



Borders, Immigration and Citizenship Bill

PART 2 House of Lords Report Stage

ILPA Briefing on amendments 49 and 50 forming part of the Marshalled List as of 24 March 2009

LORD WEST OF SPITHEAD

49 Page 38, line 5, after "3(1)" insert ", (2)"

Purpose To impose a good character test on minors (over 10) registering under section 3(2) of the British nationality Act 1981.

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

[As an amendment to amendment 49]

50* Line 1, at end insert "(save in the case of a person born stateless)"

Purpose

The purpose of amendment 49 is to impose a good character test on children registering under section 3(2) of the British Nationality Act 1981. The purpose of amendment 50 is to restrict the imposition of the good character test to cases where the child is not stateless.

Briefing

Amendment 42, in the names of the Lord West and the Lord Avebury, will raise the age at which a child can be registered under section 3(2) of the British Nationality Act 1981. Currently section 3(2) provides for a child to be registered by entitlement up to the age of 12 months and provides a discretion to register a child who is aged up to six years old. Amendment 42 will mean that a child can be registered at any time while still a child. No adult can register under section 3(2).

The good character test has not previously been an issue in such registrations, because it is imposed on children over 10 years old and, as the law currently stands, no child registering under section 3(2) is older than six.

ILPA does not accept that a good character test is ever appropriate for the registration of children. What a good character requirement does is to prohibit the Secretary of State from registering a person who is not of good character. It is the case that in all registrations prior to the introduction of the good character test in 2006, where the registration was by discretion, the Secretary of State has had regard to a person's character and antecedents in deciding whether to register him or her.

The amendment does not do away with the good character test for registration under section 3(2) altogether. What it does is to limit the imposition of the test to children who are not stateless. This is wholly in line with government policy.

It is stated government policy not to apply good character tests in the case of the stateless – as described when the good character requirement was introduced by the Immigration, Asylum and Nationality Act 2006.

An exception would continue to be made in a small number of cases where, because of our obligations under the 1961 United Nations convention on the reduction of statelessness, it would not in general be possible to refuse on character grounds where statelessness would be the result. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 256

This is reflected in the drafting of clause 45 of the Bill and in the drafting of section 48 of the Immigration, Asylum and Nationality Act which it replaces. Those provisions under which the stateless (and in the case of section 4B of the British Nationality Act 2002 the de facto stateless, British nationals other than British citizens with no other nationality or citizenship) register are not made subject to a good character test.

This is yet another example of the indiscriminate use of the good character test. In this case it has the potential to act as a bar to the UK's registration of children who would otherwise be stateless.

The UN Convention on the Rights of the Child states

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

The UK has now removed its reservation to the Convention on the Rights of the Child in respect of nationality. It would be contrary to the UK's obligations under the Convention on the Rights of the Child and the UN Convention on statelessness to put up new barriers to the registration of the stateless. Yet this is what the government would do by amendment 49.

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