Immigration Bill House of Commons' Consideration of Lords' Amendments 7 May 2014: further briefing from the Immigration Law Practitioners' Association

The continued risk of statelessness

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government, including Home Office, and other, consultative and advisory groups.

In this briefing we identify matters that have changed in the House of Lords and thus will return for Commons' Consideration. This briefing is written before Lords' Third Reading and before we have seen the final marshalled list for it. . Therefore some comments, and indeed Clause numbers, are provisional. Suggestions amendments are annexed to this briefing. We can provide drafts of amendments or further briefing to any clause on request. All ILPA's briefings on the Bill to date, as well briefings from the Open Society Institute and Professor Guy Goodwin Gill can be found at http://www.ilpa.org.uk/pages/immigration-bill-2013.html

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The government amendments propose that the Secretary of State can only deprive a person of citizenship when she has reasonable grounds for believing that a person is able, under the law of a country or territory to become a national of such a country or territory.

But alas, law and practice are two very different things.

In her masterly *Citizenship Law in Africa* for the Open Society Institute (http://www.opensocietyfoundations.org/sites/default/files/citizenship-africa_20101118.pdf) Bronwen Manby OBE writes

> *Another cause of statelessness is the failure by many African states to provide effective naturalisation procedures, especially for refugees. In practice, even where the law is unproblematic, some countries' procedures are available in theory only. A final critical problem is the widespread lack of due process protections, especially when the government wishes to revoke citizenship. The laws in too many countries give almost unfettered discretion to the executive, allowing for incumbent governments to abuse the law in order to silence critics and exclude political opponents from public office.*

She gives examples

In some countries, such as Ethiopia, the law is gender neutral on its face; but often in practice the children of citizen mothers and noncitizen fathers are not regarded as citizens.

… many countries have provisions allowing for revocation of naturalisation at the discretion of a minister and without appeal to any independent tribunal. At the other end of the process, the laws of many countries provide explicitly that there is no right to challenge a decision to reject an application for naturalisation.

…In Swaziland, the law does not specifically refer to ethnicity, but the attitudes reflected in the provision of the 1992 Citizenship Act providing for citizenship "by KuKhonta," that is, by customary law, have in practice ensured that those who are not ethnic Swazis find it very difficult to obtain recognition of citizenship.

… In Sierra Leone, for example, citizenship by naturalisation for those not "of negro African descent" is in theory possible after a 15-year legal residence period. In practice, it is nearly impossible to obtain.

The Open Society Justice Initiative said in its briefing for Lords' report (see http://www.ilpa.org.uk/resources.php/26116/ilpa-briefing-for-the-immigration-bill-house-of-lords-report-7-april-2014-deprivation-of-citizenship)

***Dominican Republic**. In September 2013, the nation's highest court issued a ruling denationalizing many thousands of Dominicans, leaving them stateless. Those affected were born in the Dominican Republic, of Haitian descent. The decision was justified as a reinterpretation of laws dating back to 1929 and with the false assumption that affected individuals had a claim to Haitian nationality.*

***Zimbabwe.** A 2001 amendment to the nationality law made thousands of Zimbabwean citizens by birth with foreign parents stateless. Zimbabwe did not allow dual nationality at that time, and the new provision required any citizen with a claim to another nationality to renounce it – even if they never had it. Absent proof of renunciation, they lost their Zimbabwean citizenship.*

See the example of Ljulja from Kosovo, a March 2014 post from the European network on statelessness. In theory Ljulj and her three children have a route out of statelessness. In practice, they do not: :
http://www.statelessness.eu/blog/abandoned-parents-neglected-state

Are the Sahrawis from the Western Sahara stateless or Algerian? The Spanish Supreme Court has grappled with this question, finding it complex and difficult. blog describes how the Spanish courts have http://www.statelessness.eu/blog/ray-hope-stateless-sahrawis-spain-1