



Borders, Citizenship and Immigration Bill

House of Lords Committee

Part 2 Citizenship

Acquisition by registration: minors

ILPA supports the following amendment, laid in the names of the Lord Avebury and the Lord Roberts of Llandudno:

After Clause 41

95 Insert the following new Clause—

"Acquisition by registration: minors

- (1) Section 3 of the British Nationality Act 1981 (c. 61) (acquisition by registration: minors) is amended as follows.
- (2) In subsection (2), omit the words "made within the period of twelve months from the date of birth".
- (3) In subsection (3), omit paragraphs (b) and (c)."

Purpose

To ensure that a child born to a British Citizen by descent (i.e. a person who cannot pass on their British Citizenship to their children born overseas) can be registered at any time while they are still a child, rather than having to be registered within 12 months of birth and that they do not have to fulfill the requirements as to the status of their grandparents set out in paragraph (b) nor the requirements as to their parents' residence in the UK and absences of no more than 270 days set out in paragraph (c).

Briefing

Not all British citizens realize that if they were born outside the UK or a qualifying territory, their children born outside the UK or a qualifying territory will not be British citizens. Many people fail or have failed to register their children through lack of knowledge of the provisions.

This amendment can be viewed as a single amendment or as three separate amendments. Each element would make a difference to the situation of children.

The first part of the amendment would remove the requirement that the child be registered within 12 months of the birth. People do not always learn of the requirement to register within this period. An amendment to provide that the child could be registered at any time during his or her minority would avoid this difficulty.

It would also, in appropriate cases, provide an opportunity to ascertain the wishes and feelings of the child.

The final part of the amendment, to omit subsection 3(3)(c) deals with another difficulty that can present a hurdle in practice. This is the requirement to have been in the UK on the date three years before the birth and not to have been absent from the UK for more than 270 days of the intervening three years. Not everyone plans three years in advance to have children. In the meantime, as discussed in the amendments on the naturalisation provisions of this Bill, people increasingly travel for business and holidays. It is not difficult for a person who travels for their work to clock up 90 days absence, particularly if they also take holidays overseas. Absences in the final year may also be out of the control of the parents, for example if there are complications with the pregnancy and this is the reason that the mother cannot travel back to the UK to give birth to the child.

The element of the amendment that proposes leaving out section 3(3)(b) is that the grandparent of the child was a British citizen otherwise than by descent. This is essentially the old 'patriality provision' designed to put a bar in the way of those whose grandparents were not born in the UK or a qualifying territory from registering their child. In the context of the section as it now appears in section 3(3)(b) of the Act we are talking about parents who have spent three years in the UK, with a maximum of 270 days absence, who seek to register the child within 12 months of the child's birth.

The three elements may not find favour when presented as a single element, but they point to ways in which this clause could be improved, even if a more complex amendment is felt to be required to do justice to the different situations of parents.

If the British parent is prepared to be proactive about registering their child, they are affirming their desire to maintain a link with the UK and artificial bars should not be put in the way of their doing this.

The Minister may say that these children can be registered by discretion under section 3(1) of the British Nationality Act 1981. This is correct. Under section 3(1) the Secretary of State has a discretion to register any *child*, regardless of nationality and regardless of whether the parents are British citizens by descent. It is a broad power. But that is perhaps all the more reason, if one has a specific category in addition to the broad discretionary power, to make that specific category fair and workable and to recognise the realities of people's lives in the 21st century.