RESPONSE FROM THE IMMIGRATION LAW PRACTITIONERS' ASSOCIATION TO THE STUDENT IMMIGRATION SYSTEM: A CONSULTATION

Introduction

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 900 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-governmental organisations are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous Government, UK Border Agency and other advisory groups and has responded to many UK Border Agency consultations.

ILPA recognises that the main driver behind these proposals is the Government's commitment to reduce the level of net migration to the UK to 'tens of thousands each year.' International students are a numerically larger group than those migrating for work, or coming to join family members, and therefore reducing their numbers would be a more significant step towards that end. But this commitment has led to a policy proposal which would be economically damaging to the UK, in that it will cut the numbers of people who benefit the UK through paying considerable fees to both public and private institutions to study in the UK, paying fees to UK Border Agency to gain their student visas from abroad and for any extensions of their stay and living and studying and consuming goods and services in the UK for the time that they are here. Students overwhelmingly leave the UK when their studies are completed. Although they may be counted in the estimates as immigrants when they arrive, they will be counted as emigrants when they leave two or three years later. Reducing numbers will be damaging to many education institutions, which rely on the fees paid by international students to keep their institutions going, and will have serious effects on the wider economies of the towns and local areas in which they are based, when students will no longer be paying for accommodation, food and entertainment in the area. It could lead to institutions closing down, adding to unemployment and to the downward spiral of the economy of the area.

Reducing numbers could also lead to longer-term economic and political disadvantage to the UK. Study is not measured by academic achievement alone. It extends to a student's cultural and personal experience and their relations with and

view of the UK in the future. The UK's competitive advantage is threatened by measures to curtail the student's experience, by restricting their non-study activities while they are following their course, and cutting the Post-Study Work scheme. This will make the UK a less attractive destination for international students who wish to maximise the value of their overseas studies.

It is also important to value the ties and relationships fostered by international students. The business and economic objectives of maintaining and developing the UK's place in the global market place are strengthened by individual student advocates who return to their home countries with positive messages about what the UK can offer. It has been UK policy to encourage students to study in the UK leaving them with a favourable impression of the country, to ensure that when they do return to their country of residence/choice, if it is not the UK, they will have a willingness to engage in business, trade and other links with the UK. They may also contribute financially through donations and bequests to their UK alma mater during their working life and on death, and they will carry the reputation of their UK qualifications with them to other international institutions when they go there for further studies or for work purposes. There are therefore direct and indirect, as well as short-term and longer-term, positive economic consequences from students coming to study in the UK.

The Home Secretary expresses concern that "the UK is attracting students who aren't always the brightest and best." It is not clear why this is a relevant policy consideration, when she has also proposed that changes to the system introduced through the Post-Study Work scheme, which permits many students to continue to live in the UK and to seek work after completing their studies, are to be abolished. Students coming to the UK to follow courses, at whatever level, and who will benefit from their courses, contribute greatly to the UK economy, rather than harming it.[1] It is not in the best interests of the UK to throw out the baby of international students studying on pre-degree courses with the bathwater of the proportion who remain without authority after their studies.

ILPA expresses serious reservations over the way statistical evidence has been used to support UK Border Agency premises in the current consultation. The UK Border Agency's use of the International Passenger Survey, evidence from the Home Office Research, Development and Statistics Directorate research report *The Migrant Journey*[2] and the Agency's internal research on students do not provide evidence to justify this proposal. It is also unclear whether the UK Border Agency has considered what the effects of reducing numbers of students on pre-degree courses would be on those intending to continue to degree-level courses and on the viability of some courses and institutions continuing. The emphasis placed on degree-level education, as if education below degree level is somehow substandard, is both misinformed and

[1] See *Global Value: the value of UK education and training exports; an update,* September 2007, British Council.

[2] Home Office Research, Development and Statistics Directorate, Research Report 43, *Lorrah Achato, Mike Eaton and Chris Jones* September 2010.

damaging. For example, many colleges and higher education providers allow Level 4/5 college students to accelerate into degree programmes by skipping over the first or second year of the degree. It has been noted during meetings in the context of preparation for this consultation that various estimates from Universities UK and British Council suggest that some 40% of students entering higher education are progress from sub-degree level courses in the UK to degrees.

The previous Government's complete recasting of the student immigration rules, through the Points-Based System, has been in force for less than two years. Biometric student identity cards, the introduction of the sponsorship system and the Highly Trusted Sponsor status, as well as a higher level of language testing, are just some examples of the steps taken and it is unclear whether the effect of those measures has been examined.

Blanket restrictions affect all providers, good, bad or indifferent, and the crudeness of the proposed restrictive measures will involve wasted time and resources for the UK Border Agency in increased checks on all providers, instead of targeting these. If there is need to take further steps to improve Tier 4, attention should be directed toward making the Highly Trusted Sponsor quality mark more meaningful, and UK Border Agency inspections more effective. Given the lack of consultation when the Highly Trusted Sponsor status was introduced, as well as the seemingly arbitrary grant and removal of this enhanced status, the current Tier 4 review could be an opportunity to engage with Tier 4 sponsors to develop appropriate Highly Trusted Sponsor criteria and create a transparent process in which sponsors always know what is expected of them.

ILPA responded to the UK Border Agency's Tier 4 review a year ago, when an informal, but similarly ill-thought-out, consultation took place, asking many of the same questions as this document. We have seen no UK Border Agency consideration of those responses, or explanation of why the same questions are being asked again now without any reference to the recent past. Our views expressed then are still relevant and we append our letter of 4 December 2009 to this response, in the hope that these points will be considered.

ILPA fears that measures towards one aim, cutting net migration, when applied to students, will have serious economic and social effects and will militate against the overriding aim of improving the UK's economy. We now turn to responses to the specific questions in the consultation paper.

Question 1: Do you think that raising the minimum level of study sponsors with a standard sponsor licence can offer under Tier 4(General) to degree-level and above is an effective way of reducing abuse of Tier 4 (General) route, increasing selectivity and simplifying the current rules?

No.

The UK Border Agency gives inadequate and seriously misleading evidence to support this proposal. The UK Border Agency rightly states that its figures should be 'taken as indicative only' since its analysis, of a small number of students coming to the UK in an unspecified period, represents only 5%, about 1/20, of students coming to the UK in a year.[3] The full report, as referenced, makes it clear that the university students analysed were from institutions which had applied for Highly Trusted Sponsor status, and the non-university students from institutions where the UKBA already had 'concerns over suspected abuse.' The sample was therefore weighted from the beginning. The consultation document states that 26% of Tier 4 students in private institutions were estimated to be non-compliant. The full paper says something very different: that for 14% of the sample of 5648 students in further and higher education private and publicly-funded institutions, and language schools, the UKBA 'have no record of leaving the UK and do not have a valid reason to remain (potentially non-compliant).' The report does not give the numbers or proportions of students from each of these types of institution surveyed, but states that this group of 'potentially non-compliant' students includes 26% in private institutions, 8% in publicly-funded institutions and 14% in language schools. Since there are no immigration exit controls and therefore no reason for the UK Border Agency to have any record that people have left, and since the UK Border Agency's records of applications made to it are so inaccurate that its most recent statistics of conclusions in its backlog of old asylum cases include 112,500 'errors' out of a total of 334,500 decisions,[4] its lack of information about under 1000 students cannot be considered a valid evidential base for treating lower-level students less favourably or for reducing abuse.

There are of course many perfectly valid reasons for students from abroad studying on lower-level courses – the lack of availability of courses in their country of origin, wanting to experience life in a different culture, wanting to be sure that they are able to study in a foreign language before enrolling on a higher-level course. There are also the benefits to the college in receiving the fees, and to the college and to home students in having a more varied student body, and ensuring that the course, or even the college, remains viable, as well as the wider economic benefits to the area and to the country.

The proposal would by definition increase selectivity, as there would be fewer institutions to which students could apply. It could increase the work for the UK Border Agency in dealing with more applications from institutions for Highly Trusted Sponsor status. As more institutions became more effective and qualified for this status, thus being able to offer a useful education, the UK Border Agency numbers objective might not be met, although the educational objectives would be.

[3] Consultation paper at paragraph 4.3 and note 8 thereto.
[4] See HC587-I, Fourth report of the Home Affairs Committee, The work of the UK Border Agency, December 2010, UKBA submission, pp. Ev 18-19

Question 2: Do you think that only Highly Trusted Sponsors should be permitted to offer study below degree level at NQF levels 3, 4 and 5/SCQF levels 6, 7 and 8 in the Tier 4 (General) category?

The question does not allow for the possibility of ILPA's answer, which is that all sponsors should be able to offer these courses. ILPA is not persuaded by this paper, or by the background research the UK Border Agency offers, that the change is necessary or desirable.

Question 3: Do you think that the changes discussed in this section should be phased in?

ILPA opposes the changes, but if they, or some modification of them, are brought into force then yes, this should be phased in. ILPA considers that both students and institutions should have the longest possible time, at least the three academic years in proposal (d), to make the changes. Colleges whose lower-level National Qualifications Framework courses are made viable by the presence of international students need time to amend their business plans, work out their budgets, decide on coping strategies such as staff redundancies or increased advertising of their courses in EU countries, or to close down. Students who have planned courses and who are studying on courses should be able to complete them and to progress in their studies as they had planned. A phased introduction would also help to show the UK Border Agency where the proposal had created problems and give them the chance to amend it in the light of the experience of phased implementation.

Question 4: Do you think that in the light of the low risk of abuse amongst users of Tier 4 (Child) route, there should be no changes to the route?

Yes.

ILPA sees no reason to change this route. ILPA also urges that it should be possible for parents of children between the ages of 12 and 18 to qualify to remain on long-term visits to care for their children, with an amendment to rule 56(a) (iii) to permit this.

Question 5: Do you think that all students using Tier 4 (General) category should have passed a secure English language test to demonstrate proficiency in English language to level B2 of the CEFR, in order to improve selectivity and to simplify the current system?

No.

ILPA considers that assessing language proficiency is mainly a matter for the sponsoring education provider, and that the UK Border Agency should require more robust evidence from such providers to know whether such a change would be of any benefit in working towards the Government's stated goals. We have seen no evidence to support the hypothesis that those students with a lower level of English language have a greater propensity to stay on without authority after their courses.

Para 5.8 is confusing; it is not clear under which part of the immigration rules students coming for 'preparatory or pre-sessional courses' would qualify, if they have not already achieved B2 level. ILPA would welcome clarification on this point and also confirmation that such students would be able to remain in the UK to follow the main course they wanted to do, without having to leave the country for fresh entry clearance.

There is also the need thoroughly to review the UK Border Agency's existing language testing policy, as there is substantial confusion as to which testing levels equate to Common European Framework of Reference for Languages (CEFR) B2 level. We encourage the UK Border Agency to consult directly with language testing providers to achieve the needed consistency and quality within the language testing industry to make this a viable test for immigration purposes.

Question 6: Do you think that students from majority English-speaking countries, those who have been awarded a qualification equivalent to UK degree-level or above that was taught in English in a majority-English speaking country and those who have recently studied in the UK as children should be exempt from any new language testing requirement?

Yes, but with the modification that this exemption should be widened to include anyone who has obtained a degree taught in English in any country, not only a 'majority-English speaking' country. Confirmation from the educational institution that it teaches in English, and its prospectus, should be adequate evidence of this.

Question 7: Do you think that students wishing to study a new course of study should be required to show evidence of progression to study at a higher level?

No.

The rules must provide enough flexibility to distinguish between a necessary short term extension, for example to re-take a failed module, which should be permitted, and taking further unrelated courses. UK Border Agency procedure/criteria would have to be sophisticated to pick up the difference and to avoid penalising those who have had bad luck in one exam, or were unwell at the time of taking it. This proposal

would also create problems for people who started one course and then found they were not suited to it/their interests changed so they wanted to start another at the same level – why should that not be possible? Even the figures the UK Border Agency quotes show only a small proportion (6%) of students continuing to study after five years and the document gives no indication of whether these studies were in ways the UK Border Agency considers inappropriate.

It could be reasonable for a student who changes his/her field of study to explain this in any future application and for the sponsoring educational institution to confirm this. Many people find their interests change after beginning specialised study of a subject and that they would be more suited to a different course. Starting a new degree course after successfully completing the first year in another subject should be possible. It would also provide the benefit to the UK of a further year's fees and living costs, and would mean that there was more chance of the second course being completed successfully.

Question 8: Do you think that students wanting to study a new course should return home to apply from overseas?

No.

Requiring students to return home in order to extend their student visas has no merit; it would not deliver Government objections and would cause unnecessary complications, expense and wider detrimental impact. Such a requirement would create an unequal financial disincentive, as it will cost more to return to, for example, Australia or Nigeria than to Turkey; it will add to students' carbon footprints and to global warming; and it will increase work for entry clearance officers abroad in dealing with many thousands of unnecessary visa applications (even if decreasing work for UK Border Agency staff in the UK) and having to do so under great time pressures, given the confines of the academic terms and the need for students to return in time to commence their course of study. Again, the scanty figures the UK Border Agency gives do not indicate whether the people who entered as students but have remained not studying have remained perfectly legally in some other capacity or indeed, whether they did leave the UK and returned in a different capacity, with their travel not being recorded. It is not surprising that students from countries where there is already a settled community in the UK have a greater propensity to qualify to stay on – they are more likely to meet life partners and decide to stay with them, they may have more contacts to help them to find the type of work which would enable them to qualify under Tier 2, for example. There is no reason given why a student should not expect an extended stay, if he or she has good reasons under the immigration rules to stay longer, and no evidence that it is a problem when they stay. Accruing 10 years' study, and therefore potentially qualifying under the long residence rule to settle, is unusual and anyone who can do

so must by definition be reasonably affluent (and be spending their money in the UK).

ILPA cannot see any justification for the changes envisaged by Questions 7 and 8 and does not consider that they would be cost-effective for the UK Border Agency, have any public policy benefit or provide any advantage to anyone except the airlines.

Question 9: What changes do you think we should make to the Tier 1 Post-Study Work route?

'Other', if any, but ILPA opposes changes to the Tier 1 Post-Study Worker category.

The possibility of work experience can be a significant reason for students choosing the UK to study before returning home to use their qualifications and experience. The Government has proposed the end of Tier 1 (General) in its current form in any event, and ILPA has made its views known on this. Ending Post-Study Work and making students leave the UK in order to apply to return under Tier 1 or 2 again adds to students' costs, and, with the migration cap, will make it more difficult for the UK to benefit from students gaining experience here. The arguments above about the lack of benefit to anyone of migrants leaving the UK simply in order to apply to return are also relevant here.

ILPA does not agree that the Post-Study Work route should be ended and the evidence presented by the UK Border Agency that current Post-Study Work students are not engaged in highly skilled work is inadequate. Post-Study Work migrants are not eligible to claim welfare benefits and are not a drain on UK society. If they are unable to find a skilled job within the two year period and to obtain leave under Tier 2, or other relevant categories, they will be required to leave. Moreover, the Post-Study Work route should not be looked at purely in terms of its role in filling skills gaps in the UK. Many of the students, including those of the highest calibre, wish to gain work experience in the UK precisely to enhance their career prospects on returning overseas rather than having any intention to remain in the UK after their period as a Post-Study Work migrant and it is a significant factor to universities when seeking to attract students. Post-Study Work increases the competitive advantage for UK universities and enhances international relations and trade connections in the long term. As in other categories the 'brightest and best' the Government indicates that it is seeking to attract have choices and removing Post-Study Work will increase the prospects of those potential students choosing to study in other jurisdictions where Post-Study Work-style arrangements are widely available, such as in the United States of America. The Migration Advisory

Committee looked at this in more depth for its December 2009 report and recommended retaining the route.[5]

If further restrictions are imposed, they must provide that graduates can change status to Tier 2 within the UK and that their numbers will not be counted towards the cap. Those studying at the time of any change must be able to apply for the Post-Study Work category, as their decision to study in the UK may have been influenced by the Post-Study Work opportunity, and the current rules could be considered to have given them a legitimate expectation that this option would be available. Decisions on all such applications should be made quickly, so that employers have certainty and can offer permanent contracts, rather than a temporary contract for the four months stay after the course is over. This is an area where the UK runs serious risks of losing the 'brightest and best' if their route to remain has artificial barriers placed in the way.

Question 10: Do you think that we should restrict further the amount of work students should be allowed to undertake while studying?

No.

ILPA recognises that the present position has become unnecessarily complicated for both students and employers and also for the UK Border Agency when the rules were changed to restrict hours of work for those studying lower-level courses last year. Given the Tier 4 requirements on the amount of maintenance funds at the commencement of studies, and when students apply for extensions, students have to show that they have ample financial support anyway, and may not need to work. However taking part-time work is also important in helping students to improve their English language and cultural awareness and to become involved in the local community.

Question 11: Do you think we should make it simpler for employers to understand the rules around student work, by limiting it to set times, except where they are working on campus?

There are two parts to this question which require different answers. Simplicity, although useful, is not the only criterion which should be considered and the time or place where work is allowed is not the only way in which it can be increased. Weekends may not be the only time that mainstream employers require part-time workers and students may be put under pressure to work for longer or different

[5] Analysis of the Points-Based System, Tier 1, December 2009, at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/pbsanalysis-09/

hours. Modern methods of study and electronic access to materials, as well as availability of laboratories, mean that it is not necessarily at weekends that students have time free from their studies. There is no definition of 'on campus' and no guarantee that there would be work available, whether in academic-related jobs such as demonstrating and tutoring or in any other job on-campus, for all the students who wanted this. It is also not clear to ILPA why working in a student bar rather than in a community pub is to be permitted during the week, but any job can be done at weekends.

If simplicity is the paramount criterion, this would be best served by the student passport vignette of permission to stay stating that the person is a student and how many hours he/she is permitted to work. The UK Border Agency should in any case ensure that the rules about students' work are widely known, give employers more information about the meaning of passport stamps, and confirmation that a student's conditions of stay remain the same while an in-time application for an extension is under consideration, and, if this proposal is implemented, what documentation from the educational institution about term and holiday dates is acceptable. Employers should also be reminded that all other employment rights, including the minimum wage and health and safety requirements, apply to international students while working in the UK.

Question 12: Do you think that the minimum ratio of study to work placement permitted should be increased from the current 50:50 to 66:33, except where there is a statutory requirement that the placement should exceed one-third of the total course length?

Don't know; ILPA is not an education provider for international students. However, we see no reason why work placements should be restricted unless there are educational reasons for doing so. Work placements are not generally paid, and if they are the best way for a student to learn the subject, they should not be restricted.

Question 13: Do you think that only those studying for longer than 12 months should be permitted to bring their family members with them to the UK?

No.

The UK Border Agency gives no reasons whatsoever for this proposal, apart from numbers and its stated belief, unsubstantiated by any facts given in the document, that some students' intentions are distorted by the prospect of family members working.

It has always been possible for the wife and minor children of students to accompany them to the UK; the rules were changed to permit husbands of students to do so to avoid unlawful sex discrimination.[6] This proposal risks such discrimination against women; the available research suggests more accompanying spouses of workers are women than men; if this is also the case for students, then more women will be affected and restricted from accompanying their husbands. In the case of women students, in some cultures it would not be acceptable for a married woman to live abroad without her husband, so women could be prevented from coming to the UK to study. Family members of students on short courses may be able to come as visitors for up to six months; it seems a very petty and unnecessary restriction to make it impossible for those on courses of up to a year to spend the time together. It is likely to act as a disincentive for students with families to come for shorter courses, in particular PhD and Masters students, the very 'brightest and best' whom the UK Border Agency states that it wishes to safeguard.

This proposed restriction would also not affect net migration figures, given that people intending to remain for less than 12 months do not count as migrants in the International Passenger Survey, and therefore would be irrelevant to the migration cap.

Question 14: Do you think that family members permitted to accompany the student should be prohibited from working?

No.

Doing so would create more problems for families, increase the isolation of spouses and civil partners and their lack of connection with the rest of UK society. According to the UK Border Agency consultation document, 'approximately 30,000' visas to family members of Tier 4 students were issued in 2009. According to the UK Border Agency immigration statistics, 21,130 such visas were issued in 2009;[7] many of these will have been to young children, who would not be working anyway, and many of the spouses or civil partners will be caring for children and making homes, and will not be working. Those who do work are unlikely to make a substantial difference to unemployment figures for settled people. Restricting spouses and civil partners from working is unnecessary and would have no positive public policy effects. Many students' spouses and civil partners will also be highly educated and skilled and will be able to make a useful contribution by working in the UK; if they are working, they are also paying tax and national insurance contributions and therefore contributing towards the cost of any National Health Service treatment they might need, or

[6] HC 395, 1 October 1994.
[7] Home Office Research and Statistics, *Control of immigration statistics,* 2009, at http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1510.pdf

towards their children's education, both points raised by the UK Border Agency. This proposal also risks discrimination against women, for the reasons given above. It remains less acceptable in many societies if one half of a couple has to put his/her career on hold while accompanying a spouse to study, for this to be the husband.

The Migration Advisory Committee's 2009 report on the Points-Based System[8] considered dependants of Tier 2 workers and concluded that there should be no change in their right to work (para 7.95):

> 'there is no sufficient reason to conclude that greater restrictions on working rights for dependants would lead to improved outcomes – either for UK workers or the UK economy. It is notable that the stakeholder evidence we received on this issue almost universally supported the ability of dependants to work.'

This conclusion is equally valid for spouses and partners of students. The UK Border Agency's approximation of figures for students' dependants and lack of any evidence of how many of them work is an inadequate basis for policy-making.

If the government decides to go ahead with this proposal, ILPA urges that it should confirm that students' spouses who have already entered the UK will be permitted to change their status to work under Tier 1 (in whatever form it continues) or Tier 2 without needing to leave the UK to apply, and that they will not be counted against the migration cap. We would also urge that if a spouse has a job under Tier 2, and therefore independent permission to remain, then his or her salary should be considered as part of the student's resources available when applying for entry clearance or for an extension of stay.

If family members' use of public funds is the main issue, this is not an adequate reason to restrict access to the UK. Students are paying large amounts in fees and in living expenses and the public policy implications of refusing to educate children and refusing to treat illnesses would be undesirable. In some circumstances, children may be educated privately, and some families may have private health insurance. The issues of National Health Service and state school student access are not an issue for foreign students alone (e.g. they also apply in the case of EEA workers' dependants) so if the government proposes any changes affecting access to the National Health Service/state schools this should be reviewed in a holistic context. ILPA opposes any further restrictions in access.

[8] Analysis of the Points-Based System, Tier 2 and dependants, August 2009, at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/pbsanalysis-09/

Question 15: Do you agree that differential requirements for high and low risk students should be adopted?

No.

As ILPA wrote in its response to a previous Tier 4 consultation on 4 December 2009,[9] this is stereotyping and creates the strong risk of unlawful discrimination. It would require an authorisation under s. 19D of the Race Relations Act 1976 as amended, and an authorisation based on the country of origin could not be justified under the law. Illegal migration from one country in the past does not mean that there will be in the future. One student from a country who broke the conditions on his stay does not mean that another one will, or is more likely to. Guilt by association can have no part in an equitable immigration law.

The Independent Chief Inspector's recent series of reports on the entry clearance processes dealing with applications from Pakistan showed how entry clearance officers working in Abu Dhabi treated applications from nationals of the Gulf states and of Pakistan differently and recommended that UK Border Agency should 'take immediate action to ensure it is operating in accordance with its duty under the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000.'[10] In its response to that report, the UK Border Agency merely 'noted' this recommendation but also 'agreed to review this area of policy.'[11] It stated 'we are currently considering, as part of a wider review, whether changes are required to the Immigration Rules to bring greater transparency to our risk-assessed approach to decision making. We will review our current policy by the end of 2010.' ILPA urges that this proposal be considered in the light of that policy review, to ensure that any policy that the UK Border Agency proposes with respect to students is lawful.

Question 16: Do you believe that we should focus on the abuse of documentary evidence for maintenance and/or qualifications as the basis of differential treatment?

No.

While the UK Border Agency should be vigilant in detecting forged documents from whatever source, UK Border Agency profiling of nationalities using forged documents in table 2 of this paper ranks certain countries highly, but as these

[9] Points-Based System, Tier 4 review, ILPA comments, 4 December 2009, at www.ilpa.org.uk/submissions

[10] Inspection of entry clearance in Abu Dhabi and Islamabad (January - May 2010), published November 2010.

[11] Agency response: entry clearance in Abu Dhabi and Islamabad, November 2010, p. 2, at http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/chiefinspector/

countries have higher levels of applicants overall it does not necessarily indicate applicants are more prone to use false documents - unless the UK Border Agency has further proof or statistics that have not been published.. The figures could also be because UK Border Agency has more rigorous checking procedures in some countries than others, and thus creates a vicious circle. The Chief Inspector's reports on the visa system for Pakistan, cited above, give many useful pointers on the dangers and possible illegality inherent in making generalised assumptions about people of a particular nationality.

The UK Border Agency's table 2 in the consultation paper based on 'management information' gives no indication of the numbers of forged documents found from applicants at each of the 10 posts listed, the number of applications at each post and whether the 'top 10' is in numbers of documents, or is a proportion of the number of applications where forged documents were submitted, or even whether the list includes a duplication of applicants in Islamabad and in Abu Dhabi. It does not state how many of these refusals were successfully challenged at appeal, or in how many cases evidence was later produced to show that documents were not forged and therefore that the refusal was wrong. It is an inadequate basis for any change to the law.

It is certainly the case in practice now that applications made in some countries are checked more thoroughly than those in others – even though the immigration rules are the same. This means that more allegedly forged documents are found because more are looked for, but when applications are refused on those grounds and appeals are lodged, it may transpire that the UK Border Agency has no, or no adequate, evidence to support its assertion of forgery. People who have been told that their bank statements or pay slips are forged when they are not may be able to appeal with evidence from the issuer of the document to confirm that it is genuine, or may be so hurt and angry that they will never consider travelling to the UK again.

Sponsoring institutions wishing to increase their numbers of students from certain areas of the world and entering on recruitment drives will have less incentive to do so, despite high numbers of potential students (e.g. India, China). There would be a lower chance that these student applications would succeed in a slanted verification process, and the UK would lose out on the contacts being made by the future business and political leaders of these emerging economies.

It would be better to make the process of evidencing maintenance and education qualifications clearer overall. When documents are found to be false, after a rigorous and transparent checking procedure, this may justify refusal, but the decision must always be made on an individual basis, and there must be a right of appeal against the refusal.

Question 17: Do you believe that we should also, or alternatively look at the sponsor's rating as a basis for differential treatment?

No.

Using non-compliance in the UK and institutions' attendance levels and records as a profiling indicator would be unfair, as it would penalise students of certain nationalities if other students from their country, wholly unconnected to them, had abused the system, or if there were temporary administrative failures in an otherwise-good college. It is better to address it by rigorous and fair processes across the board.

If there were differential treatment on the basis of whether the sponsor was Highly Trusted or not, this would be more in keeping with the Points-Based System ethos of putting the onus on sponsors to regulate their actions to prevent abuse. It is also possible that a proposal to treat students at Highly Trusted Sponsor institutions differently would lead to a rush of applications from particular countries to such sponsors' institutions. However if Highly Trusted Sponsor status is to be used as a mechanism for prioritising certain student applicants, the Highly Trusted Sponsor accreditation process must be made transparent and uniform.

Question 18: Do you think that more should be done to raise accreditation and inspection standards to ensure the quality of education provision within private institutions of further and higher education for Tier 4 purposes?

ILPA's expertise is in immigration law, not in accreditation of education institutions, but we are concerned by reports from many of our members that the UK Border Agency regulation of education institutions is ineffective and heavy-handed. We agree that education provided in the UK should be of the highest quality and that accreditation overseeing bodies have a role in this, as well as the private education institutions themselves. Our direct experience of accreditation is with the Office of the Immigration Services Commissioner and the Solicitors Regulation Authority, which have not eliminated incompetent advisers. Any change of immigration rules based on accreditation bodies will be a longer term change.

Question 19: In the light of the proposals described in this document, what do you think will be the main advantages / disadvantages, including any financial impacts, to you, your business or your sector?

This is also not directly relevant to ILPA's expertise, but we would expect both education institutions put under more pressure, and students having to negotiate

more complex procedures, to have an increased need for legal advice and representation – not a consequence we believe that the UK Border Agency would welcome.

Sophie Barrett-Brown

Chair

ILPA

31 January 2011