

Asylum and Immigration Bill

A Joint Briefing with the Immigration Law Practitioners' Association

Committee Stage : House of Lords

Regulating Immigration Advisers

Introduction

This briefing has been produced jointly by the Law Society and the Immigration Law Practitioners Association (ILPA). Both organisations have been concerned for a number of years about the activities of unregulated immigration advisers. The Asylum and Immigration Bill provides the Government with the opportunity to take powers to regulate unqualified immigration advisers, which both ILPA and the Law Society believe are necessary to ensure that unscrupulous unregulated advisers cannot prey on vulnerable people with immigration problems.

The Law Society and ILPA have made it clear that we believe such powers are needed and should be enforced by an independent body. We believe that there would be several benefits to regulating non qualified advisers, including improved applications, saving Home Office time, speedier adjudications and fewer adjournments, less public expenditure on duplicating legal work on cases badly done and less waste of time. This view is supported by the commissioned by the Government on asylum appeals by KPMG Peat Marwick (Review of Asylum Appeals Procedure, December 1994, p.21).

The Problem

Advice and representation on immigration matters are not activities restricted to those who are legally qualified. Anyone can hold themselves out to be an immigration adviser or consultant, and there are no effective restrictions on rights of audience before the immigration adjudicators. People with immigration problems can be particularly vulnerable to exploitation by unscrupulous advisers or consultants, because of their lack of understanding of the British legal system, language difficulty or a fear of officialdom. People may be more willing to trust someone from their own community regardless of their knowledge of immigration law, or may put more value on a service for which they pay.

Exploitation of people with immigration problems by unscrupulous advisers has been widespread for a considerable period of time, and has now spread to asylum seekers. Unregulated advisers frequently overcharge clients for simple tasks such as filling out forms, and the advice given is often incompetent or simply wrong. Practitioners have given instances of unregulated advisers putting in asylum applications without the knowledge of their clients, or raising false hopes with applications which are bound to fail, and it is a common practice for unscrupulous advisers to hold onto passports and other documents until overinflated bills have been paid. In some instances the activities of unregulated advisers may be linked to immigration racketeering.

Powers to regulate immigration advice

The Home Office is aware of the widespread nature of this problem, and have looked, without success at ways of controlling the problem. The immigration adjudicators have also examined what powers they have to control the activities of unregulated advisers, and have concluded that their powers are negligible. The main problem lies with non qualified advisers, as the KPMG Peat Marwick report notes:-

"Many representatives are well known, reputable and offer a good quality service.....there are others, mostly but not exclusively non legally qualified self styled immigration consultants, whose competence and honesty have to be called into question".

Most bona fide advisers will be subject to some form of regulation: legally qualified advisers will be regulated by their respective professional bodies, the Law Society and the Bar Council and advisers in most voluntary organisations such as CABx and independent advice centres will be subject to some control by their membership or management body.

Solicitors and bona fide advisers frequently have to pick up cases which have been grossly mishandled by unregulated advisers at the very last moment. This can have very serious consequences for the clients and may lead to them losing their immigration status.

This amendment would have the effect of putting into place a regulatory body which would have powers to require non-legally qualified advisers, and those advisers not working in bona fide advice agencies, to register with the authority and to meet standards set down by that authority, for example, standards of competence, requirements to have professional indemnity insurance and to have a proper complaints procedure. Fees could be raised from those registering, to ensure little or no public expense for the registration scheme.

The body established by this clause should be set up by the Lord Chancellor's Department, to ensure independence from decision making in the Home Office, and should be independent of service providers in the immigration field. This will provide assurances to the public that the regulatory body is acting independently and in the public interest.

For further information please contact:

Chris Philipsborn, Parliamentary Officer, The Law Society, 50 Chancery Lane, London, WC2A 1SX. Tel: 0171 320 5858.

Karen MacKay, Secretary to Immigration Law Sub Committee, 50 Chancery Lane, London, WC2A 1SX. Tel: 0171 320 5702.

Susan Rowlands, Immigration Law Practitioners' Association, 38 Great Pulteney Street, London, W1R 3DE. Tel: 0171 434 3690.

30 April 1996