

**ILPA BRIEFING
House of Lords – Committee****December 2011****LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –
HL Bill 109****Immigration: refugee family reunion, trafficking victims
and onward appeals (Schedule 1, Part 1)****LORD THOMAS OF GRESFORD
LORD DHOLAKIA
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY****71***Page 131, line 3, at end insert—**“Immigration: family reunion cases, trafficking victims and onward appeals**27A (1) Civil legal services provided to an individual in relation to any rule having effect under section 3(2) of the Immigration Act 1971 making provision about a person’s entering or remaining in the United Kingdom as a member of the family of a person who is entitled to enter or remain in the United Kingdom—**(a) (in a case where the services in question do not fall within paragraph 26) under the Qualification Directive, the Refugee Convention or the Temporary Protection Directive, or**(b) as a beneficiary of humanitarian protection.**(2) Civil legal services provided in relation to any question as to whether a person who is, or claims to be, a victim of human trafficking is to be permitted to enter or remain in the United Kingdom.**(3) Civil legal services in relation to an appeal to the Upper Tribunal, the Court of Appeal or the Supreme Court insofar as the appeal relates to an issue under any enactment about immigration.**Exclusions**27B Sub-paragraphs (1) and (2) of paragraph 27A are subject to the exclusions in Parts 2 and 3 of this Schedule.**Definitions**27C In this paragraph and paragraphs 27A and 27B, the Qualification Directive, the Refugee Convention and the Temporary Protection Directive have the same meanings as in paragraph 26.”*

Purpose

To provide for civil legal aid in relation to (1) refugee family reunion, (2) immigration matters concerning trafficking victims and (3) immigration onward appeals.

Briefing Note

As regards refugee family reunion, please see Amendment No. **69** and ILPA's briefing on this amendment at <http://tinyurl.com/coe43c3>

As regards immigration onward appeals, please see Amendment No. **78** and ILPA's briefing on this amendment at <http://tinyurl.com/bm6ddof>

The remainder of this Briefing Note relates to victims of trafficking. These victims may be in various situations of exploitation in the UK, including sexual exploitation and labour exploitation and situations of domestic slavery. In its consultation response, the Government said of this group¹:

“There will be instances in which the Convention [on Action against Trafficking²] requires legal aid to be provided to victims of trafficking to fund their [immigration] claims. However, we estimate that the volume of these cases is likely to be small and any obligation to provide legal aid will be met by the proposed new exceptional funding scheme that will provide legal aid where failure to do so would be likely to result in a breach of the individual's rights to legal aid under the Human Rights Act 1998.”

The bureaucracy required to operate an exceptional funding scheme is likely to add to the cost of providing legal aid to this especially vulnerable group, and may itself prove to be a hurdle in the way of victims of trafficking obtaining legal aid to which they may be entitled and are likely to need. The Bill would clearly be improved by identifying this group as specified persons for whom legal aid is to be available, subject to means, for immigration matters.

By comparison, the Government has recognised the particular vulnerability of victims of domestic abuse, whose immigration status is dependent on their relationship to a British citizen or person with indefinite leave to remain, to being trapped in an abusive relationship for fear of the consequences of seeking to escape that relationship (though note Amendments Nos. **62-67** and see ILPA's briefing on these at <http://tinyurl.com/bnvvc3>). However, victims of trafficking may be trapped in their situations of abuse by reason of similar fears – e.g. where going to the authorities to report abuse from their 'employer' puts their immigration situation at risk (and/or with fears of detention and/or prosecution).

The Bill would exclude from legal aid trafficked persons who do not claim asylum. Asylum claims are based on risks on return. While some victims of trafficking face such risks, others do not. However, this group does constitute

¹ *Reform of Legal Aid in England and Wales: the Government response*, Ministry of Justice, June 2011 (Cm 8072), pp28-29

² 2005 Council of European Convention on Action against Trafficking in Human Beings

a paradigm “*physically or emotionally vulnerable group*” (this being one of the primary factors said by the Government to be behind its decisions on legal aid scope³). Their cases often require expert evidence (including medico-legal reports, country expert evidence and evidence on the *modus operandi* of traffickers) for which, without legal aid, they will be unable to pay. The Bill may increase the number of cases in which an asylum claim is made.

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CASE STUDIES:

This case gives example of how domestic workers in the UK may often be exposed to significant exploitation and how, without legal advice and representation in immigration matters, a domestic worker may simply be unable to take control of his or her immigration status or escape an employer’s exploitation.

M was a national of a South Asian State on a domestic worker visa. Despite being in the UK for approximately six years she had almost no English and a very basic education, having left school at a very young age. Her employer wrote to the UK Border Agency to inform them that she no longer wished to employ her and renew her domestic worker visa, this was as a result of an argument the employer had had with M’s boyfriend. Her employer then appeared to change her mind when M separated from her boyfriend and said she would support an application to renew her domestic worker visa. By this time the UK Border Agency had refused to extend M’s domestic worker visa.

M came to (legal) appointments with her employer who attempted to speak on her behalf. It was explained to her employer that she would not be able to be present when M was giving instructions.

M’s appeal was allowed under Article 8 of the European Convention on Human Rights (right to a private life) as her employment as a domestic worker enabled her to financially support her son and daughter in India and pay for their educations. M was granted Discretionary Leave to Remain in the UK. After her grant of Discretionary leave she was able to leave her employment as a domestic worker. It transpired that although she had a work contract with her former employer, that her employer did not honour this contract and required her to work additional hours for no additional payment. M was too afraid to say anything about this; it had been as a result of M’s boyfriend raising this issue with her employer that her employer had contacted the UKBA to say that she did not wish to renew M’s visa.

³ *Government’s consultation response, op cit* pp11-12; the other three factors related to the seriousness of the issue at stake, the availability of alternative sources of funding for legal assistance and the availability of other means to resolve legal disputes. As regards these other factors, the question of the UK’s obligations to trafficking victims and whether it is appropriate to removal a victim of trafficking from the UK are serious issues, and there are no other sources of funding of dispute (with the UK Border Agency) resolution available.

M would not have been in a position to afford private legal representation. Without legal aid it is unlikely that M would have understood her rights or would have been able to lodge her appeal against the decision to refuse to renew her domestic worker visa and subsequently her human rights as guaranteed by the European Convention on Human Rights would never have been considered.

This case shows the value of early intervention by competent Legal Aid lawyers. While a threat of judicial review proved necessary, a judicial review was avoided. It also provides example of the serious nature of crossover between immigration matters and criminal injuries compensation.

B was sent to the UK when she was 12 to stay with her uncle. She is now a young adult. Almost as soon as she arrived the uncle started sexually to abuse her. This abuse continued until she ran away from home when she was still a teenager. During this time she attended school achieving what in the circumstances were very good GCSE results. She reported her uncle to the police after running away and he was arrested. The case came to trial and he was convicted on several counts of rape of a minor and sentenced to 15 years. B only realised that she had no immigration status when she tried to apply to university to study a course in social work. She approached several lawyers for advice and some offered to take her case on but she could not afford the fees. One legal aid lawyer took her case on but did not do any work on it. She then found representatives who helped her prepare an application on the basis of Article 8. It was refused by the UK Border Agency. The representatives indicated that they would seek judicial review if the UK Border Agency would not reconsider. The Agency then reconsidered and granted discretionary leave. Her representatives also helped her make a claim to the Criminal Injuries Compensation Authority. She was awarded £22,000. She now works for a charity with young people, and mentors young people in difficulty. Her representative says, “*She is a very determined and inspirational young woman who has applied to do an access course that will enable her to go to university next year where she intends to study to become a social worker.*”