# BORDERS, CITIZENSHIP AND IMMIGRATION BILL – HL BILL 15

## HOUSE OF LORDS COMMITTEE

### Clause 37

### New paragraphs 1(2)(b) and (c) to Schedule 1 of the British Nationality Act 1981

### (90 days absence and qualifying immigration status)

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

**Amendment 46** Page 27, line 6, after first "the" insert "average"

**Amendment 47** Page 27, line 10, at end insert ", save that periods during which A was in the United Kingdom with leave other than that conferring qualifying immigration status shall be disregarded for the purpose of considering whether A had qualifying immigration status for the whole period"

**Purpose:**

The first amendment would maintain the current position whereby maximum permitted absences during the qualifying periods for naturalisation are calculated in terms of an average over the qualifying period.

The second amendment would ensure that where a person spends two periods of time in the UK with a qualifying immigration status but in between is lawfully in the UK with an immigration status that is not a qualifying immigration status, the two qualifying periods can be aggregated.

**Briefing:**

The first amendment is to ensure that people, including those who are absent for over 90 days due to travel on business, a family crisis or illness abroad, do not have to start the qualifying period for citizenship all over again. It addresses one example in the Bill of the problem identified by Baroness Hanham at Second Reading of migrants who:

> "*…will end up in a game of snakes and ladders, by which they may fall down and have to start the process all over again.*" (*Hansard*, HL 11 Feb 2009 : Column 1135)

Currently, a migrant can avoid having to start all over again because the route to citizenship allows absences to be averaged out over the qualifying period. The current requirement is explained in Chapter 18 of the Nationality Instructions, and the relevant extract is set out as an appendix to this briefing. This means that an exceptional absence for business or family reasons in one year may be mitigated by fewer absences in other years.

Clause 37 changes this[1]. It requires that absences must exceed no more than 90 days in each qualifying year. Thus, if the 90 days is exceeded, the clock must be reset and the route to citizenship started all over again. The following case studies provide example of how this change may affect migrants.

**Case Study A**
A is a highly skilled migrant (now Tier 1, points based scheme). He is a highly paid UK employee of a Financial Services company, and travelled extensively to drum up business for a newly formed UK team specialising in that emerging market. In the first year of the team being set up, he travelled overseas almost every week, resulting in over 150 days absence in a 12 months period. Under the current route to citizenship this is not a problem so long as A's average length of absences over the qualifying period does not exceed 90 days. Under clause 37, however, A would be required to reset the clock to zero and start all over again.

**Case Study B**
B is a skilled worker in the care sector. She takes an extended period of leave because of the death of her sole surviving parent, and the need for her to deal with the funeral and wider, complex family arrangements including the immediate management of the family estate and a dispute over this. This single period of absence exceeds 90 days. As with A (above), B would be required to reset the clock to zero and start all over again.

A similar example to B would be where there was a need to attend to a sick or dying relative.

We have been informed that the Government is not attracted to averaging absences because it believes that requiring no more than 90 days absence in each year will promote integration. However, what is the evidence for this assertion? Under the current route to citizenship, absences can be averaged and this has been the position for very many years. What is the evidence that those who have relied upon averaging absences to mitigate a lengthy absence in any one or two years (as in the case studies) are any less integrated than those who have kept within the 90 days in each year?

The effect is to require those who cannot avoid an exceptional period of absence to have to start the route to citizenship all over again, during which second progress along the route to citizenship they will once more be excluded from benefits and services. This could mean, depending on when he or she needs to taken an exceptional period of absence, someone being required to spend as long as 10 or 11 years before becoming a British citizen (even having done whatever may be required under the activity condition – see ILPA briefing on clause 39). In the meantime, should he or she be made redundant or taken ill, there would be no state support despite his or her having paid taxes, including National Insurance, throughout this time.

None of this promotes integration. Rather, it promotes marginalisation and exclusion.

The second amendment addresses another example of the 'snakes and ladders' problem identified by Baroness Hanham. Clause 37 would require a migrant to have a particular type of leave or status throughout the qualifying period[2]. The amendment seeks to ameliorate this where there is an interruption in the type of status held by the migrant, though his or her presence in the UK remains lawful throughout.

[1] New paragraph 1(2)(b), Schedule 1 to the British Nationality Act 1981
[2] New paragraph 1(2)(c), Schedule 1 to the British Nationality Act 1981

It would, for example, allow a worker who ceased work and did a full time degree (e.g. a Masters of Business Administration) before recommencing work to aggregate the two periods as a worker. Without the second amendment, the clock would be reset to zero when the person ceased their qualifying immigration status as a worker. He or she would have to start qualifying all over again from the time their second qualifying period as a worker began, despite having remained in the UK lawfully throughout.

The following case study raises more than one example of how the requirement to have a qualifying immigration status (as opposed to merely being present in the UK lawfully) throughout the qualifying period may affect migrants.

**Case Study C**
C studied in the UK for 3 years then joined a graduate programme and worked at the same employer in the UK for 4 years and 11 months. Under clause 37 her time spent studying would not be anticipated to count toward the qualifying period for citizenship.

After 4 years and 11 months she was told that she would be made redundant by her employer just before she had obtained ILR. She was 3 months pregnant at the time of redundancy. Her husband was her dependant and held only a Palestinian travel document and as such found it very difficult to travel. She was extremely worried that the redundancy would affect her ability to remain in the UK. However, as she had a 3-month notice period, her employer was able to write in support of her Indefinite Leave to Remain (ILR) application and confirm her continuing employment for the duration of this notice period. She also had substantial savings in the UK. She was granted ILR.

This case study also raises questions about the continuous employment requirement in clause 37 – see separate ILPA briefing.

However, if C's period of study had come between periods of work, it is anticipated that the changes introduced by clause 37 would discount the time she had spent during the first period of work towards her progress to citizenship.

This aspect of clause 37, like that which prohibits averaging of periods of absence, promotes the marginalisation and exclusion of those who may, for good or unavoidable reason, have their qualifying immigration status interrupted by a period of lawful presence which does not itself count as qualifying status.

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**APPENDIX**

Extract from UK Border Agency, Nationality Instructions, Chapter 18
http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/nationalityinstructions/nichapter18/chapter18?view=Binary

"*18.2.1.2 The residence requirements referred to in 18.2.1.1 above are that the applicant was:*

*a. in the UK at the beginning of the period of 5 years ending with the date of the application; and*

*b. not absent from the UK for more than 450 days in that 5 year period; and*

*c. not absent from the UK for more than 90 days in the period of 12 months ending with the date of the application; and*

*…*"

Here we have a qualifying period of 5 years. No more than 90 days absence is allowed in the last 12 months period. However, subject to that stipulation, the 450 days of absences (5 x 90days) may be spread around the 5 years period. Even where someone was required to take an exceptional absence in the last year of their qualifying period, they would only be required on their return to complete a 12 months period with less than 90 days absence – rather than, as under the path to citizenship that would be provided by this Bill, start the journey all over again.