15 July 2005

Tony McNulty MP
Minister for Immigration, Citizenship and Nationality
Home Office
Marsham Street
London SW1

Dear Minister

New policies on refugees and leave

ILPA appreciates the opportunity afforded by the Minister for consultation on the new policies concerning the leave to be granted to persons recognised as refugees in the UK. This is a matter of considerable concern to our members and their clients and we request that ILPA's views, distilled from many years combined practice and analysis of policy-making, should be given credence and weight in the implementation of the proposals. ILPA recalls that the policy to grant ILR to refugees was an initiative of this government which ILPA supported as an appropriate and proper acknowledgement of the enduring needs for protection and integration of refugees.

We are aware that the consultation is directed to policy implementation. Even so, it is important to state our general concern about the proposals themselves. ILPA's considered legal, professional view is that the provisions in the Qualification Directive (2004/83/EC) on cessation do not require that immigration leave given to those recognised as refugees is necessarily revoked or curtailed. We would seek an opportunity to make detailed submissions on this point. Even if we cannot now change the policy decision on granting initial temporary leave to refugees, our concerns do justify a careful, sensitive approach to the implementation and practical design for the policy proposal.

ILPA's general concern

ILPA is concerned that the proposals infringe Article 34 of the Refugee Convention which requires contracting states to make every effort to expedite naturalisation proceedings for refugees. This obligation is not simple rights rhetoric. It is a practical response to the refugee experience and derives from the observation of those working with refugees who can attest that uncertainty and insecurity about their protective placement can prolong the suffering and the post-traumatic symptoms of

victims of torture and trauma. This observation is now confirmed by current medical research which shows that post traumatic stress victims need a sense of safety and security to recover.

On a practical level the new arrangements will result in repeat deliberations upon refugee claims. ILPA notes that clause 1(5) of the Immigration Asylum and Nationality Bill– the proposed section 83A - envisages that refugees who also have discretionary or humanitarian leave to enter or remain may have their leave to remain curtailed or refused on the grounds that the person is not a refugee. This provision confirms our worst fears of repeat consideration and appeals upon refugee status. This introduces new – and we would say, unjustified processing costs.

By definition, many of those with humanitarian, discretionary and/or refugee temporary leave will have family connections in the UK or will be victims of torture or trauma. It seems extraordinary to expose such persons to repeated contests on their refugee status. For the very important cohort of refugee trauma victims, this new process will require them to revisit past persecution and torture not in a therapeutic environment but in the sceptical, forensic context of Home Office interviews and appeal hearings.

Our members are well aware just how stressful the application and appeal process is for refugee clients. Their medical and psychiatric conditions are exacerbated when they fear a return to their homes. Many such clients are the recipients of medical or counselling treatment for psychiatric conditions. ILPA can envisage the thoroughly unsatisfactory situation where the immigration processing system through its repeat reconsideration process is generating costs for the NHS.

ILPA sees the new proposals adding considerably to public costs for no real benefit. In evaluating such costs, it is well to remember that these are not claimants but refugees. ILPA suggests that the implementation arrangements should be designed to capture the direct and consequential costs of repeat processing. Our experience forecasts that the real costs of this new system will be felt in the NHS, in community care and family services who will be required to deal with the distress and anxiety these arrangements will generate for refugees and their families.

ILPA requests that the principle of subsidiary protection is given considerable weight in all decision making on revocation or curtailing of refugee status and leave. There is limited if any advantage gained by curtailing the refugee status and leave of persons with family or humanitarian claims to protection or to remain. The person's status is redefined but at personal and community cost. In present circumstances where we have been forcibly reminded of the need to engender loyalty, social cohesion and foster national identity, ILPA suggests that immigration officers should be required to consider cases holistically before refugee status is re-determined or curtailed. On a broad cost benefit analysis there will be many cases where there is simply no point served, and where there may be real damage done by revisiting decisions on refugee status. We urge that caution, pragmatism and compassion be the defining principles for implementing the policy change.

In addition to these general concerns ILPA has particular comments on the settlement tests and the cessation arrangements.

ILPA's Concern about the Settlement Tests.

ILPA is concerned about the application of the proposed settlement tests. Our concern is that the tests will work in a discriminatory fashion, so as to deny settlement to the most vulnerable of refugees – those suffering psychiatric stress retarding their capacity to learn, those with learning difficulties, with limited education or aptitude, women and the elderly who have not been afforded educational advantages, may be closeted in the homes and have few prospects to learn English. If the test is applied prescriptively and with no scope for waiver or modification for deserving cases, ILPA can envisage that certain family members will be denied settlement while others will qualify. The school age children of the family may qualify but the parents fail. Again we suggest that there should be close consultation and careful design of this policy initiative. ILPA suggests that at the very least there needs to be in-built capacity for waiver of the settlement test requirement so as to avoid discrimination and unfairness to those who will be unable to meet the requirements. There will also have to be proper arrangements for refugees to receive English language instruction. There needs to be careful planning for the delivery of such services to capture those who have limited opportunities for learning English.

ILPA's Concern At Country Declaration

ILPA is very concerned at the prospect of country declarations for cessation purposes. The government's frequently stated policy is that they no longer make refugee decisions on a country basis - e.g. Zimbabwe, but only on individual cases. It cannot be appropriate to mandate individual tests for inclusion but apply generic country declarations for cessation/revocation of status. Kosova is a useful case example. It may be superficially attractive to declare it safe, but there are real issues concerning whether the UNMIK mandate provides durable change as there is still no decision on the relationship with Serbia. Also the country information makes clear there are continuing protection requirements for Roma, for minorities and those of mixed ethnicities. We expect the Kosovan example is typical and there will be few if any occasions when a generic country cessation declaration could or should be made.

We emphasise the Refugee Convention provisions on cessation - in particular that the change in objective country circumstances is appropriately exacting. Professor Hathaway's formulation of this test – that the change should be of substantial political significance, truly effective and durable, should be the formulation adopted.

The Convention cessation provision also requires consideration of subsidiary protection issues, namely whether the refugee can point to compelling reasons for continuing to refuse to return to their homes. We reiterate the points made above about the need to protect torture or trauma victims from country cessation arrangements. ILPA also recommends the exclusion from country cessation of those identified explicitly by Baroness Hale in *Hoxha & Anor v Secretary of State for the Home Department* [2005] UKHL 19 (10 March 2005), namely victims facing discrimination and stigmatisation in their homes on account of their experience of sexual violence.

ILPA also notes that such cessation arrangements have particular adverse impact on children, young people and the elderly. It is an important truism that the old and the young will experience their term of residence in the UK differently from those in their middle years. It is much more disruptive to sever the community contacts and friendships which children and young people establish in formative years. It is also harder to expect older people to readjust to their homes after five years in the UK. These considerations should be built into any country cessation provisions.

ILPA is keen to be a part of ongoing consultation on these implementation arrangements. It is hoped these initial thoughts assist at this planning stage of the process. As part of this constructive dialogue, we note our support for the policy changes to humanitarian leave which will make a real difference to those persons who are, as your policy change indicates, no less deserving of protection and family reunion.

Yours sincerely

Rick Scannell

Chair