group email list or to check your subscriptions/unsubscribe visit the working group page on the members' area of our website. Each working group has a page and subscription details are at the top.

All convenors are members of ILPA. To contact a working group convenor please get in touch with the ILPA Secretariat. ILPA also convenes ad hoc working groups around particular topics and staff can help you identify who would be the best person to speak to on a particular topic.

Children: Operates as an email group only

Courts and Tribunals: Allan Briddock - One Pump Court, Nicola Burgess - JCWI, Rowena Moffatt - Doughty Street Chambers

Economic Migration: Tom Brett-Young - Veale Wasbrough Vizards LLP, James Perrott - Macfarlanes LLP, Anushka Sinha - Kemp Little

European: Elspeth Guild - Kingley Napley LLP, Alison Hunter - Wesley Gryk Solicitors LLP, Jonathan Kingham - LexisNexis

Family and Personal: Katie Dilger, Nath Gbikpi - Wesley Gryk Solicitors LLP, Nicole Masri - Rights of Women

Legal Aid: Polly Brandon - Freedom from Torture, Laura Smith - JCWI, Ayesha Mohsin - Kalayaan

Legislation Adrian Berry - Garden Court Chambers

Refugee: Ali Bandegani - Garden Court Chambers, Beya Rivers - Hackney Community Law Centre

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Remember we have a general email address which is always checked and your email will be forwarded from there to the relevant person in ILPA, so if you don't know who to contact about your question please send it to **info@ilpa.org.uk**

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