

## **ILPA comments on the draft proposal for passport return**

ILPA has long advocated for the return of passports and there have been many discussions about this over the years. Our archives include, for example:

- A document dated 19 December 2002 providing a telephone hotline to foundry house in Sheffield for the return of passports or “travel extensions”. Withdrawing the passport equated to withdrawing the application.
- Details from October 2004 of the procedure for the urgent return of passports to EEA nationals, which operated by means of a dedicated email box and use of pre-paid special delivery envelopes. Passports were returned within five working days. There is also separate correspondence from this date on the return of passports of Accession State nationals, who had sought asylum, and who wanted to register for the workers registration scheme. A helpline was used so that those who had lost support as persons seeking asylum, but could not register for work because their passports had not been returned, could pursue return of their passports as a matter of urgency
- An interesting letter from the Identify and Passports Service of October 2008 dealing with first applications for passports from naturalised British citizens needing to travel frequently. It suggests sending in applications without (other national) passports and waiting for these to be requested.

We trust that the Home Office has studied and learned from these examples in planning the pilot.

### **The need for this service**

We emphasise that passports are needed not just by business users but by users in all categories (including EEA nationals and those on family immigration routes). This need would increase if the Home Office's latest proposals, to have private landlords and doctors verify immigration status, find favour. We suggest that the current system is of a complexity that defeats very many employers, many of whom employ lawyers to assist them. It would be likely to defeat private landlords utterly.

It is becoming ever more difficult to operate without a passport; not only is it needed for travel but to navigate internal, including privatised, immigration controls: to prove permission to work, and to prove identity.

The need to be able to withdraw a passport is particular acute for those in categories where they cannot submit applications at a Public Enquiry Office or even via the super premium service but only by post. They would benefit more than those who have the option to submit their applications using a premium method.

## Return of passports as a way of relieving pressure on premium services

The Home Office asked at the business user forum whether a 'scanning and returning passports' system would reduce the use of Premium services. As described above, the need for passports is not limited to those who can use such services. We continue to be surprised that premium services, which generate so much more in revenue for the Home Office than they cost, continue to be in short supply. While aware that the funds raised cannot be ring-fenced, we should not have thought the business case a difficult one to make.

Premium services are used because of their speed, but also, at least in the past, because of their certainty. It was, although it is not always now, possible accurately to predict when a passport would be returned. Now that we see documents transported, without warning, across the country to be caseworked, difficult to locate and to retrieve, there is anxiety about premium services.

It continues to be a shortcoming of the priority postal service that it does not provide a guaranteed maximum time for the return of documents. Meanwhile the ordinary postal service is so slow as to cause difficulty not only to the frequent business traveller but to most people who do any travel for business or pleasure.

It is in the proposals stated that "for permanent routes we already operate a service" and reference is made to the settlement and nationality checking services. But the information on the UK Border Agency website at [http://www.ukba.homeoffice.gov.uk/visas-immigration/settlement/applicationtypes/applicationformset\(m\)/scs/](http://www.ukba.homeoffice.gov.uk/visas-immigration/settlement/applicationtypes/applicationformset(m)/scs/) states

*You are able to keep your passport but we do recommend that you do **not** make travel plans whilst we consider your application as this will result in an invalid application which will be rejected.*

Thus while those making applicants for indefinite leave to remain may be able to use their passports to negotiate internal immigration controls, they would not be able to travel. They are no further on than they were in 2002, and indeed do not have the possibility of a "travel extension."

## Procedure

- Would applicants have to request the return of their passports or would passports be returned automatically? We advocate the latter to ensure that applicants are expecting a passport and that it is missed if it does not arrive, but it is important that it is possible to request the rapid return of a passport. The 20 days for the return of EEA passports is too long, and it is not always met.
- It is important that applicants know, prior to requesting the return of their passports, how long it will take for them to be returned.
- It is vital that passports are sent by secure delivery and not in the ordinary post. This is a matter we have raised with the Home Office in many contexts. It has, inter alia, been a problem when passports submitted to the public enquiry office have been caseworked elsewhere

- It is also vital that the applicants choice of where the passport be sent be respected to ensure the security of these documents.
- That the passport has been returned should be clearly recorded on the file.
- When we telephone the European enquires contact centre: if the return of a passport is not received within 20 working days, a formal request has to be made again and a further 20 working days is then required from when the second request was made. This gives the impression that the return of documents within 20 working days is meaningless and that it is possible that some requests may never be processed

### **Low risk applicants**

We are concerned that the level of risk should not be assessed by reference to nationality but to the circumstances of the individual. We have pointed out before the fine, and in many cases non-existent, line between risk profiling and stereotyping. We are mindful that those making these applications will already have been granted leave, which remains valid, and will have brought themselves to the attention of the Home Office. Certainly if the low risk category is, as proposed, initially just intra-company transferees, then, in addition, where the sponsor in other Tier 2 categories is an A-rated sponsor the person too should be classified as low risk. Further, as regards low risk generally, regard should be had to the circumstances of the individual and the period for which the passport is withdrawn, so that it will also be appropriate to categorise others as low risk.

The criteria for assessing risk should be published in advance so that applicants can assess the likelihood of their passport's being returned before making an application.

### **Use of certified copies of documents**

If the settlement/nationality checking services, registered at OISC level one, provide an acceptable check, why does not a copy of a passport in support of a valid application certified by lawyers? Lawyers certify passports and other documents for a variety of purposes. Where a client is paying a lawyer it should not be necessary, for those on permanent routes, to go through a checking service when their own lawyer has checked the documents. Those on temporary routes have the option of having their documents certified by a lawyer but not of using a checking service.

### **Processing times and the expiry of leave**

The return of a passport for the purposes of travel is useful while a person has valid leave to enter or remain, but is of limited use when that leave to enter or remain has expired. There is a significant risk of not being admitted back into the UK, and thus of not being admitted onto means of transport or into other countries. The same is true where the document is relied upon for internal immigration control. An employer will need accurate information (not always forthcoming) from the Employer's Helpline to supplement a passport in determining that a person with only expired leave in their passport has made a valid, in time application and thus continues to have leave and permission to work. We anticipate a high level of error were the Government's proposals to have immigration document checked by doctors and private landlords given effect, with resultant discrimination.

The consultation paper observes that leave under section 3C of the Immigration Act 1971 lapses on leaving the Common Travel Area and identifies that a change to primary legislation in this regard would take some time. Given that an Immigration Bill is currently in preparation, we trust that it should not take too much time.

Guaranteed and shorter processing times would be one way of address the problem of the visa in the retrieved passport expiring. The other would be the return of the passport with a short (but long enough to cover processing times) extension of leave stamped in it *gratis*. This would cover a wider range of scenarios than an amendment of the effect of leaving the Common Travel Area on the expiry of 3C leave, as it would be clear from the passport itself, without more, that the person had valid leave. It would be useful both for travel and for those negotiating internal, including privatised, immigration controls. We ask that this be considered.

### **Other matters**

- It is unlikely that those who were not forewarned at the time of their original grant of leave will anticipate needing to make an application for leave as far in advance as three months.
- If applications are made in advance then a longer period of leave should be granted, giving the applicant in all cases the requisite period from the end of the date of the last visa so that s/he would have no need of a further extension application to reach five years (this will not be relevant to all intra-company transferees but will be relevant to some and is relevant to persons in other categories to whom, in our view, the scheme should be extended.)
- Passports should be returned where leave to remain is refused so that applicants may make applications at a Public Enquiry Office, via the super premium service or by post within the 28 days of refusal.

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