

8<sup>th</sup> May 2007

## **BRIEFING: Report and Third Reading of UK Borders Bill**

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ILPA is a professional association with some 1100 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through teaching, provision of resources and information. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups.

This briefing addresses discrete and key aspects of the Bill and amendments laid for report. We have previously indicated our position in respect of all aspects of the Bill (save amendments made in committee) in our Briefing for Second Reading, which is available on our website at [www.ilpa.org.uk/submissions/Briefing2ndreading\\_UK\\_Borders\\_Bill.pdf](http://www.ilpa.org.uk/submissions/Briefing2ndreading_UK_Borders_Bill.pdf)

### **Immigration Officer Powers:**

There are several new powers for immigration officers (and others). Of particular concern are powers to:

- detain anyone (British or not) at a port of entry on suspicion of an offence (related to immigration or not) [**clauses 1-4**];
- seize cash on suspicion that it relates to illegal working [**clause 23**]; and
- enter and search premises for a nationality document when a person is arrested (whether the arrest relates to immigration or not) [**clauses 43-44; NC 9**]

### Regulation and oversight

Concerns were rightly raised in committee about training, regulation and oversight of immigration officers exercising these powers. In relation to detention, the Minister said "*detention facilities... are subject to oversight by three organisations... the independent monitoring boards, which are extremely important... the prisons and probation ombudsman... [and] Her Majesty's chief inspector of prisons [on whose reports] the immigration service and I often rely... to get many of our arrangements correct.*" He also noted section 41 of the Police and Justice Act 2006 and the planned extension of the Independent Police Complaints Commission's role to examine serious complaints against immigration officers. It is concerning, then, that the new chief inspector for the Border and Immigration Agency [**clause 45-53**] will be empowered to refuse to cooperate with such bodies and may prohibit inspections [**clauses 48-50**].

### Welfare of children

In committee, both Conservative and Liberal Democrat Members urged the Government to bring immigration operations within the scope of section 11 of the Children Act 2004 so that the welfare of children is properly accounted for in the exercise of immigration powers. The Minister made reference to ongoing discussions with the Children's Commissioner, but we are not aware of progress. As was then put

to the Minister, the case for [the application of](#) section 11 is “*extremely strong*”. We support the amendment laid by Damian Green [NC 2]; and would refer Members to the Refugee Children’s Consortium briefing on this amendment for further information.

### Destitution

At Second Reading, several Members raised legitimate concerns at the enforced destitution of many thousands of people in the UK and exploitation of those made vulnerable by destitution. These concerns are, for those who have been made destitute following a refused asylum claim, addressed by amendments laid by Jon Cruddas and Neil Gerrard [NC 13-14, NC 15] which we support. However, if directed at individuals forced into exploitative and unsafe working to overcome destitution, the powers to seize cash will greatly exacerbate the vulnerability of many and likely add to the number now suffering an inhuman and degrading existence<sup>1</sup>.

### Community relations

It seems inevitable that conducting searches for nationality documents where no immigration issue has materialised beyond a suspicion that someone may not be British will provide further example of how immigration practices and concerns can substantially and regressively affect wider community relations. No explanation has been given as to how such suspicion will be formed. If, as seems likely, factors such as a person’s name, language or colour are used, British people (their homes and premises) wrongly subjected to such searches will [in all likelihood](#) be from black and minority ethnic communities.

### **Reporting and Residence Conditions for those with Limited Leave to Enter/Remain:**

The Bill would allow for these conditions to be imposed on anyone with limited leave (which could include refugees, work permit holders, highly skilled migrants and family members of those settled in the UK) [clause 16]; and there is no restriction on the extent of conditions that may be set. Reporting and residence conditions (which could include daily reporting to an immigration officer and curfews) are far more intrusive than the conditions (prohibition from working, no recourse to public funds and registration with the police) now available under section 3(1)(c) of the Immigration Act 1971.

In committee, the Minister stated particular and limited circumstances for which these powers are wanted. If so, this should be clearly stated; and attention then given to:

- whether there is good reason; and
- drafting a clause which does not (as the clause currently does) provide a catch-all power for very onerous conditions to be applied to all migrants excepting those granted indefinite leave to remain.

Both Conservative and Liberal Democrat Members in committee recognised these provisions to be highly controversial and intrusive. We welcome amendments laid by Paul Rowen limiting their exercise to circumstances of real need [29-30].

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<sup>1</sup> The Joint Committee on Human Rights March 2007 Report on Treatment of Asylum Seekers concluded that in a number of cases the destitution caused by Government policy reached the threshold of inhuman and degrading treatment prohibited by Article 3 of the European Convention on Human Rights.

## Deportation:

The deportation provisions in this Bill [**clauses 31-38**] constitute an abrogation of responsibility on the part of the Secretary of State. It came to light last year that in a number of cases the Secretary of State's officials had simply failed to consider or make decisions in respect of several foreign criminals ~~as to and~~ whether they should be deported. Calling these provisions "automatic deportation" suggests that this will not be possible in the future – but this is not true. There is no such thing as automatic deportation, and if officials fail to consider or make decisions, the same risks remain. However, by providing for circumstances in which the law will mandate that a deportation order be made, the Secretary of State seeks to abrogate his responsibility to consider cases on their individual facts so as to make the right decision.

Amendments laid by the Secretary of State will now considerably extend the circumstances in which these provisions will apply [**17-22, 27**]. As the Bill stands, a person sentenced to any term of imprisonment (even a matter of days) for an offence of graffiti or shoplifting falls within their scope<sup>2</sup>. With the amendments, a person receiving even a suspended sentence for such offences (or indeed someone who has already received such a sentence) would fall within the scope of these if any part of that sentence is activated at any time in the future. These provisions apply regardless of the particular circumstances of the offence or the individual, including what may be ~~his or her~~ very ~~long long-residence period~~ of stay in the UK and an absence of connection to his or her country of origin. The proposed deportations of Sakchai Makao and Ernesto Leal (see appendix) were opposed by 113 and 60 MPs in respective EDMs last year. Their appeals were successful on ordinary immigration law principles (i.e. principles that would be effectively abandoned in future cases), yet their offences were plainly more serious than graffiti or shoplifting. The provisions in this Bill greatly accentuate the risk of deportation where a sensible assessment of the individual's circumstances and crime would show it to be neither fair nor rational.

By effectively empowering indefinite detention following completion of criminal sentence [**clause 35**] and removing any appeal right before deportation [**clause 34**], these provisions provide a package of deportation powers that will have harmful and arbitrary effects. Much of the debate on these provisions has focussed on the most serious offences – yet there is no credible suggestion that the current powers, if officials act competently, are insufficient to deal with such cases. And while the Article 3 (prohibition on torture) bar on removal does create real problems in respect of some plainly dangerous individuals<sup>3</sup>, such cases are not and cannot be addressed through these provisions.

The Secretary of State tightened the Immigration Rules in favour of deportation last year. Rather than abrogating responsibility, he ought to be ensuring his officials are now performing their duties. If so, the current deportation powers are more than sufficient to deal with any mischief to which this Bill relates; and these new provisions are neither necessary nor desirable. They should be removed from the Bill.

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<sup>2</sup> The offences fall within Condition 2 [**clause 31(3)**] as these are specified by SI 2004/1910 under section 72 of the Nationality, Immigration and Asylum Act 2002.

<sup>3</sup> ILPA has consistently made plain our belief in the propriety of an absolute bar against deportations that place persons at risk of torture or other serious ill-treatment within the ambit of Article 3 of the European Convention on Human Rights.

**Trafficking:**

We have previously welcomed the provisions in respect of trafficking [**clause 30**]; and consistently urged further steps to provide for adequate protection to the victims of trafficking. We welcome the amendment laid by Anthony Steen [**36**].

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## APPENDIX

### Sakchai Makao

Sakchai Makao was born in Thailand on 10 December 1982. When he was a few months old, his father died; and when he was still at a young age his mother married a British citizen and moved to the UK. In September 1993, he and his sister were granted indefinite leave to enter to join his mother (he was 10 years old). In 1994, the family moved to Shetland. After school, he became a lifeguard at the community sports complex. He obtained a number of qualifications in relation to this; and remained in employment in an increasingly senior capacity until his imprisonment in January 2004. His offence was of culpable and reckless fire raising to which he pleaded guilty and for which he received a 15 month sentence [we note that this would bring him within both categories to which the provisions in this Bill apply]. On his release, he returned to his former employment.

The decision to deport him precipitated mass protest amongst his community in Shetland. A petition was signed by over 8,000 Shetlanders, with a further 3,000 names on-line; and a determined campaign against the deportation was led by church leaders and other high profile members of the community, with witnesses ultimately travelling to North Shields to give evidence at his appeal. His appeal was successful.

His offence occurred after he had become seriously drunk on learning of the news that his stepfather (the British man his mother had married, but in effect the only stepfather he had ever had) had been diagnosed with cancer – his father subsequently died. It was accepted that so far as the offence was concerned he had been led astray by another who took the leading part in the events. He pleaded guilty; and it was accepted he was very remorseful and posed no serious risk of re-offending. As regards the prospect of return to Thailand, whereas he was no longer dependent upon his mother (being an adult at the time of the offence, let alone decision to deport), he did not speak Thai and had no subsisting knowledge or connection to that country.

### Ernesto Leal

Ernesto Leal was born in Chile. In 1977, he fled to the UK as a refugee with other family. He was then 13 years old. More than 25 years later, having established a business (as an arts and music promoter) and settled in the UK with two children of his own, he became involved in a pub brawl. He was sentenced to three years for assault occasioning grievous bodily harm. Much of that was served in an open prison, and he was released after serving 18 months.

He faced deportation despite his family being settled here – including his elderly mother and father, for whom he cared (his father had heart and diabetes problems). The decision to deport him precipitated a sizeable campaign, and ultimately on appeal an immigration judge overturned the decision.