Borders, Citizenship and Immigration Bill
House of Lords Report
Part 2 Citizenship

Amendment 45 proposed new Clause after Clause 43

ILPA supports amendment 44 in the names of the Lord Avebury and the Baroness Miller of Chilthorne Domer

After Clause 43

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

45 Insert the following new Clause—

"The Ilois: citizenship

(1) Section 6 of the British Overseas Territories Act 2002 (c. 8) (the Ilois: citizenship) is amended as follows.

(2) After subsection (2) insert—

"(2A) A person shall be entitled to register as a British citizen if—

(a) his father or mother was or is a citizen of the United Kingdom and Colonies or a British citizen by virtue of birth in the British Indian Ocean Territory or by operation of section 6(1), and

(b) he is not a British citizen.

(2B) A person shall be entitled to register as a British overseas territories citizen if—

(a) subsections (2A)(1)(a) and (b) apply to him, and

(b) immediately prior to registration under subsection (2A)(1) he was not a British overseas territories citizen.

(2C) In subsection (2A)(1)(a) "father" has the meaning given in section 50(9A) of the British Nationality Act 1981.

(2D) No charge or fee shall be imposed for registration under section 6(2A) or (2B).""

Purpose

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To ensure that Chagos Islanders born in exile can be registered as British citizens. The amendment would protect those still living who were born to parents born on the Chagos Islands – thus all of the first generation born in exile. The entitlement to register does not depend upon whether the parent was a man or woman or whether the parents were married. In addition the amendment gives an entitlement to register to the children of those who registered under section 6(1) of the British Overseas Territories Act 2002. Such people (those born on or after 26 April 1969 and before 1 January 1983) became British Citizens by descent upon registration. Therefore they cannot pass on their nationality or citizenship to their children and need this provision if their children are to be protected.

Briefing note

See ILPA's very detailed briefing for Committee Stage on previous amendments. When Lord Brett responded at Committee stage, he spoke of

> "…the very powerful arguments made by the noble Lord, Lord Avebury and my noble friend Lady Whitaker, and with regard to the enormous respect that we all have for the noble Lord, Lord Ramsbotham, and the powerful case that he puts yet again.
>
> I have several pages of Civil Service prose to read out …However, I should like to suggest a different approach…I suggest that we should consider Amendments 92 and 101A, along with the remaining amendments to clauses in Part 2, with the exception of Amendment 105A which, to my embarrassment I must return to, having failed to deal with it on Monday.
>
> The purpose of my suggesting that I discuss those amendments not in the form of a considered debate today, which would take a very long time, but in the form of a discussion, is to look at the cases that have caused noble Lords to table the amendments, to consider the decisions taken in respect of those cases and the principles behind those decisions, and to see whether policy and other practical measures can be found to resolve them. (4 Mar 2009 : Column 737)

By the time the Lord Brett wrote to the Lord Avebury on 20 March 2009, the banality of civil service prose had reasserted itself and the response was:

> '…whilst the government has not sought to justify the actions taken in the 1960s and 1970s it maintains the case that is obligations, legal and otherwise, have been settled by previous compensation awards and by the grant of British citizenship under the British Overseas Territories Act 2002.'

This wholly fails to look at the principles behind the decisions and whether policy and other practical measures can be found to resolve them. The British Overseas

Territories Act 2002 treated exile as ending on the date that section 6 of that Act, dealing with Chagos, came into force. Exile has continued. Chagos Islanders cannot be born in the British Indian Ocean Territory, which is a qualifying territory, because they remain in exile from that territory. Thus people who would, but for exile, be British citizens are, because of exile, prevented from becoming British citizens by birth unless it be by birth in the UK.

The Chagos Islanders have described what this means in practice. It can be argued that the option of having their children in the UK is open to the islanders. But in practice this is not the case. Those members of a family who are British can come to the UK. But they can only bring members of the family who are not British if they can demonstrate that those people will have no recourse to public funds immediately on arrival. This has resulted in split families, where one parent comes to the UK and works until such time as they can afford to have their spouse It has resulted in those who cannot or will not leave their partner behind being unable to come to the UK at all, and the chances of amassing sufficient funds in Mauritius to meet the 'public funds' requirement are slim.

For those who have no ability or desire to come to the UK the route of birth in the UK to ensure that their children become British is not open. They may have family in Mauritius. They may wish to remain there to continue to campaign for return to the islands . Family members may be elderly or sick and unable to travel.

The letter of the Lord Brett refers to the hardship that resulted from the 'resettlement', of the Chagos islanders. It was not resettlement, it was exile. The letter says that the Government has not sought to justify past actions. But neither has the Government lifted a finger to put right the effects of exile on nationality law since parliament persuaded it to insert section 6 in the British Overseas Territories Act 2002. The Lord Brett's letter states that the government

> '..maintains the case that is obligations legal and otherwise, have been settled by previous compensation awards and by the grant of British citizenship under the British Overseas Territories Act 2002'

A compensation award cannot compensate for loss of entitlement to a nationality. The British Overseas Territories Act 2002 can only assist those who benefit from its provisions. If that Act is regarded as a response to legal and other (presumably moral) obligations for those who benefited from it, then should not the obligations to those who were similarly disadvantaged but did not benefit be considered?

The letter of the Lord Brett also contends that the 'enforced resettlement' took effect on 26 April 1969. As set out in ILPA's very detailed briefing prepared for Committee stage of this Bill, that is not the case. The judgments in the litigation, including that of the House of Lords, found that the leasing of the Islands to the United States was contemplated from 1964 and that people were prevented from returning to the islands from 1964. As set out in that briefing, there are people born before April 1969 who were born outside the islands as a result of exile, not through choice. It is the case that the amendment as drafted would benefit the children of those were outside the islands through choice at the time of their children's birth. But there is no evidence that this is a sizeable group. Moreover, but for exile such people could have returned subsequently to the islands and their children subsequently been registered as British

citizens having completed the necessary residence requirements. Exile has made that impossible and they too are disadvantaged.

Unlike the amendments laid at Committee stage, these amendments do not turn back the clock. They do not change the status of people without their voluntary action, a registration. The amendment is drafted so that people register by entitlement; there is no good character test.

As drafted the amendment makes people full British citizens, not British citizens by descent upon registration. Therefore they would be able to pass on their nationality or citizenship to their children born overseas. This will thus protect some of the second generation born in exile. Those children, because born overseas, could not pass on their nationality or citizenship to their own children born overseas so the process is finite.

Assurances should also be sought from the Minister. First, that any Chagossian child not covered by the amendment should be registered (while still a child by discretion under section 3(1) of the 1981 Act as British citizens, a matter that could be effected by a change of guidance/policy. This would give effect to the Lord Brett's undertaking to look at matters that could be resolved by policy and practical steps.

If the Minister declines to accept the amendment at Report stage then he should be asked to put a limit of time on considering it, with a view to its being brought back in the Commons or, at the very latest, in the draft simplification bill to be laid in the autumn.

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