

**House of Lords Committee Stage
Crime and Courts Bill (HL Bill 4)****Race Discrimination Grounds of Appeal****After Clause 24****LORD AVEBURY****148B**

Insert the following new Clause—

“Immigration appeals: race discrimination grounds

(1) In the Nationality, Immigration and Asylum Act 2002, in section 84(1)(b), after “Race Relations (Northern Ireland) Order 1997” insert “or relates to section 115 of the Equality Act 2010 in relation to the protected characteristic identified in section 9 of that Act”.

Purpose:

To draw attention to the inadvertent omission, when commencing provisions of the Equality Act 2010, of the specific race discrimination ground of appeal in immigration cases; and to provide opportunity to press Ministers to ensure this is remedied urgently.

Briefing:

The Equality Act 2010 brought together statutory equalities provisions, and in this it performed a consolidating role in relation to previous legislation, including the Race Relations Act 1976. Previously, section 84(1)(b) of the Nationality, Immigration and Asylum Act 2002 had provided for a specific ground of appeal relating to race discrimination against an immigration decision, which read:

“(1) An appeal under section 82(1) against an immigration decision must be brought on one or more of the following grounds –

(b) that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (c. 74) or Article 20A of the Race Relations (Northern Ireland) Order 1997;”

On 5 April 2011, the Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011, SI 2011/1060 removed the words underlined. Section 84(1)(b) in the 2002 Act, therefore, now reads:

“(1) An appeal under section 82(1) against an immigration decision must be brought on one of more of the following grounds –

(b) that the decision is unlawful by virtue of Article 20A of the Race Relations (Northern Ireland) Order 1997;”

The specific race discrimination ground of appeal in immigration cases now only relates to Northern Ireland. The 2002 Act continues to allow an immigration judge to find an immigration decision to be unlawful by reason of race (or other unlawful) discrimination, because section 84(1)(e) provides a ground of appeal “*that the decision is otherwise not in accordance with the law*”. However, the immigration

judge can only do so where he or she has jurisdiction to hear the appeal in the first place. The importance of the specific race discrimination ground of appeal is that it is one of two statutory grounds, which generally preserve an appeal right which would otherwise be precluded by the 2002 Act. Thus, in the various and complex sections restricting appeal rights in that Act, the following general formula is several times repeated:

“[the relevant restriction] does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c)”

This general formula previously preserved a right of appeal against an immigration decision where the would-be appellant sought to challenge the immigration decision on race discrimination or human rights grounds. This has particular relevance to Clause 24 of the Crime and Courts Bill, by which it is intended to remove the right of appeal against a refusal of a family visitor visa. The provisions, which Clause 24 is to amend, will continue to retain the general formula intended to preserve a right of appeal on race discrimination or human rights grounds. Preserving a right of appeal on those grounds is clearly intended as the Explanatory Notes to the Bill make express at paragraph 373; and as was also made clear on the UK Border Agency website when the Bill was first published¹ and in a more recent announcement on that website concerning changes that are to be made by regulations to remove the right of appeal for aunts, uncles, nieces, nephews and cousins against a refusal of a family visit visa.²

However, the omission of the relevant words in section 84(1)(b) has undermined all this. The general formula now only preserves appeal rights where the appeal is brought on human rights grounds in England and Wales or Scotland; and only preserves appeal rights on both race discrimination and human rights grounds in Northern Ireland. ILPA has raised this with the Home Office, and it has been confirmed that this is not intended. ILPA understands that the Home Office is looking at how best to remedy the omission. It is not necessary for there to be primary legislation to do this, but ILPA is very concerned that the omission dates from April 2011. More than one year has gone by, and no remedy has been implemented. It is high time that the omission is corrected, and the Government should be pressed to give a commitment to address this quickly. It would be reasonable for Ministers to assure the House that before Report stage for this Bill, the Government will make clear how and by when this omission is to be corrected, if it has not been corrected by then.

The events that led to the inadvertent omission of the specific race discrimination ground of appeal highlight once again the notorious complexity of immigration law, including the highly complex statutory appeal provisions. Parliament has just enacted the Legal Aid, Sentencing and Punishment of Offenders Act 2012, despite widespread concern both within and outside Parliament as to the intended removal of legal aid in areas such as immigration. As Lord Pannick said on the last day of debate in the House of Lords before enactment (*Hansard* HL, 25 Apr 2012 : Column 1797):

“...the limits on the scope of legal aid... will hit hardest the weakest and most impoverished sections of our society, often on complex questions of law such as are raised by immigration law.”

If Government cannot foresee the consequences for the statutory immigration appeals scheme when amending the scheme or commencing legislation with an impact upon that scheme, it can hardly be expected that individuals deprived of legal advice and representation by reason of the general withdrawal of legal aid for immigration cases will be able to comprehend that scheme and understand the appeal rights for which Parliament has legislated.

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¹ See <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/may/28-family-appeal>

² See <http://www.bia.homeoffice.gov.uk/sitecontent/newsarticles/2012/june/25-family-visit-visa-appeal>