



monthly news for members may 2011

23 MAY 2011

■ *Working with
refugee children:
current issues
in best practice*

New ILPA publication – see the purple panel for how to get your copy

■ **Justice for all
Day of action
for legal aid**

Friday 3 June 2011

McCarthy in the Court of Justice of the European Union

Is the *Zambrano* party over? So soon? The decision of the Court of Justice in *McCarthy v UK* (C-434/09) on 5 May has caused confusion, not to say consternation.

Ms McCarthy, a dual Irish/British national born in the UK who had never worked or been self employed in the UK or anywhere else in the EU and relied on State benefits, sought family reunification with her third country national husband.

The Court of Justice held that Directive 2004/38 is not applicable to a dual national Union citizen who has never exercised their right of free movement and has always resided in a Member State of which they are a national.

The Court further held that Article 21 of the Treaty on the Functioning of the European Union is not applicable to such a person providing that

'...the situation of that citizen does not include the application of measures by a Member State that would have the effect

of depriving him of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member States.'

It held that Article 21 was not applicable in Ms McCarthy's case. What of *Chen* (C-200/02)? *Surinder Singh* (C-370/90)? Let alone *Zambrano* (C-34/09 – which is addressed in the judgment), you cry? Quite.

See enclosures for reflections on the McCarthy case. See also ILPA's training programme, with Jonathan Kingham's *Introduction to EU free movement law* on 9 June (1303) for those feeling at sea and Simon Cox's *In-depth: Rights of residence under European Union law* (DT 1311), all day on 28 June.

Those interested in following this debate should ensure that they are signed up to the European subcommittee email list, and your reflections are welcome.

New ILPA publication

On 20 May 2010 ILPA held the first conference associated with the Refugee Children's Project, ILPA's programme of work funded by the Diana, Princess of Wales Memorial Fund. At the conference, ILPA launched a new publication *Working with refugee children: current issues in best practice*.

Copies of the publication are available to all ILPA members free of charge, with no postage charges. Please get in touch with Lisa.Woodall@ilpa.org.uk if you would like a copy. The publication is also available on the publications page of www.ilpa.org.uk

This is a collection of essays on topical issues in work with refugee children, drawing on ILPA's work, including the work of the children's subcommittee and on the training that has been done under the auspices

of the project. The essays cover best interests, working with child clients, legal aid and age disputes.

Ian MacDonald QC, ILPA's President, has written the forward and contributing authors are Syd Bolton of the Refugee Children's Rights Project, based at the Children's Legal Centre, Kalvir Kaur of the Immigration Advisory Service, Jackie Peirce, Shuh Shin Liu of Garden Court Chambers and Colin Yeo of Renaissance Chambers, and it is edited by Lisa Woodall, Refugee Children's Project Coordinator. Our thanks also go to Pat Kahn, Sue Shutter and Helen Williams for their work on the publication.

A report of the conference will appear in next month's mailing.

**Immigration Law
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may news

Refusal of entry to students at port

ILPA and others continue to receive worrying reports of students subjected to 'English language testing' at port and then refused entry, including in cases where the port has got in touch with the sponsoring college and invited them to withdraw sponsorship. Removals have been effected or attempts made to remove students.

We are interested in hearing from members instructed by clients with similar experiences; we and English UK are seeking a meeting with the Border Force on this matter.

Subcommittees and email lists

Ali Bandegani steps down from his role as co-convenor of the access to justice subcommittee and is replaced by Alison Pickup of Doughty Street chambers. Thanks to both, and welcome to Alison.

We have also introduced a new email list for asylum, if you would like your name to be added to it please get in touch with elizabeth.white@ilpa.org.uk.

You can also get in touch with Elizabeth if you wish your name to be added to any of our subcommittee lists.

Domestic violence – and legal aid

The April mailing highlighted the requirement, introduced from 6 April 2011 by Statement of Changes in Immigration Rules HC 908, to be free from unspent criminal convictions when applying for settlement.

Its effect on survivors of domestic violence is something on which ILPA and others have been working hard ever since. Eaves Housing, ILPA, Rights of Women and Southall Black Sisters held a meeting with officials at which officials agreed to refer the matter to the Home Secretary. Rights of Women coordinated a joint letter to the Home Secretary which over 106 organisations have signed. The Lord Avebury's motion to regret the changes will be debated on 16 May (as this mailing goes to print).

The debate has put ILPA in touch with a wide range of organisations and individuals, as well as officials, nationally and internationally. It sends a message loud and clear that there are a very large and diverse range of people who do not regard foreign nationals with criminal convictions as pariahs, and expect them to enjoy the full protection of the law. See enclosures.

The strength of feeling on domestic violence and immigration that this and the broader 'no recourse' debate have generated may be one reason why Minister Jonathan Djanogly MP indicated in a Westminster Hall debate on 12 May that the Government is revisiting its

proposals to exclude survivors of domestic violence making immigration applications from the scope of legal aid. Good news, but it does suggest that plans to exclude immigration as a whole are proceeding apace. The Minister indicated on 12 May that an announcement on the outcome of the Legal Aid consultation is expected in the next few weeks.

Do not forget the Justice for All day of action on 3 June. If you would like a campaign action pack (complete with stickers), please get in touch with the ILPA Secretariat. If you can get local MPs and councillors into your firm, chambers or organisation, or meet them with other lawyers and providers of advice in your area that would be splendid, but writing an email to your MP or a letter to your local paper or councillor is also very worthwhile.

■ Legal aid 11 May 2011

Hansard Westminster Hall debate Col 451WH
www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110511/halltext/110511h0001.htm#11051169000003

Justice for all day of action

www.justice-for-all.org.uk/Take-part

Reform of Legal Aid – response of Administrative Justice and Tribunals Council to Ministry of Justice consultation

14 February 2011

www.justice.gov.uk/ajtc/news/450.htm

Deputy Prime Minister's speech on refugees

The Deputy Prime Minister made a speech on 10 May 2011 at the Refugee Council's party for its 60th birthday, and the 60th birthday of the UN Convention Relating to the Status of Refugees, emphasising the importance of the Convention and of protection for those fleeing persecution.

In answer to questions after the speech, the Deputy Prime Minister placed emphasis on limits on funding. He appeared not fully to understand

questions about resettlement of refugees currently living as refugees in Libya, and focused his answer on the question of 'migrant workers' arriving in Lampedusa. Asked about the detention of adults, he indicated that in his view there was a 'moral distinction' between the detention of children, and that of adults.

■ Text of the speech

www.dpm.cabinetoffice.gov.uk/news/60-years-refugee-council



mailing enclosures may 2011

- 11.05.01** Joint letter from Eaves, ILPA, Rights of Women, Southall Black Sisters to Theresa May MP, Home Secretary of 4 May 2011 and Theresa May MP, Home Secretary to Rights of Women of 16 May 2011
re domestic violence and Statement of Changes in Immigration Rules
- 11.05.02** House of Commons Hansard Written Answers 3 May 2011 on Domestic Violence and Convictions
- 11.05.03** Correspondence between Refugee Children's Consortium and Sarah Teather MP, Minister of State for Children and Families of 14 March – 20 April 2011
re enforced returns of separated children to Afghanistan
- 11.05.04** Jonathan Djanogly MP, Parliamentary Under-Secretary of State for Justice to Fiona McTaggart MP of 18 April 2011
re legal aid reform
- 11.05.05** ILPA to Jonathan Sedgwick, Acting Chief Executive, UK Border Agency of 16 May 2011
re application for Entry Clearance by 'Posted Workers' under 'Van der Elst' criteria
- 11.05.06** Correspondence between ILPA and Jonathan Sedgwick, Acting Chief Executive, UK Border Agency to ILPA of 26 April and 9 May 2011
re resumption of enforced returns of failed asylum seekers to Zimbabwe
- 11.05.07** Eddy Montgomery, Director of Operations, North West Region, UK Border Agency to ILPA of 9 May 2011
re EEA Premium Service at Liverpool Public Enquiry Office
- 11.05.08** Public Enquiry Office, UK Border Agency to all Third Party Representative Companies of 6 May 2011
re EEA applications
- 11.05.09** Public Enquiry Office, UK Border Agency of 6 May 2011
re Senior Caseworker telephone numbers
- 11.05.10** Correspondence between James and Co Solicitors and International Group, UK Border Agency of 2 – 5 May 2011
re English language testing for spouses The Gambia
- 11.05.11** ILPA to Third Country Unit, UK Border Agency of 4 May 2011
re separated children in Third Country Unit removal procedures
- 11.05.12** Jonathan Sedgwick, Acting Chief Executive, UK Border Agency to ILPA of 21 April 2011
re the welfare and best interests of children
- 11.05.13** ILPA note on meeting with UK Border Agency on the changes to the Immigration Rules in respect of requiring those applying under the domestic violence rule to be free of unspent criminal convictions 20 April 2011
- 11.05.14** Penningtons Solicitors LLP to Assistant Director, Sponsor Compliance, UK Border Agency of 20 April 2011
re Tier 4
- 11.05.15** Ian Robinson, Immigration Policy, UK Border Agency to ILPA of 19 April 2011
re Tier 4 students switching to Tier 2
- 11.05.16** UK Border Agency to Wesley Gryk Solicitors LLP of 19 April 2011
re Masters, PhDs and the English Language Requirement
- 11.05.17** International Group, UK Border Agency to Camden Community Centre of 15 April 2011
re freedom of information request re new Immigration Rules – English Language Test Centres

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- 11.05.18** ILPA note of National Asylum Stakeholder Operational Forum meeting 14 April 2011
- 11.05.19** The GEO Group UK Ltd Harmondsworth Removal Centre Stakeholders Development Plan March 2011
- 11.05.20** Action points from UK Border Agency International Group User Panel meeting February 2011
- 11.05.21** Freedom of Information Team, UK Border Agency to Blokh Solicitors of 3 August 2010 *re Sponsor Licensing mechanism and the Points Based System*
- 11.05.22** Correspondence between ILPA and Legal Services Commission of 11 – 12 May 2011 *re new matter starts*
- 11.05.23** Legal Services Commission note on billing rejects and e-form service 10 May 2011
- 11.05.24** ILPA note and data from Legal Services Civil Contracts Consultative Group meeting 9 May 2011
- 11.05.25** ILPA to Vice-President, Commission for Justice, Fundamental Rights and Citizenship, European Commission of 13 May 2011 *re EEA charges*
- 11.05.26** Independent Chief Inspector of the UK Border Agency Inspection Calendar for 2011-12
- 11.05.27** Most recent reported determinations of the Upper Tribunal (Immigration and Asylum Chamber) 14 May 2011
- 11.05.28** Note on *McCarthy* by Helena Wray 15 May 2011
- 11.05.29** What did *McCarthy* decide? note by Bernard Ryan, 15 May 2011
- 11.05.30** Residence, 'Static' Nationals and Self Sufficiency: *Zambrano* and *McCarthy* by Keith Puttick 13 May 2011
- 11.05.31** A Shock to the System: The CJEU judgment in *McCarthy* on Dual nationals and third country national family members C-434/09 by Elspeth Guild 5 May 2011
- 11.05.32** Caselaw roundup for ILPA members: *R (New London College Ltd) v SSHD* [2011] EWHC 856 (Admin), *R (MD China) & others v SSHD* [2011] EWCA Civ 453 and *RS (Pakistan) v SSHD* [2011] EWCA Civ 434 by Judith Farbey QC May 2011
- 11.05.33** Note by Universities UK on Tier 4 and language requirements April/May 2011
- 11.05.34** ILPA note of meeting of specialist practitioner groups at The Law Society 19 April 2011
- 11.05.35** Wornham and Co Solicitors to ILPA of 18 April 2011 *re new fee exemption for certain Tier 2 extension applications*
- 11.05.36** ILPA note of members and non-members' meeting on Running Zimbabwean Cases Following the New Country Guidance *EM and Others (Returnees) Zimbabwe CG* [2011] UKUT 98(IAC) 24 March 2011
- 11.05.37** LGBT Asylum: In Conversation with the UK Border Agency' invitation to panel discussion and debate 9 June 2011 at Mishcon de Reya
- 11.05.38** New Statutory Instruments for ILPA mailing May 2011

for your diary

New Chief Inspector's reports of the UK Border Agency

The Chief Inspector of the UK Border Agency has published two new reports, one where the inspectorate made a visit at short notice to shadow arrest teams, and one looking at the Agency's use of intelligence.

The Inspection Plan for 2011–12 is also available and a summary of upcoming inspections is included in the enclosures.

Current inspections include foreign national prisoners and the Detained Fast-Track, New York, Scotland and Northern Ireland, and Africa.

Members are reminded that inspection reports now frequently contain material that may be useful evidence in appeals or to support, for example, complaints, and also helps representatives to understand how the UK Border Agency works.

■ **Preventing and detecting immigration and customs offences: A thematic inspection of how the UK Border Agency receives and uses intelligence**
published 13 May 2011

icinspector.independent.gov.uk/wp-content/uploads/2011/02/Preventing-and-detecting-immigration-and-customs-offences.pdf

■ **A short-notice inspection of a UK Border Agency Arrest Team (Croydon)**
published 13 May 2011

icinspector.independent.gov.uk/wp-content/uploads/2011/02/A-short-notice-inspection-of-a-UK-Border-Agency-Arrest-Team-Croydon.pdf

■ **The Inspection Plan 2011–12**

icinspector.independent.gov.uk/wp-content/uploads/2010/03/ICIUKBA-Inspection-Plan-for-2011_12.pdf

consultations

If you would like to be involved please contact info@ilpa.org.uk

■ **Migration Advisory Committee full review of jobs and occupations skilled to NFQ Level 4 and above to inform the Tier 2 shortage occupation list – call for evidence**
Deadline: 10 June 2011

■ **UK Border Agency consultation on UN Convention on the rights of persons with disabilities: review of immigration reservation**
Deadline: 13 June 2011

■ **Tribunal Procedure Committee judicial review of 'fresh claim' decisions in immigration and asylum cases – consultation on proposed amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008**
Deadline: 17 June 2011

meetings

subcommittees

(all members welcome)

■ **Monday 23 May and Monday 18 July 2011**

Family and general subcommittee
6.30pm, ILPA

■ **Monday 6 June 2011**

Children subcommittee
5.30pm, ILPA

■ **Tuesday 28 June 2011**

European subcommittee
6.30pm, Kingsley Napley, Knights Quarter, 14 St John's Lane, London EC1M 4AJ

■ **Wednesday 29 June 2011**

Economic migration subcommittee
6.30pm, ILPA

training

Latest information on courses available can be found at www.ilpa.org.uk/train.html

All courses are in London unless specified.

■ **Wednesday 25 May 2011**

NEW Deportation and exclusion of European Union nationals and family members

■ **Friday 27 May 2011**

NEW An introduction to immigration law, getting started, the first steps to accreditation

■ **Thursday 9 June 2011**

Introduction to EU free movement law

■ **Thursday 16 June 2011**

NEW Challenging immigration decisions, appeal rights and other remedies

■ **Wednesday 22 June 2011**

NEW Challenges in the High court and appeals to the Court of Appeal

■ **Thursday 23 June 2011**

NEW Challenging immigration detention, an update

■ **Tuesday 28 June 2011**

NEW In-depth: Rights of residence under European Union law

■ **Monday 18 July 2011**

NEW Home Office policy, concessions and the exercise of discretion outside the immigration rules

■ **Thursday 21 July 2011**

NEW The general grounds of refusal and applications for leave to enter: mandatory bans and significant contrivance

Please send any requests or suggestions for training sessions to info@ilpa.org.uk

publications

■ Parliament

Sections 19 and 57 Borders Act 2007 (inserting s85A Matters to be considered: new evidence: exceptions Nationality Immigration and Asylum Act 2002) 22.3.11

Hansard HL Col WA164

www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110322w0001.htm#11032288000684

Passenger Name Records 10.5.11

Hansard HC debates Col 1040

www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110510/debtext/110510-0001.htm#110510660000003

Statement of Changes in Immigration Rules (HC 863) 3.5.11

Hansard HL Motion of Regret Col 409

www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110503-0002.htm#11050331000098

Statement of Changes in Immigration Rules (HC 908 & HC 663) 31.3.11

Merits of Statutory Instruments Committee Twenty-ninth Report

www.publications.parliament.uk/pa/ld201012/ldselect/ldmerit/137/13703.htm

Passenger Name Records

30 March 2011

Hansard European Committee debate

www.publications.parliament.uk/pa/cm201011/cmgeneral/euro/110330/110330s01.htm

■ UK Border Agency

Indefinite leave to remain – calculating continuous period in the UK 19 April 2011

guidance based on the Immigration Rules

www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/ilr-calculating-continuous/ilr-calculating-continuous.pdf?view=Binary

Izmir declaration – Rule 39 27.4.11

European Court of Human Rights

www.echr.coe.int/NR/rdonlyres/E1256FD2-DBE5-41E8-B715-4DF6D922C7B6/0/20110428_Declaration_Izmir_EN.pdf

Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea

20.4.11 UNHCR

www.unhcr.org/refworld/docid/4d4fe0ec2.html

Best Value Review: Immigration and Asylum 22.3.11

Scottish Legal Aid Board

www.slab.org.uk/news/documents/ImmigrationandAsylumBestValueReviewfinal.pdf

Saving Justice –

Where next for legal aid? 4.11

www.justice-for-all.org.uk/dyn/1303119811180/Saving-justice_final.pdf

What have I done? The experiences of children and families in UK

detention: Lessons to learn 4.11

The Children's Society

www.childrenssociety.org.uk/sites/default/files/tcs/research_docs/immigration%20experiences_full%20report.pdf

Guidance: Libyan nationals experiencing temporary

loss of funds 4.11

No Recourse to Public Funds Network

www.islington.gov.uk/DownloadableDocuments/CommunityandLiving/Pdf/guidance_libyan_nationals_temporary_loss_of_funds.pdf

100 Images of Migration competition

Migration Museum Project

www.migrationmuseum.org/competition/

documents available

from elizabeth.white@ilpa.org.uk

Letter to Rt Hon Theresa May MP, Home Secretary and Minister for Women and Equalities of 10.5.11 **re domestic violence and Statement of Changes in Immigration Rules (106 endorsements)**

UK Border Agency to ILPA re enforced returns by charter flight

Afghanistan: 27.04.11, 18.05.11
Democratic Republic of Congo (DRC): 28.04.11; Nigeria: 28.04.11

UK Border Agency guidance for sponsor applications – Tiers 2, 4 and 5 of the Points Based System

Minutes of National Asylum Stakeholder Forum meeting 22.3.11

Papers from Legal Services Commission Civil Contracts Consultative Group meeting 7.3.11

responses and briefings

available from www.ilpa.org.uk

ILPA comments on UK Border Agency draft EEA forms April 2011

ILPA Briefing for the debate on 3.5.11 on the motion by the Lord Hunt of Kings Heath (HC 863) April 2011

ILPA response to Home Office consultation on changes to immigration-related Home Office statistical outputs May 2011

ILPA response to OISC consultation on the intention to produce an Equality Scheme May 2011

ILPA briefing for Westminster Hall debate on legal aid 11 May 2011

ILPA submission to Independent Chief Inspector of the UK Border Agency re 2011/12 inspections on immigration detention May 2011

ILPA comments on UK Border Agency draft Asylum Instruction on gender identity May 2011

ILPA monthly news for members is prepared by Alison Harvey, Steve Symonds and Elizabeth White 13.5.11

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