ILPA Briefing on New Clause 6 (stateless children)

Borders, Citizenship and Immigration Bill

House of Commons Committee Stage, June 2009

ILPA is a professional association with some 1000 members (individuals and organisations), who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-government organisations working in this field are also members. ILPA aims to promote and improve the giving of advice on immigration and asylum, through teaching, provision of resources and information. ILPA is represented on numerous government, court and tribunal stakeholder and advisory groups.

ILPA is happy to assist Members of Parliament in considering and/or drafting other amendments of interest to them.

NEW CLAUSE 6

"Stateless children of British nationals

(1) Schedule 2 to the British Nationality Act 1981 (c. 61) (amendments to Immigration Act 1971) is amended as follows.

(2) In paragraph 4, omit sub-paragraph (1)(c).

(3) In paragraph 4, for sub-paragraphs (2)(a) and (2)(b) substitute "shall be registered under it as a—

(a) British citizen, or

(b) in the case of a child whose mother or father is, or would have been but for their death, a British overseas territories citizen, as a British overseas territories citizen."

(4) In sub-paragraph (4) of paragraph 4, for "sub-paragraphs (1) to (3)" substitute "sub-paragraph (1)"."

(5) In sub-paragraph (4) of paragraph 4 after "British Overseas Citizen" insert "British National Overseas"

Purpose
To ensure that stateless children born after 1 January 1983 to British nationals (British citizens, British overseas territories citizens, British Overseas citizens, British Nationals (Overseas) and British subjects) wherever in the world, are entitled to be registered as British Citizens, and that the children of British overseas territories citizens can be registered as both British citizens and British overseas territories citizens.

Briefing
ILPA welcomes the amendment the government already made to allow children born abroad to some British citizen parents to be registered as British citizens themselves throughout their childhood, rather than only before they are one year old. However, this does not go far enough to provide justice for children of all British nationals.

ILPA's briefing for the House of Lords Committee stage, where a similar amendment was debated, is attached. This illustrates clearly that there are children who would benefit from this amendment. Lord Brett's response (HoL *Hansard,* 4 March 2009, col. 739) merely confirmed that this would be 'a good starting point for discussions' on nationality. His letter to the Lord Avebury on 20 March 2009 gives no suggestion that the government has addressed the issue. He merely refuses to make this change, on the grounds that 'the UK cannot always make up the shortfalls created by the failure of other countries to provide for children born in their territories'. This is true. But when the parents hold a form of British nationality and no other, and when under the 2002 Act they now have the right to register as British citizens, the only link those children have to a nationality at all is to the UK. The UK cannot hide behind the failures of other states to ignore its own obligations.

The government says that it distinguishes the 'perpetually stateless' from 'citizens in waiting'. But, as illustrated in the attached briefing for the House of Lords Committee stage, children affected will spend the whole of their childhood, and beyond, with no nationality or citizenship. The prolonged statelessness of a child or young adult cannot be ignored on the basis that it will come right one day. It may be one thing to be a 'citizen in waiting' for a matter of weeks while an application is under consideration; it is quite another to be a citizen in waiting for decades, as has been the case for some people in Hong Kong and in east African countries.

Lord Brett's letter also states that the government will only consider the 'direct close connection with the UK acquired by residence' as a ground for registering a child as British. But when the British national parent has been barred from residence in the UK by UK immigration laws for over 30 years and did not have the option of residence in his or her country of nationality, this is not a valid argument. The historical connections of the territory with the UK, or of people and their parents with British ex-colonial territories can also be close. The government accepted the justice of the claim of most British nationals with no other citizenship to become British citizens in 2002, recognising that this was 'righting an historical wrong'. In this Bill it is adding in British nationals (overseas) to those who have the right to register. If these people's stateless children cannot also gain a real nationality, in circumstances when they often cannot get a travel document from any authority, the parents' new status may be meaningless if the family is unable to travel together.

The government should be pressed, if it will not accept this amendment, to give assurances that it will amend its guidance to officials dealing with applications for

registration under s3(1) of the British Nationality Act 1981 (registration of *any* child) to provide that discretion should normally be used in favour of stateless children in this position, so that they will normally be registered under this section, in whatever country they live.

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