ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

ILPA RESPONSE TO THE VISITORS CONSULTATION PAPER

ILPA is a professional association with around 1,000 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 training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups and has given its views to the Border and Immigration Agency (BIA) throughout the development of the Points Based System.

ILPA does not support the general idea of changing the present simple visit category into several more complex statuses. The paper gives no adequate reasons for doing so and only states that visitors at present come for several different purposes. It is not clear why this is in any way a problem, whether for individuals or for the state. Visits are usually for more than one purpose and ILPA sees no problem with this. The goal specified within the paper is that the aim is "…a simpler, clearer system for visitors and their status and entitlements, which helps promote travel to the UK but is robust against abuse" but creating more categories would not achieve this and indeed runs counter to the current intention of 'simplification' of the immigration; it is particularly notable that at a time when the Points Based System is being introduced to rationalise multiple immigration categories into a single-points based system (condensing approximately 80 categories into five tiers), precisely the opposite appears to be being contemplated for the visitor category, creating multiple separate visitor categories/subcategories in place of a single main visitor category.

The paper makes no provision for people who do not fit neatly in to one of the categories it lists but who may straddle several – a person coming for an academic conference who also has relatives living in the UK, a business person based abroad who is required to attend meetings in the UK but also has friends in the UK, who will quite legitimately be coming for more than one purpose. At present it makes very little difference to someone who obtains a visa/leave to enter as a visitor whether they have given a detailed breakdown of all their reasons for visiting and there is no need for the immigration authorities to know all about precisely which of the permitted activities the visitor may engage in during the entire visit or which of those activities may constitute their primary purpose. Forcing a person to choose between possibly-overlapping and closely-defined categories and having different criteria (and conditions of leave) for them is a way of creating more work for Entry Clearance Officers and possibly the appellate authorities in deciding on categories, which would not be a sensible use of limited resources.

Without adequate explanation of the reasons why these complex proposals are being made, ILPA sees them as unnecessary and undesirable. They would make coming to visit the UK still more bureaucratic and would create unnecessary work for entry clearance officers and immigration officers. Even the current system and visit visa application forms are more complex than necessary. If the UK wishes to remain a tourist centre it is not helpful that the current visit visa application form (VAF1) runs to 21 pages, asking a lot of detailed questions (and only in English). By

contrast, the Schengen visa form is only two pages. If a visitor had to choose between multiple different types of visitor application this would surely only serve to make the process more complex.

The consultation document makes no mention at all of non-visa nationals and the references throughout the document to 'visas' (which only apply to visa nationals) suggests a failure to recognise the current distinction between these two groups in the procedure for seeking leave to enter the UK as a visitor. A visa national must apply for a visa from a British diplomatic post abroad prior to entry (which is typically issued for six months but may also be issued for longer periods, up to 10 years, subject to a maximum single visit of 180 days) whereas a non-visa national, such as a US citizen, does not require prior entry clearance and seeks leave to enter as a visitor on arrival to the UK. Some of the proposals appear to be predicated on the perceived advantage of a commemorative visa or reduced visa fee when a substantial proportion of visitors will neither be making a visa application nor paying a fee since the 'apply' on entry to the UK. We presume that it is not contemplated that visa-free entry for non visa-national visitors will cease (and ILPA would strongly oppose any such proposal), not least as such arrangements are frequently reciprocal and the imposition of visa requirements on non-visa nationals visiting the UK would surely result in visa requirements on British citizens visiting certain of the countries affected. We would observe that seeking to implement these complex proposals for different classes of visitor at ports of entry would be highly impractical and likely to cause significant delay as immigration officers would be faced with having to determine each visitor's primary purpose and which of several different visitor categories the visitor should be admitted under. Equally, it would add to injustice as well as unnecessary complexity to have increasingly different systems for visa nationals and non-visa nationals.

Visa-national visitors coming for short periods may obtain multiple-entry visit visas (which can be valid for up to 10 years) and may enter the UK numerous times during the validity period, whether for business or leisure (provided that their activities in the UK fall within the permitted activities of visitors). Such individuals would need to submit multiple applications under these proposals as separate visas would be required depending upon the various different purposes of each visit (such as visiting family, attending a meeting, attending an event, sightseeing). Far from simplifying the process or being more cost-effective as suggested in the consultation document, separate visitor categories would add a further layer of complexity, cost and administration.

When the plans for e-borders and for exit controls come into force, the UK will have full records of people coming in and out and will be able, should it wish, to connect these with the details of people in the country and with the visa records abroad. The use of biometrics was stated to be for the purpose, as well as of checking fraud, of making things easier for the vast majority of visitors. That has not happened and the proposals here would also not help towards that aim.

We have the following specific observations in respect of the questions raised within the consultation.

2.4 Do you think the current maximum leave for tourist visitors should be reduced?

NO.

There is no benefit in reducing the current maximum leave granted to tourists. Whilst a relatively small percentage of visitors may wish to stay in the UK for longer than three months, there is no case made within the consultation paper for prejudicing those who wish to do so. The statistic quoted within the consultation document from the ONS International Passenger Survey that 1.1% of all visitors do so would suggest approximately 65,000 visitors to the UK are in this category. Immigration practitioners regularly encounter circumstances in which individuals remain beyond three months as visitors. Some common examples include:

- those paying a visit for more than three months to the UK to visit family members who are temporarily in the UK, a common situation.
- parents intending to accompany children over the age of 12 to start education in the UK – there is no other provision within the Immigration Rules which would permit this;
- parents formerly resident in the UK now undertaking proceedings in the family courts;
- people of independent means who simply wish to take extended holidays in the UK without applying for leave to remain in a category leading to settlement.

It is difficult lawfully to change immigration status within the UK having entered as a visitor. Extensions of stay as a visitor are only permitted in limited circumstances. With no evidence cited of any problem caused to the UK by visitors who stay for up to six months, this change is unnecessary.

2.9 Do you think we should introduce a group tourist travel visa?

ILPA has no specific view on this. We believe this may be an expedient way of processing such applications for groups of visitors, but perhaps this is a matter which should be guided by observations from travel companies.

2.10 Do you think the group tourist travel visa should be time limited?

NO.

Leave to enter as a visitor should not have any shorter time limitation.

2.12 Do you think a specific category of events visitor, included under the tourist category, should be created for major sporting and cultural events? If yes, what type of events do you think should qualify for inclusion in an events visitor subcategory? Please select all that apply.

NO.

Individuals attending these events should be granted leave to enter the UK within the general visitor category. This is how the present system operates in respect of major sporting events. It appears to work well and we query what benefit there would be of introducing a new, specific event visitor category. The stated goal of the consultation is to create a system which is clear and capable of preventing abuse; since the paper gives no evidence or suggestion that these immigration categories are being abused at present, we favour the clearest system possible.

At present, some of these activities are accommodated by the visitor category (such as attendance at major sporting events). Other activities are categorised as permit-free employment (such as attendance at a performer at some festivals); we suggest these should be accommodated within the visitor category also, since these short trips, albeit for employment, do not have the characteristics of an employment relationship which should involve a sponsor taking responsibility for the individuals concerned. The definition of "permit free festivals" within the IDIs limits these to a specific list and sets particular criteria the festival must meet before performers may attend without a work permit. A better way to accommodate such performances would be if there were a general presumption within the visitor immigration category that performance at a festival is a permitted activity as a visitor; should the Entry Clearance Officer or Immigration Officer have doubts as to the *bona fides* of either the performer or the event it would of course remain possible to refuse entry clearance or leave to enter.

There is simply no case made within the consultation document why the events visitor category would be preferable to the present system, in particular in relation to spectators (as opposed to participants) who can clearly attend such event under the present visitor Rules. It is stated that the Government believes there is a need for such a category and that tourism might be boosted by this, as it could be branded, time-limited and discounted. The latter could be achieved equally well by admitting those attending events within the general visitor category. If it were felt an appropriate marketing strategy, visitor entry clearance to attend the Olympic Games, for example, could be branded as such with a discount. We doubt there would be any extra boost to tourism created simply by the existence of a special category of visitor to accommodate the event, which is what the document suggests. Further we would remind you that non-visa nationals do not submit visa applications and accordingly there is no fee to discount or branded visa to be issued. In respect of visa nationals, we recognise that the Olympic Games may lead to an increased numbers of visa applicants and therefore pressure on British posts; this could be best met by a simplified visa application process.

The list of potential events within the consultation document which could be accommodated in this category suggests that it would be complicated to define "events visitors" and potential tourists may be lost to the UK on the basis that the event concerned is not on the list held by the Entry Clearance Officer. The evidence required about the visitor's intentions, to enable an Entry Clearance Officer to decide if the primary purpose of the visit is to watch the sporting event, or to see family and friends who may also be going to the sporting event, or to have a holiday as well, or even to establish whether the person intended to visit the sporting event at all or to sell the ticket at a profit, would create a whole raft of unnecessary entry clearance work. Few visits have only a single purpose: they may include sightseeing

and shopping and seeing friends as well. Once in the UK, the visitor's activities as well as attending the Olympic or other event could not be monitored, so any restriction on the nature of the visit would be without purpose. And what of an 'Olympic visitor' who decided after entry not to attend the event, or who could not obtain a ticket – would she or he become an illegal entrant and thus subject to the provisions of HC321 if she or he ever wanted to visit again?

If the intention is that the event visitor will also be free to engage in other visitor activities (such as other touristic purposes, such as visiting friends, sightseeing etc), we see no purpose for a separate event visitor category; if the intention is that the event visitor will only be permitted to attend the event and engage in no other tourist activity, we would strongly oppose this as being both undesirable and unworkable.

2.13 Do you think the events visit visa should be time limited? If yes, how long do you think the visa should be valid for? Please select one option.

Not applicable – ILPA does not consider that there should be an events visitor category. If special events visas are created, they should have the same six-month validity as all other visit visas.

3.4 Do you think a specific category of business and special visitors should be created?

3.11 If we have a business and special visitor category, what do you think the maximum length of time a business visitor should be allowed to stay in the UK should be? Please select one option.

3.12. What activities do you think business visitors should be able to undertake whilst in the UK? All views are welcome

3.13. What options should be available to make travel more flexible for business visitors? Please select all that apply.

3.27 Please indicate which of the following activities, if any, should be included in the list of activities permitted by business visitors. Please select all that apply.

A separate business/special visitor category is not necessary *unless* it is proposed that the conditions of leave to enter for business visitors will permit working in the UK, warranting a separate category.

The overriding aim of the reform of the visitor Rules and policy should be to make it easier for individuals to understand and to use.

If the conditions of leave under a separate business visitor category would not allow work to be undertaken in the UK, clarification on the definition of what business visitors are permitted to do is nevertheless required and this could be addressed

within the IDIs. This point is mentioned by the Independent Monitor of entry clearance refusals without the right of appeal in her March 2007 report, in which she also comments that posts cannot reliably separate figures for tourist and business visas issued.

The current guidance for business visitors is incomplete and, in parts, contradictory. For the business visitor the main difficulty at the moment is not about what type of visitor they are (that problem will arise more frequently if the visitor category is subdivided) but identifying whether their activities properly fall within the category of business visitor or whether they require a work permit. The current guidance is just over a page long and does not purport to define this group. The guidance simply gives examples of circumstances in which a traveller is not a business visitor, some typical examples of passengers who are and other groups of people who will be accepted as being visitors. The consultation document states that there were 1,690,000 business visitors to the UK in 2006, a figure we consider likely to be an underestimate given the likelihood many such passengers will be unrecorded and simply categorised as "visitors" instead. It appears astonishing that an immigration category encompassing such a large number of people remains so poorly defined.

The current list of activities permitted to business visitors appears an arbitrary summary of potential activity in the UK. A regular comment from clients to immigration practitioners on the IDIs on business visitors is that the document appears to have been prepared by people with no practical experience of international assignments. A more systematic approach to defining what business visitors are permitted to do in the UK is required.

Our practical experience of such matters is that immigration officers in the UK and Entry Clearance Officers overseas tend to make little reference to the IDIs in their decision-making in any event. Practice is inconsistent.

Aside from significant confusion caused to individuals by the guidance and practice, the current lack of clarity is a cause of concern for both major companies who may accommodate several thousand business visitors to the UK each year and smaller businesses. Lack of consistency in interpretation of the guidance regarding business visitors can result in confusion and can encourage bad practice within international organisations.

Tier 2 of the Points Based System is, at the time of writing, likely to include a requirement that Intra Company Transferees have an English language qualification and it also appears that employers will not be able to apply as sponsors under Tier 5 for temporary workers (for which no English language requirement of proposed). A significant number of potential short-term intra-company transferees to the UK may no longer be able to qualify for certificates of sponsorship as they will not possess such a qualification, but may be required in the UK for critical short-term/urgent projects that would not impact in anyway on resident labour. It is suggested that an appropriate way to accommodate such short-term assignees would be to introduce a *de minimis* period of employment within the business visit category. This would allow such assignees to respond to specific business needs, whilst not obliging them to obtain English language qualifications which they may struggle to obtain and would not in fact require for their work. As stated above, ILPA would recognise the utility

of a separate business visitor category if it is intended that such a category would allow short term employment/work in the UK, which could accommodate circumstances such as the above; if no work will be permitted ILPA sees no material distinction between this and the current visitor Rules/policy and accordingly would see not justification for a separate category.

We would suggest that a new definition of activities which should be included in a revised IDI to encompass business visitors should be the following:

- the IDIs should be more coherently defined to avoid the ambiguity and inconsistency currently there. We suggest it would be inappropriate to try to define business visits in terms of the occupation or precise activity of the employment undertaken and better to try to do so based on clear factual matters which should not be in dispute (such as, for example, the place at which the individual is employed and the employment relationship between the visitor and the UK entity)
- paid work for a specified limited period should be included within the definition

3.30 Do you think that within the business/special visitor category there should be a
specific subcategory of special visitors to bring together the current special visitor routes?

3.31 If yes, do you think that we should include academic visitors under the special visitor route?

No, a special visitor category is unnecessary.

3.32 The consultation document does not include a question in connection with its paragraphs about domestic workers. ILPA notes the commitment to 'finding a solution that will provide the right level of protection to those who are exploited' and urges the Border and Immigration Agency to provide details of such a solution, discussed by Liam Byrne at the Labour Party Conference 2007.. The present rules were welcomed by all working with domestic workers and has had significant effects. When ILPA members met with James Quinault, then heading up work on the Points based system, on 28 November 2008 Mr Quinault stated that it was the Border and Immigration Agency's view that providing domestic workers with a route to settlement and the ability to change employer had improved the situation in terms of fighting exploitation. It is vital that domestic workers should keep the ability to change employers and keep a route to settlement, as these are the important protections against exploitation. To abolish the category and allow domestic workers to enter for only six months, and then have to leave, is no solution. It will push the worse forms of abuse underground. It will make the UK a less attractive destination for those who wish to bring with them the person who has been caring for their children since they were very small, or who has been with the family for years.

5.4 Do you think a separate category for those wishing to visit family in the UK should be created?

Not applicable. In practice, there is such a separate category at the moment, because those for whom a family visit is part of the purpose of the visit enjoy a right of appeal whereas those in other categories do not.

Many people who come to the UK for family visits come for a range of purposes at the same time. People's lives are more complicated than these specific either/or choices and the rationale for the different types has not been adequately explained. Why should people have to make unnecessary choices about what the major purpose of their visit is? It is not clear from the consultation paper why the Border and Immigration Agency considers this would be desirable and in the absence of any reasons or explanations, ILPA sees no merit in the change. Family visits are of importance in general in maintaining family contacts and providing support at times when families need it, when a person is ill, when a new baby is born. Usually a family visit will be for a few weeks often for a special occasion, but in other circumstances it will be necessary to stay longer. ILPA would not support any reduction in the general time for family visits.

As stated earlier, people often will not fit neatly in to one of the proposed categories listed but may straddle several – a person coming for an academic conference who also has cousins living in the UK, a business person based abroad whose sister and her family live in the UK, who will quite legitimately be coming for more than one purpose. At present it makes very little difference to someone who obtains leave to enter as a visitor whether they have given a detailed breakdown of all their reasons for visiting and there is no need for the immigration authorities to know all about this. Forcing a person to choose between possibly-overlapping and closely-defined categories and having different criteria for them is a way of creating more work for entry clearance officers and possibly the appellate authorities in deciding on categories, which would not be a sensible use of limited resources.

If this change is made, ILPA urges that in guidance to applicants it is made clear that a family visitor will have the right of appeal if refused and that those for whom visiting family is one purpose of their travel are urged to state this and thus gain an appeal right.

5.8 Do you think family visits should be sponsored?

No. This should not be a necessary part of the visit. There should not be different rules for people visiting from different countries; if the visitor rules are to be more prescriptive and detailed this should be for all countries. The amount of work involved in obtaining more detailed information and evidence for all could not be justified on the Border and Immigration Agency's stated intention of concentrating effort where risk is highest.

Financial sponsorship is not necessary for all visitors. Many **prospective visitors are fully self-supporting and able to maintain themselves as persons of standing and of means in their own country. Not everyone from less affluent countries needs to be sponsored by a British citizen or resident in order to come here for a visit. If such a person states that their trip is also**

a family visit, say to attend a family function, see a sick or dying relative, but they are fully self-supporting how would they be categorised? That a person is coming to visit a relative does not mean that that relative needs to take responsibility for the visit.

If sponsorship is pursued, the requirements must be clearly defined and operated consistently throughout the world. They should not be complex; family visitors may state who it is they are planning to visit and the person in the UK may confirm that the visitor is expected and, if this is necessary in the individual case, that financial support is available for the visit. The means of support may be those of the visitor, or the UK based family member or a third party. Onerous and complex lists of documents, such as those set out for Tier 1 General in HC 321, should be avoided. Reports of successive Independent Monitors have set out the difficulties and inconsistencies caused by failure to take a sensible view of the support and maintenance requirements.

5.9 Do you think that the documents required for a family visitor visa should be clarified?

The requirements should be clarified, but not uniform as the conditions and documents in each country are different. We would not advocate going down the route that has been pursued under the Points Based system of requiring specified documents. Asking for the same documents in widely differing countries risks unlawful discrimination, when they are readily available in some and impossible to produce from another. The present system is discriminatory in that many more documents are required from visitors in some countries than others, and the Entry Clearance Officers have huge discretion in deciding what documents they will accept. It would not be acceptable to require as a matter of law documents such as pay slips and bank statements from sponsors or visitors from only certain countries – both because inconsistent requirements would be unfair, and because evidence of wages or salaries will be shown in different ways from different countries. The experience of the Highly Skilled Migrant Programme has shown the danger of specifying an inflexible list of documents. Introducing this bureaucracy for short visits would be disproportionately onerous.

Clarity about what is required is key. It would be helpful to have clearer explanations to visitors and to their sponsors of what has to be proved in order to satisfy immigration officers about their plans and intention. There should be clarity and uniformity as to the criteria to be met; the applicant can then produce the documents available to him/her that demonstrate that the requirement is met. A list of documents which could be acceptable proof might be helpful, but should also make clear that it would not preclude other documents to show the particular circumstances of the applicant. It would be simpler to have a standard list of possible documents for a sponsor to produce, as the sponsors will all be in the UK, but people's circumstances still vary widely. Transparency of the process is key – it is not acceptable for different British posts to have separate and secret lists of documents they require.

If a list of documents were to be established, it must not be prescriptive and should not create a huge extra burden for visitors and sponsors. There should also be a

clear and uniform procedure throughout the world on how to check that documents are genuine and the reasons for Entry Clearance Officers suspecting falsity or forgeries must be made known to applicants. Assertions are not enough.

5.10 What documents do you think should be submitted in support of a family visitor application? Please select all those that apply.

See answer above. If it is decided to create a standard list of documents then these should include evidence of finances of *either* the visitor *or* the sponsor to show support, for a recent period, but both should not be needed and the provenance of the money should not be investigated. A simple letter of invitation or sponsorship of the visit should be adequate, including the relationship of the sponsor and the visitor and any particular reason, if there is one and it is relevant, for example a family wedding, for the visit at that time. The information to sponsors and applicants should make it clear that a sponsorship declaration, witnessed by a solicitor, is *not* required; ILPA is aware that the immigration authorities have been stating this for decades but it has not got through, and people still pay money unnecessarily to solicitors for witnessing signed documents which do not add any value to the application and may be positively harmful when they are shoddily prepared, inconsistent with information given by the visitor and not supported by documentary evidence. The information in the sponsorship declaration may well be useful, but that is an argument for UKVisas to prepare a pro forma which is freely available and can be downloaded. A list of documents could never be exhaustive nor cover all possible sets of circumstances. UKvisas recognises in its guidance notes for visa applications that documents are not always available and advises applicants to explain why they do not have a specific document rather than attempting to create it when it is assumed to be necessary, but is unavailable, and the person can nevertheless meet the requirements of the rules without them.

5.13 Who do you think should be defined as a family member, and, if sponsorship is introduced, do you think they should be able to sponsor a family visitor? All sponsoring family members will be required to be aged 18 and over. Please select all that apply.

The list should maintain all the existing categories of relative and should be increased to be clear that it includes civil partners, nieces, nephews, relations-in-law, step-parents and step-siblings. If a woman is not working because she is caring for a baby her husband should not be prevented from sponsoring his parents-in-law to come to meet their grandchild. ILPA accepts that a person making any sponsorship declaration and agreeing to support a visitor should be an adult, but this underlines our point that sponsorship should not be mandatory. When a child is in the UK, for example attending a private school, family members should be able to come to visit him or her.

5.14 Sponsors will be limited to those aged 18 years and over. Do you think sponsors should also be limited to those with a particular immigration status?

No. There are many reasons why someone in the UK temporarily would require a family visit – eg a student wanting family members to see his or her graduation ceremony and then the family return to the home country together. There are also circumstances when a person with no immigration status requires a visit – for example an asylum-seeker who is ill, or a relative who is imprisoned in the UK and therefore not in a position to offer financial sponsorship. Their visitors should not be prohibited from coming.

It is the visitor who has to satisfy the immigration rules to come. The sponsor may lend weight to the application but the visitor may qualify under the rules even if the sponsor has an irregular status.

5.18 How do you think a sponsor should ensure that their sponsored family member complies with the conditions of their visa? Please select all that apply.

No. ILPA does not agree that a sponsor should have to provide a financial bond or security and does not think that a statement witnessed by a solicitor is of any more value than a simple statement. The Foreign Office has stressed for decades that a solicitor-witnessed declaration of financial support is not required and there is no need for it now. A draft form of words, available on UKVisas website, which would be acceptable would be useful. The kind of financial sponsorship envisaged is akin to that being discussed in relation to Tier 2 and 3 of the Points-based system. There has been some consultation on this but no decisions or detailed processes have been published and it has not come into force. As more work has been done on this it would be sensible to wait until these tiers have come into force and have been running for some time and the effects evaluated before bringing in a similar system to some other area of the rules. The system as applying to students and workers should be tested first and glitches ironed out before it is considered extending it to others.

The pre-publicity in the media about this proposal suggested that the Home Office was proposing that the sponsorship would include a £1000 bond. This would be excessive; if several relatives were visiting at the same time, for example for a family wedding, depositing several thousand pounds at the same time as meeting the expenses of the wedding would be prohibitive. It would also add to delays in people being able to visit for funerals, and to the family's distress at the time. The paper does not mention this amount, only the idea. In the last consultation paper about fees, no amount of the fees rise was mentioned so the consultation process was flawed; ILPA fears a repeat of that process and would welcome a quick assurance that this amount is not part of the government's thinking.

ILPA opposed the idea of visitor bonds when they were raised in 1999 . Such an idea would have to be applied across the board, to all nationalities of family visitors, if it were not to be discriminating illegally on the grounds of race. It is unrealistic to expect that all British nationals sponsoring family visitors from every country in the world should have to provide a bond and unjustifiable to provide that only those from certain countries should have to do so. If several family members were coming

for the same event, for example a wedding or a funeral, trying to get several thousand pounds together at the same time, and at very short notice, could mean that family members were unable to travel for a vital family event. The Home Office would have administrative difficulties in dealing with bonds, it would add to the costs of processing visas and it would be quite unjustifiable for the Home Office rather than the owner of the money to receive interest on it.

The problem to which financial bonds have been suggested as a solution is actually that visitors are unreasonably refused and their family members, clutching at any straw which might make the visit possible, have suggested that they would be prepared to deposit money as a surety for their relatives leaving. ILPA's fear is that even if a bond system were established, the same people would still be refused visas, while the vast majority of families, who have been issued visas in the past, would also be required to deposit a bond.

It is impossible to set a bond that is fair to the vast majority of families whose relatives come to visit them and then return to their country of origin which is also high enough to deter the minority who would hope to remain illegally - £1000 may be cheaper than the fees of a people-smuggler.

5.20 Do you think a sponsor should face a penalty if their family member fails to comply with the conditions of their visa? If yes, what do you think these penalties should be? Please select all that apply.

No. If a sponsor knowingly makes a false statement in support of a relative then he or she could already face prosecution. If it is felt necessary to take action in such circumstances, the Border and Immigration Agency already has the power to do so.

Sponsors and visitors are normally adults who make their own decisions. A sponsor cannot physically drag a drugged visitor to the airport in handcuffs to force him or her to leave, and can do no more than impose moral pressure. When a sponsor has been deceived by a visitor, who disappears and does not return, this is rarely the sponsor's fault, who may have done everything legally possible to make the visitor leave. The sponsor may also have informed the immigration authorities that the person has not returned and no action may have been taken. It would then be unfair to refuse any other family visitor the chance to come. If any system of sureties or bonds is set up, the sponsor must have the opportunity to make representations to an independent decision maker, about why the bond should not be forfeit.

5.24 Do you think that the current appeal rights for family visitors should be revised?

5.25 If yes, how do you think rights of appeal should be revised? Please select all that apply.

No, the current appeal rights should not be revised, unless to extend them to other visitors as well as family visitors, and all family visit appeal rights should be retained.

The right of appeal is an important safeguard against arbitrary and biased decision-making and appeals can correct errors of law and of practice made by Entry Clearance Officers. The existence of the appeal, to an independent immigration judge, is an important check on the decision-makers and in the interests of justice, should continue. The Independent Monitor of entry clearance refusals without the right of appeal, while an important post, is no substitute as the monitor cannot alter individual wrong decisions and secure justice for individuals. It is right that some family visits are for a time-limited reason, but many are not; and even if an appeal is successful after the original event, its success may enable the visitor to come in the future. ILPA supports the continuation of the current structure of appeals, being heard in the UK and with the choice of the case being decided at an oral hearing or on the basis of a written case, at the choice of the appellant. The Home Office has based its arguments for withdrawing rights of appeal in Points Based System cases on the notion that these are simple, straightforward and objective decisions. ILPA's disagreement is a matter of record. But the Home Office has never suggested that family visits fall into this category and indeed, given the complex human rights, in particular Article 8 right to private and family life, matters that they raise it would be very surprising if they did so. We refer you to the Home Office report '*Family visitor appeals: an evaluation of the decision to appeal and disparities in success rates by appeal type*' out in June 2003 and the articles in ILPA's official journal, Tolley's Journal of Immigration, Asylum and Nationality Law: *Family visitor appeals: an examination of the decision to appeal and differential success rates by appeal type*[1] *and Family visitor visas: ECO decision-making 200-2003*[2] for a discussion of the importance of an oral hearing. See also the Citizen's Advice *Inquiry into Asylum and Immigration Appeals*[3] *visas.*

Family visit appeals have only been in effect in their present form since October 2000 which is not long enough to see whether there are ways of improving the system. Administrative review, which is proposed for decisions under the points-based system, and which will come in to force shortly for selected nationalities, is not an adequate substitute. But again, when a new system is about to come into force, it is sensible to see how it works and to iron out any possible glitches, before extending an untried and inferior system to another area of law. When it ain't broke, don't fix it.

Sophie Barrett-Brown
Chair, ILPA
11 March 2008

[1] Gelsthorpe, V., R. Thomas, D. Howard and H. Crawley (2004) Vol 18, No 3 IANL 167
[2] Dunstan, R., (2004) Vol 18, No 3, IANL 100
[3] 10 August 2004, see
http://www.citizensadvice.org.uk/index/campaigns/policy_campaign_publications/consultation_responses/cr_immigrationassylum/cr_committee_lcd