

**ILPA BRIEFING**  
**House of Commons - Committee****September 2011****LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –**  
**Bill 205****Immigration and Domestic Violence**  
**(Schedule 1, Part 1, Paragraph 10)**

Paragraph 10, Page 100, line 30, after 'enactment' insert –

*and matters relating to immigration control*

Paragraph 10, Page 100 line 33 after subparagraph (b) insert –

*(a) 'matters relating to immigration control' shall mean rights to enter and remain the United Kingdom under the immigration laws as defined in section 33 of the Immigration Act 1971 (c.77)***Purpose**

To preserve legal aid in immigration matters, as defined, for a person who is a victim of domestic violence as defined in paragraph 10 of the Schedule. A probing amendment.

**Briefing Note**

A probing amendment. Paragraph 10 preserves legal aid for victims of domestic violence in family cases. The amendment would extend the exception for victims of domestic violence to immigration cases as defined. This would serve to give effect to the Minister's undertaking in Committee on 19 July<sup>1</sup> to bring forward an amendment to bring immigration cases involving domestic violence within scope.

This amendment provides an opportunity to press the Minister on whether he intends to bring back within scope only applications under the domestic violence rule, currently persons who are present in the UK with two years limited leave as spouses or partners whose relationship breaks down during that period because of domestic violence and who can prove this to the satisfaction of the Secretary of State,<sup>2</sup> or from a wider group of survivors. The amendment is broadly drafted in that it does not differentiate between those cases where domestic violence is relevant to the immigration application and those where it is not, and should therefore be treated as a probing amendment. This provides an opportunity to highlight the range of circumstances in which persons not falling within the domestic violence rule may lose their entitlement to remain in the UK because of domestic violence and the

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<sup>1</sup> 2<sup>nd</sup> session, at col 245.

<sup>2</sup> HC 395 as amended, rules 289A to 289C.

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circumstances in which domestic violence is relevant to a person's ability to present his/her case.

Southall Black Sisters said in their evidence to the Public Bill Committee (LA 18):

*"It is a criminal offence for a non-accredited person to give immigration advice. The majority of support services for victims of domestic violence do not have such accreditation which is why they refer to legal immigration practitioners and caseworkers.*

*Women's organisations and other support services across the UK have varying degrees of quality, experience and capacity. Most do not have the training or skills necessary to assess the merits of a case or carry out complicated case or representation work which involves detailed knowledge of immigration law. The gap that will be left cannot be met by other support services. The lack of access to quality advice and representations will have a detrimental impact on how applications are prepared and represented at the initial or appeal stage."*

Not every survivor of domestic violence will have immigration problems, but those who do need the same protection in their immigration case as in their family law case. Domestic violence applications are far from straightforward:

- The UK Border Agency's record in dealing with these cases is especially poor. Some 61% to 69% of refusals are overturned on appeal;<sup>3</sup>
- The gathering and presentation of evidence, with associated costs and risks, is often necessary for success. Many applications are (including wrongly) refused by the UK Border Agency on the grounds of inadequate evidence;
- To escape abusive relationships, victims need to understand the implications for their immigration status. They need immigration advice. As described above, only regulated advisors can provide this; a refuge etc. cannot. Without advice and assistance, the aim of the domestic violence rule is defeated because victims do not find the confidence to escape.

The domestic violence rule exists in an effort to ensure that people do not stay in abusive relationships because they fear removal. The UK Border Agency has recognised the particular difficulties experienced by people in this position by setting up a scheme, the Sojourner Project,<sup>4</sup> to provide financial support for an eight-week period to women applying for permission to remain under that rule, who are not normally entitled to claim welfare benefits and therefore cannot access refuge accommodation. The Government is committed to establishing access to benefits for this group in April 2012. Even under current arrangements it has been difficult for those working with domestic violence survivors to find legal advisors or solicitors who can take on the case at short notice, and prepare the documentation to send to the UK Border Agency within the time permitted.

Immigration clients who have been victims of domestic violence find themselves in extremely difficult circumstances. As with other victims of domestic violence, their lives (and often those of children) are turned upside down by their experiences and often the need to abandon their lives and move into hiding or away to safety. Their abusive spouse or family may have controlled their lives (including their immigration status) until that point. They require good legal advice and assistance to enable them to take the next step in resolving their problems. Many issues such as benefit entitlement, re-housing, contact and residence arrangements for children are

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<sup>3</sup> Figures disclosed by the UK Border Agency to Rights of Women show success rates on appeal within this range for the period April 2009 and September 2010.

<sup>4</sup> See <http://www.eaves4women.co.uk/Sojourner/Sojourner.php>

effectively put on hold until the immigration matter is resolved. Some survivors will have become overstayers.

Victims of domestic violence are not necessarily probationary spouses/partners. They may be the spouse/partner of someone with limited leave or of a person exercising European free movement rights). While they do not fall within the immigration rule that exists to protect survivors of domestic violence, they may face many of the same problems as those who do. They too need legal advice and representation if they are not to face great injustice within the immigration system as a result of the abuse they have faced. Unchallenged decisions to remove adult victims of domestic violence could result in the separation of parent and child. It is an unsatisfactory response to their situation to fund legal assistance to obtain an injunction (which remains in scope) but not to enable them to obtain an immigration status which is not dependant on their spouse/partner. Without special protection there is the risk that they remain (with their children) in abusive relationships for fears of the immigration consequences of escape. It may lead those with a risk on return to advance an asylum case they would not otherwise have made.

Examples of such cases are set out in the Annexe.

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## **Annexe: Domestic Violence, cases**

### **Case of A**

A is a citizen of an Eastern Europe country which recently joined the European Union. She was here on the basis of her self-employment in the UK until she married her British husband and applied for a spouse visa, which was granted for the standard two year probationary period until 2007. There were instances of domestic violence during the course of the probationary period, although she remained living with her husband after this. They moved away from the city where they lived to a more rural area where her husband's family lived. She was isolated from her support networks. She had two children with her husband, and he was also abusive towards them.

Her husband effectively caused her to overstay her visa by telling her that there was no requirement for her to apply to extend it before it expired in 2007. She had no reason to doubt this at the time. It was only late in 2009 that she discovered that she did not have the right to reside in the UK solely on account of her nationality. There are no solicitors or organisations dealing with immigration law in the part of the UK where she lives. The close immigration law provider is 75 miles away. A sought help and received limited information from a local Citizen's Advice Bureau. A was subjected to further violence resulting in criminal charges against her husband, and managed to obtain support to travel the 75 miles to get legal advice. The lawyers obtained evidence to support an application on the basis of domestic violence. The lawyers also put forward a case under Article 8 of the European Convention on Human Rights, long residence and the rights of her two British children. The letter of representations was 11 pages long, and 63 separate pieces of evidence were submitted. The Home Office considered the application and granted indefinite leave to remain within four weeks. The lawyer observes "...if she had been able to obtain early legal advice...closer to her home she could probably have escaped her abusive relationship a lot sooner."

### **Case of B**

B was a national of a country in the Caribbean with two children of four and eight (both British Citizens). She had arrived in the UK about 2000 on a visitors' visa and switched to student visa. She became involved with a widowed man from her community. She moved in with him and he is the father of her eldest child. He mistreated her throughout the relationship, using her lack of immigration status as a threat and forced her to have sex. He travels on business frequently. On one trip unbeknownst to her he got married. She found out about this when a woman telephoned the house threatening her and warning her to leave.

She challenged him and he threatened to go to the authorities re her immigration status and to keep their child. She eventually sought help and was supported by the Sojourner project. As she did not have any valid leave, an application was submitted for her under Article 8, rather than on the basis of domestic violence under the Immigration Rules.

She was eventually granted three years Discretionary Leave. Given that she had no means of supporting herself, she was entirely reliant on legal aid in order to obtain legal representation.