

**BORDERS, CITIZENSHIP AND IMMIGRATION BILL – HL BILL 15****HOUSE OF LORDS COMMITTEE****Clause 37****(Temporary Admission and pending refugee and human rights applications)**

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

**Amendment 54** Page 28, line 21, at end insert "; or

- (f) detention, temporary admission or release within the meaning of section 11 of, and Schedules 2 and 3 to, the Immigration Act 1971 (c. 77) if immediately following that detention, temporary admission or release the person had a status listed in subparagraphs (a) to (e) above."

**Amendment 55** Page 28, line 21, at end insert "; or

- (f) a pending application for leave to remain pursuant to an asylum claim, a human rights claim or in reliance on Council Directive 2004/83/EC;
  - (g) exceptional leave to remain outside the immigration rules.
- (1A) An asylum claim and a human rights claim have the meaning given in section 113 of the Nationality, Immigration and Asylum Act 2002. A pending application is one that has not yet been determined or that is the subject of a pending appeal within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002."

**Purpose:**

The first amendment would ensure that periods of temporary admission, temporary release or detention can count towards the qualifying period if these are immediately followed by a grant of a qualifying immigration status.

The second amendment is an alternative to the first. It would ensure that those who have made a claim for asylum or on human rights grounds and those claiming entitlement to exercise rights of free movement under European Community law can count time in the UK prior to the determination of their application as part of the qualifying period, and that exceptional leave to remain outside the immigration rules counts toward the qualifying period.

**Briefing:**

Some migrants do not start the path to citizenship before arriving in the UK. Others may have their path to citizenship interrupted by the UK Border Agency for reasons that turn out to be unnecessary or misinformed. These amendments seek to further the Government's aim of promoting integration of those migrants who are anticipated

to make the UK their home by ensuring that delays in processing their claims or unnecessary interruptions in their temporary leave do not delay their progress towards citizenship.

The first amendment would mean that someone who was awaiting the UK Border Agency resolving their application for leave to enter the UK would not be prejudiced by that delay contributing to an overall delay in their progress to citizenship. Under Schedule 2 to the Immigration Act 1971, a person who arrives in the UK may be granted temporary admission while the UK Border Agency considers his or her entitlement to be granted temporary leave. This generally applies to refugees and others who may qualify for humanitarian protection or discretionary leave on the basis of a human rights claim.

The first amendment would also mean that someone who was wrongly detained while on temporary leave, or otherwise had his or her leave wrongly curtailed, would not be prejudiced by having to start the path to citizenship all over again once this unnecessary or misinformed interruption was resolved.

The following two case studies provide example of why these amendments are necessary.

#### **Case Study A**

A arrived in the UK and claimed asylum at port. He was granted temporary admission. However, his asylum claim was not dealt with for several months; and it was refused on incorrect grounds. Although A successfully appealed against this decision, he was not recognised as a refugee until several years had passed since his arrival. Throughout the time he had been in the UK, up until the point his refugee status was granted, A was on temporary admission and had complied with the conditions of that. He has not been in breach of immigration laws. Nevertheless, under clause 37 as currently drafted, A's time in the UK waiting for the decision to recognise him as a refugee cannot count towards his qualifying period for citizenship.

#### **Case Study B**

B came to the UK as a skilled worker. An error at the UK Border Agency or misinformation passed to the agency leads to a decision to curtail B's temporary leave because it is thought that B has not abided by the conditions of her temporary leave. B is detained to be removed. However, B is able to show the UK Border Agency that it has made a mistake. Contrary to the agency's belief, B has abided by the conditions of her leave. B's leave is reinstated. Nevertheless, under clause 37 as currently drafted, B is required to begin her path to citizenship all over again because she must have a qualifying immigration status throughout the qualifying period. Her period of detention (or any period while she was released from detention on temporary release) would not count as a qualifying status.

The remaining three amendments would not assist B but would assist A (see the case studies above). In some cases, people have had to wait several years for a decision on their asylum or human rights claim. Indeed, some people in the Home Office backlog, often referred to as 'the legacy'<sup>1</sup>, are still waiting. Why should the delay in deciding asylum claims slow down a person's progress to citizenship? These three amendments, therefore, would ensure that those who have made asylum claims or human rights claims, or are awaiting decisions on their European Economic Area (EEA) applications (e.g. applications for a family permit or residence

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<sup>1</sup> This is the backlog announced by John Reid MP, Home Secretary, in July 2006 to the House of Commons: see *Hansard*, HC 25 July 2006 : Column 736-7

card by those who have joined EEA partners in the UK) would not be prejudiced by the delay in dealing with their applications.

Clause 37 requires people to satisfy the requirement that they were not at any time during the qualifying period in breach of immigration laws in the UK<sup>2</sup>. These amendments do not alter this requirement. However, those who have not breached immigration laws would, without these amendments, suffer delay in their progress to citizenship. This is unnecessary, and does not promote integration, which is said to be the Government aim. In its response to the consultation on the *Path to Citizenship* Green Paper, the Government stated:

*“We want migrants who wish to make Britain their long term home to integrate fully into our society.”*

To achieve that aim, it is necessary to ensure that those who suffer administrative delays in decision-making, of whatever length, can count their time awaiting a decision towards the qualifying period.

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<sup>2</sup> New paragraph 1(2)(f), Schedule 1 to the British Nationality Act 1981