

ILPA briefing for the All Party Parliamentary Group on the Chagos Islands: British nationality & the Chagos Islanders Update, February 2012

As detailed at the end of this briefing, ILPA provided extensive briefing notes about the British nationality law implications of the situation of the Chagos Islanders during the passage of the Borders, Citizenship and Immigration Act 2009. We spoke with the islanders, the better to understand their situation, and reviewed a variety of material from independent sources.

Unlike other British Overseas Territories citizens Chagos Islanders cannot have their children in the relevant British Overseas Territory (the British Indian Ocean Territory – i.e. the Chagos Islands) at the moment because they cannot go to the islands. Thus the only way for a Chagos Islander who is a British citizen by descent to pass on their nationality is to have a child in the UK – involving uprooting themselves, leaving behind family members not entitled to come to the UK, permanently or until such time as the person in the UK can afford to sponsor them. For many the combination of the expense and responsibilities in Mauritius, not to mention the inability of some, for example, elderly, relatives to travel so far rules this out.

The disadvantage in British nationality law is permanent. It applies whether or not there is eventual return; it is not cured by return. It is not a problem that will go away.

The solutions that ILPA identifies are:

- Allow Chagos Islanders born in exile who are not already British citizens to be registered as British citizens thus protecting those still living who were born to parents born on the Chagos Islands – thus all of the first generation born in exile. The entitlement to register should not depend upon whether the parent was a man or woman or whether the parents were married. This would require an amendment to legislation.
- Give an entitlement to register to the children of those who registered under section 6(1) of the British Overseas Territories Act 2002. Such people (those born on or after 26 April 1969 and before 1 January 1983) became British Citizens by descent upon registration. Therefore they cannot pass on their nationality or citizenship to their children and need this provision if their children are to be protected. We advocate that this be to make them British Citizens otherwise than by descent and thus able to pass on their nationality to their children born outside the UK or the British Indian Ocean Territory. This will thus protect some of the second generation born in exile. Those children, because born overseas, could not pass on their nationality or

citizenship to their own children born overseas so the process is finite. This would require an amendment to legislation.

Section 3(1) of the British Nationality Act 1981 provides for registration by discretion of any child (i.e. under 18; once the child turns 18 the provision can no longer be used) as British. There is guidance as to how that discretion should be exercised in Volume I, Chapter 9 of the UK Border Agency's nationality instructions. That guidance should be amended to provide that any Chagossian child in exile should be registered under this section. This could be effected by a change of guidance/policy and would not require legislation.

For more detail see the ILPA briefings prepared during the passage of the bill that became the Borders, Citizenship and Immigration Act 2009:

June 2009 <http://www.ilpa.org.uk/data/resources/12878/09.06.227.pdf>

March 2009 <http://www.ilpa.org.uk/data/resources/12888/09.03.236.pdf>

February 2009 <http://www.ilpa.org.uk/data/resources/12913/09.02.260.pdf> (the amendments proposed in this briefing were refined at a later stage)

All ILPA briefings on the Bill are here:

<http://www.ilpa.org.uk/pages/briefings-on-the-borders-citizenship-and-immigrationbill-2009.html>

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