

Immigration Update

1. These notes have been prepared to accompany a seminar discussion with a group from Widows and Orphans International on Saturday, 18th June 2011. The purpose of the seminar is to provide an update on recent or current developments in UK immigration law, particularly as these may affect persons living with HIV/AIDS; including (1) those who may wish to sponsor family to join them in the UK, (2) those with leave to enter/remain who may wish to settle in the UK or become British citizens and (3) those who are without leave to enter/remain who may wish to regularise their immigration status (including those whose cases may be in the asylum legacy).
2. It is important to note that there have been many changes in immigration law, policy and practice in recent months and weeks. It is not within the scope of these notes or the proposed discussion to address all of these changes. Those changes which are addressed here, are addressed briefly – as an introduction to the changes and their implications. In individual cases, specific legal advice may be necessary to consider any impact these changes may or may not have.
3. Further information on various matters of immigration law, policy and practice may be available from ILPA information sheets. These are produced by the ILPA information service, and are available free of charge on the ILPA website at www.ilpa.org.uk in the 'Info service' section or by email (approx. one email per month).
4. The following subjects are addressed in these notes:
 - a. Access to Healthcare
 - b. Settlement and naturalisation
 - c. Legacy cases
 - d. Family migration
 - e. Removals
 - f. Legal Aid

Access to healthcare:

5. Shortly before the last general election (May 2010), the then Labour Government published a consultation on access to healthcare. The general election resulted in a change of Government, and so it fell to the new (Conservative-Liberal Democrat coalition) Government to consider the responses to that consultation. In March 2011, the Government published its conclusions on that consultation and proposals about access to healthcare.
6. The ILPA information sheet "Access to Healthcare 4" (see page 3) sets out briefly these conclusions and proposals. The ILPA information sheet "Access to Healthcare 2" (see page 4) sets out other information relevant to access to healthcare.

Settlement and naturalisation:

7. In 2009, the then Labour Government introduced a new Act to enable it to make changes to how a migrant in the UK could become a British citizen (naturalisation). The relevant parts of that Act were not, however, brought into force before the last general election. The new coalition Government decided not to introduce the changes planned by the previous Government. However, the Government has made important changes to how a migrant may become settled in the UK (i.e. obtain indefinite leave to remain/enter). This affects naturalisation because, in order to naturalise as a British citizen, a migrant must first become settled.
8. In August 2010, the UK Border Agency introduced a process to deal with applications for settlement by refugees and those granted 5 years humanitarian protection. The ILPA information sheet "Protection Settlement Applications" (see page 5) gives more information about this.
9. In April 2011, the Government introduced a new requirement for settlement applications made under the Immigration Rules (this applies to migrants applying for settlement as workers or family members, not those applying as refugees). The new requirement was that, to be granted settlement, the applicant must be free of any

unspent convictions. The ILPA information sheet “Settlement and Unspent Convictions” (see page 7) explains the new requirement.

10. The ILPA information sheet “Settlement and Continuous Presence” (see page 8) deals with another requirement of settlement, which particularly applies to migrants who have come to the UK as workers.
11. The Government has a general commitment to limit the number of economic migrants to the UK (other than European Economic Area nationals). The Conservative party, which is the larger party in the coalition Government, also has an aim to reduce net migration to the UK (from 100,000’s per year to 10,000’s per year). As part of these objectives, the Government is consulting about settlement. It proposes that migrants coming to the UK to work should normally not be permitted to settle in the UK. In the consultation document, published this month, the Government says:

“1.3 In 2010, there were 238,000 grants of settlement, of which 84,000 were from employment routes, 65,000 were from family, 5,000 were from asylum and 83,000 were from other routes. In 1997 there were 59,000 grants of settlement in total and less than 10,000 employment related grants. As immigration to the UK has increased, so too have grants of settlement. We want to end the notion that coming to the UK to work will result in permanent stay for those who want it.

“1.4 Migrants who enter or remain in the UK as a result of family connection to a British citizen or permanent resident will be unaffected by the changes proposed in this consultation. We will continue to have regard to a migrant’s right to private and family life under Article 8 of the European Convention on Human Rights. A route to settlement will be maintained for those in the family route. We shall consult separately on the family route.”

12. The consultation on family settlement and migration has not been published yet. It is not yet known what proposals the Government may make in that consultation.

Legacy cases:

13. In 2006, the then Labour Home Secretary announced that what is now the UK Border Agency had a backlog of around 450,000 cases in the asylum system. He called this backlog a “legacy”. He announced that this legacy would be cleared in 5 years (i.e. by July 2011). The ILPA information sheet “Legacy Cases” (see page 10) set out basic information about this legacy as at April 2007.
14. The criteria for deciding whether cases should be granted leave (usually indefinite) to remain were explained in the ILPA information sheets “Legacy Cases 4” and “Legacy Cases 7” (pages 11 & 12).
15. The Case Resolution Directorate was the part of the UK Border Agency dealing with the legacy. It has now closed. The Government says that before it closed it had reviewed all the outstanding cases. However, many of these cases remain unresolved.
16. In March 2011, the Government gave an update to the Home Affairs Committee. At that time, the Immigration Minister said that *“I am confident that we remain on track to complete the [legacy] by summer 2011”* but that there were some cases that would remain where the UK Border Agency had been unable to trace people or confirm that the person had left the UK.
17. The UK Border Agency has now set up a new team based in Liverpool. This team is called the Case Assurance and Audit Team. It is to deal with the remaining legacy cases.
18. At the beginning of this month, the Home Affairs Committee made its latest report on the work of the UK Border Agency. They reported that in their opinion the legacy programme had involved an amnesty. There was considerable media attention and much criticism about what was said to be the amnesty. Unfortunately, this likely makes it more difficult for the UK Border Agency to increase the number of grants of indefinite leave to remain that it has made in legacy cases, and it may be that the

Agency is immediately more determined to try and remove people in some of these remaining cases.

Family migration:

19. As previously noted, the Government is to produce a consultation on family settlement and migration. It is not known when this will be published.
20. In November 2010, the Government changed the Immigration Rules for migrants seeking to come to or stay in the UK as the spouse, civil partner, unmarried partner or same-sex partner of a British citizen or person settled in the UK. At this time, a new English language requirement was introduced. The Government said that this new requirement *“aimed at helping those who come to the UK to integrate into British society”*. There is an exemption for those who are over 65 years of age; and those with a mental or physical impairment if this would make it unreasonable for the person to learn English. There is also a discretion to exempt others from the requirement, which the Government said would be exercised *“on a case by case basis where there are compelling compassionate circumstances”*.
21. Migrants who are nationals of certain countries, accepted by the UK Border Agency as majority English-speaking, are treated as meeting the requirement automatically. Others must take and pass an approved test in order to be granted permission to come to or stay in the UK. Residents (long-term) of countries, which the UK Border Agency accepts have no test centre, are exempt from the requirement when applying to come to the UK, but if applying to stay in the UK will have to meet the requirement. The UK Border Agency publishes a list of the relevant countries on its website.
22. The language requirement does not apply to children applying to join their parents in the UK.
23. The language requirement does not apply to refugee family reunion applications. The Government has made changes, however, to family reunion applications and

intends to make more changes. It will continue to be the case that partners and children (under 18 years of age) who were part of the refugee's family before he or she fled his or her country of origin will be able to apply to join the refugee in the UK (once the refugee is recognised as a refugee). Unlike others applying to join family members, these partners and children do not have to show that they will be accommodated and supported in the UK without recourse to public funds ("the accommodation and support" requirement).

24. The ILPA information sheet "Refugees and Family Reunion" (see page 15) sets out the position on refugee family reunion as at August 2010. However, there are three changes to note.

25. Firstly, the Government changed the Rules in October 2010 so that refugees who had naturalised (i.e. become British citizens) were no longer able to rely on the refugee family reunion provisions to be joined in the UK by the partners and/or children. This means that the requirements that apply generally to family applications (such as English language, accommodation and support, and fees) now apply in such cases.

26. Secondly, in April 2011, the Government introduced provisions in the Rules so that a partner of a refugee could apply to join the refugee in the UK, even though the relationship began after the refugee had fled his or her country of origin. Thirdly, in July 2011, the Government intends to change the Rules to provide that in certain compassionate cases other family members (i.e. not partners or children) may apply to join a refugee in the UK. However, in each of these cases, the accommodation and support requirement will apply.

Removals:

27. For those who are at risk of removal, there have been important changes this year to the Immigration Rules and to UK Border Agency practice.

28. In April 2011, the Government changed the Rules by which bans on returning to the UK are imposed on migrants who leave the UK and (i) had entered the UK unlawfully, (ii) overstayed in the UK, (iii) breached a condition of leave to enter or remain in the UK or (iv) used deception to try and gain entry to the UK. The change to the Rules is to introduce an incentive for people to make voluntary departures within 6 months of receiving a decision that the UK Border Agency intends to remove the person or within 6 months of exhausting any appeal rights. The ILPA information sheet “General Grounds for Refusal” (see page 17) explains how these bans work.
29. Also this year, the UK Border Agency has introduced new procedures when trying to remove families (i.e. cases where there is at least one dependent child under the age of 18 years of age). The ILPA information sheets “UKBA Family Returns” and “UKBA Family Returns Pilots” (see pages 18 & 19) should be read together, and provide more information about this.
30. The ILPA information sheet “AIDS/HIV Cases and Removals” (see page 20) provides information about persons living with HIV/AIDS who may face removal.
31. There have been important decisions in the UK and European courts this year concerning whether families with dependent children should be permitted to stay in the UK. The ILPA information sheets “ZH (Tanzania) Supreme Court Judgment” and “European Citizenship Judgment (Zambrano)” (see pages 21 & 22) provide information about this.

Legal Aid:

32. The Government put out proposals on the future of Legal Aid in November 2010. It has consulted on these, and we are awaiting its conclusions from that consultation. The proposals include to remove many types of matters (including many immigration cases) from the scope of Legal Aid. If implemented, this would mean that, apart from asylum-seekers and those in detention, migrants in the UK would normally not be able to seek Legal Aid to advise about or deal with their immigration problems. Legal Aid would also be withdrawn for many other non-immigration

matters which may be important to migrants (and indeed to British citizens) because they need legal advice or representation.

33. The ILPA information sheets “Legal Aid 6 – The Latest Proposals” and “Legal Aid 7 – Immigration Proposals” (see pages 24 & 25) provide more information.

Final Observations:

34. There are many other changes in immigration law, policy and practice that are being made or have been made in recent months. As indicated above, information about some of these matters is available from information sheets and updates on the ILPA website at www.ilpa.org.uk in the ‘Info Service’ section.

35. Information is also available from the UK Border Agency website. While very many of the news items on that website are about raids and other enforcement activities, the News and Updates section does include short statements about important changes that have been made or are being made.

36. However, the pace of change and the complexity of immigration law and policy mean that it is generally advisable to seek specialist legal advice about immigration matters. It is always helpful to keep hold of immigration papers so that, if advice is sought, an adviser can quickly see all the relevant papers.

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17 June 2011