

By email to John Vine CBE, QPM  
Inspection Plan Consultation  
Independent Chief Inspector of the UK Border Agency  
5<sup>th</sup> Floor, Globe House  
89 Eccleston Square  
London, SW1V 1PN

By email to: [chiefinspectorUKBA@icinspector.gsi.gov.uk](mailto:chiefinspectorUKBA@icinspector.gsi.gov.uk)

30 November 2011

Dear John

**Re: Inspection programme for 2012/13**

In response to your invitation to submit suggestions for your inspection programme for 2012/2013, this letter sets out ILPA's suggestions.

Some of the following may be suitable for discrete inspections. Others are matters that could be borne in mind when conducting wider or related inspections. Some maybe considered to fit into both categories.

**Asylum Screening Unit**

The Asylum Screening Unit being greatly changed, both in respect of practice and layout. Changes in practice are well underway, and these have caused immense upheaval resulting in people not being able to lodge their claims for asylum and/or access asylum support within any reasonable period. Problems have included:

- people being turned away from the Asylum Screening Unit in Croydon when they go to claim asylum in person, including those with young children and without secure or appropriate accommodation available to them;
- people being unable to make appointments to lodge their claims because they cannot get through on the telephone;
- people having to wait weeks or months between the first attempt to lodge a claim and managing to lodge that claim because of the appointments system.

Staff of the Asylum Screening Unit are now taking extensive and detailed personal information by telephone prior to a screening appointment, but adequate records of that telephone interview are not being kept.

**Section 55 of the Borders, Citizenship and Immigration Act 2009, duty to safeguard and promote the welfare of children**

Since its introduction in late 2009, there has been no general review of the implementation of section 55 of the Borders, Citizenship and Immigration Act 2009, the duty to safeguard and promote the welfare of children. There have been several

ILPA Lindsey House, 40/42 Charterhouse Street London EC1M 6JN Tel: 020 7251 8383 Fax: 020 7251 8384

email: [info@ilpa.org.uk](mailto:info@ilpa.org.uk) website: [www.ilpa.org.uk](http://www.ilpa.org.uk)

court judgments in which the UK Border Agency has been found wanting in what it has done to fulfil this duty. On 18 March 2011, ILPA wrote to Jonathan Sedgwick, then Acting Chief Executive of the UK Border Agency, about several such cases. A copy of that letter was at that time sent to you.

Such judgments continue. In addition to inadequacies in the Agency's operations, ILPA has also observed a failure at policy level. Policy instructions and consultations continue to be developed and issued without any, or any adequate, consideration of the section 55 duty. A recent example is the Family Migration consultation. This contains containing wide-ranging proposals concerning families and, inevitably, children. In the consultation document, only one reference is made to section 55. This is in footnote 125 on page 63, a note to the following text:

*"We suggest that, in general, where a couple have formed a union in circumstances in which one of them has not established their entitlement to be in the UK, they may be expected to make a choice as to whether they should separate, or remain together outside the UK (temporarily or permanently), regardless of how difficult that choice might be. We feel that this accords the appropriate weight to our objective of maintaining a system of immigration control which is fair as between individuals, and which lessens the possibility of illegal migrants and those whose immigration status here is precarious taking advantage of their position to secure an entitlement to remain in the UK. In all cases the best interests of any child or children in the UK must remain a primary consideration."<sup>125</sup>*

The Court of Appeal has drawn attention to the failure of the UK Border Agency's policy instructions on the family returns process to make explicit the need for the Agency to be alive, throughout that process, to the possibility that an intended return will need to be reconsidered by reason of such matters as the safety or welfare of children.<sup>1</sup>

## **Appeals**

In response to your report *How the UK Border Agency receives and uses Intelligence*, and in particular recommendation 9, the UK Border Agency said:

*9.1 The agency takes decision quality very seriously, and has a programme of continuous improvement in this area. It accepts that the overall quality of decision-making should have an impact on the overall assessment of risk in the methodology it uses to identify higher risk nationalities.*

*9.2 There are however challenges to taking account of the overall quality of decision-making in its intelligence assessment. In many cases decisions are not subject to a full right of appeal, or where they are, such appeal rights are not always exercised. In many cases, when assessing decision quality, there are practical considerations regarding the availability, quality and timeliness of data which need to be examined.*

*9.3 The agency will therefore examine the implications and the extent to which it is practicable and feasible to take account of the quality of decisions in the*

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<sup>1</sup> *NA (Iran) v Secretary of State for the Home Department* [2011] EWCA Civ 1172

*methodology for identifying higher risk nationalities, and will share its thinking with the Chief Inspector before the end of October 2011.”*

ILPA is aware that the Agency has been seeking to develop the capacity to learn from its appeals work, and it may be fruitful to inspect that work.

There remain problems with the division of responsibilities and working relationships between initial decision-makers and those who represent the Agency at appeals, and with the delays in information and files being passed between the two. These result in unnecessary adjournments, points being contested or argued at appeal which need not or should not be contested and an inability on the part of the Agency to deal efficiently and effectively with new information submitted after a decision but prior to an appeal.

### **Ministerial Authorisation of 10 February 2011**

The Ministerial Authorisation on equality<sup>2</sup> is not transparent. ILPA wrote to the Minister about this on 21 March 2011. That letter was copied to you. The nationals/countries to which the authorisation relates are not disclosed. As such, the applications of certain individuals are or are potentially being subjected to scrutiny which those individuals cannot have anticipated with the possibility or likelihood that their applications are rejected and that they have paid fees for an application that never had any prospect of success for reasons to which they have no opportunity to respond even where their applications meet the requirements under the immigration Rules and, had the opportunity been made available, a compelling response to the reasons for rejection could have been made.

### **Rejection of ‘invalid’ in-country applications**

In July 2011, ILPA wrote to the UK Border Agency concerning its practice and policy in treating in-country applications as ‘invalid’. Examples supplied to the UK Border Agency concerned in-country applicants, who stand to become overstayers (with prejudicial consequences for their rights and entitlements under immigration law and that depend upon their immigration status) if their applications are treated as invalid and they are left unable to make good the situation before their leave expires. These examples include where minor mistakes appear to have been made by applicants, sponsors and the UK Border Agency – e.g. concerning the correct form or fee when the application is made at the cusp of a change-over from one form or fee to another.

### **Students**

Student cases are among the in-country applications identified as rejected as invalid with prejudicial consequences for the students. Additionally, the way in which the UK Border Agency has sought to tackle language colleges that it considers are running scams has caused enormous cost and upheaval to entirely innocent students. The case of *Anwar & Ors v Secretary of State for the Home Department* [2010] EWCA Civ 1275 provides a particularly egregious example where two students were

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<sup>2</sup> See Annexes to section 11 of chapter 1 of the Immigration Directorate Instructions, in particular Annex EE8 and Annex EE9 issued on 10 February 2011

stripped of their leave to remain without notice on the false grounds that they had used deception at the point when the UK Border Agency concluded that their respective sponsoring colleges should be removed from the register of colleges permitted to sponsor overseas students.

## **European Casework**

In your report *An Inspection of Nationality Group: management of applications for British Citizenship*, you recommended that other parts of the UK Border Agency attempt to learn from the successes of the Nationality Group. European Casework has implemented practices such as the use of minute sheets, and was for a period under the same senior staff member (Tony Dalton OBE) as ran the Nationality Group. It would, therefore, seem an excellent place to begin an examination of whether lessons have been learned and applied. The case of *Ruiz Zambrano*<sup>3</sup> is a complex case presenting challenges for the UK Border Agency and provides an excellent opportunity to study the Agency's implementation of its reaction to a binding judgment necessitating changes to its existing practices.

## **Legacy**

The Case Resolution Directorate has now been disbanded. Most, although not all, of the remaining legacy cases are now the responsibility of the Case Assurance and Audit Unit based in the UK Border Agency's North West region. Our concerns are generally set out in the correspondence between ILPA and Eddy Montgomery between August and October of this year, copies of which we have provided to you.

ILPA was represented at the autumn meeting of your Refugee and Asylum Forum at which other suggestions for inspection were raised, including asylum support. We have not included in this letter matters raised at the Forum.

A number of UK Border Agency functions have passed into the Strategy, Immigration and International Group in the Home Office. Does this take them outside your remit? In any event, we assume that the relationship between the policy work in the group and operational policy within the Agency is a proper subject for study and do not doubt that it would be a fruitful one.

We should, of course, be very willing to discuss further the detail or suitability of any of the above issues, or indeed any other issues, for inspection and to assist if we can.

Yours sincerely

Alison Harvey  
General Secretary  
ILPA

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<sup>3</sup> *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)* [2011] EUECJ C-34/09