ILPA MONTHLY

APRIL 2018

Free Movement:

Commonwealth Citizens, EU Citizens and the World to Come.

The departure of the United Kingdom from the European Union will herald the end of a system of free movement that entitled EU citizens from other countries to be admitted to the UK and to reside here without a grant of permission.

A system that, reciprocally, entitled British citizens to do the same in their countries. Yet this is not the first time in living memory a system of free movement has been discarded in response to the politicisation of immigration and its deployment in pursuit of wider and highly contestable political objectives.

In the 1960s the Commonwealth Immigrants Acts of 1962 and 1968 saw the imposition of immigration controls on British subjects/Commonwealth citizens from both independent Commonwealth countries and from remaining colonies. The Immigration Act 1971 imposed further, revised controls. Prior to those Acts the common law right of such persons to come to the UK and to reside here was unlimited; in that sense it was truly a system of free movement.

By contrast, free movement of persons under the EU Treaties involves a system of control over admission, residence documentation, and expulsion; albeit one considerably more flexible and friendly to the person moving into and out of the UK than the Immigration Rules.

Then as now the call for immigration controls was presented as a solution to major social and economic problems, notwithstanding a want of evidence as to cause and effect. Then as now such calls were marshalled around questions of identity that sought to define who belonged to the UK and to exclude others or to reduce and render precarious such rights as they had.

Now, as was the case then, in reducing rights of movement something is lost: a sense of belonging, along with others, to a wider community, of belonging not only to an island but to a part of the main. In the 1960s such sentiments were animated often by a misplaced nostalgia for empire; an empire the constituent parts of which each had long imposed immigration controls on British subjects from outside its particular territory. But the loss of the rights in the 1960s was real enough for those Commonwealth citizens who had come to the UK and for those who sought to come to join family members or to work.

At present, the UK is being sundered from a system of free movement that will continue to extend across the western and central parts of Europe for the inhabitants of 27 other EU states, the EEA States and Switzerland. After December 2020, a French citizen or a Polish citizen will remain able to move and live across a region of hundreds of millions of people as of right, much as a US citizen may move around America, or an Indian national move from Kolkata to Mumbai. But the right of a British citizen to live in Rome, Paris or Frankfurt will end, unless maintained by a new international treaty.

Any alternative system, albeit visa-free, that involves obtaining permission to reside and settle in another EU country, will not be the same as one that advances the right to do so and to belong to a wider community of neighbouring people and countries in so doing. Moreover, inward economic migration into the EU states is not harmonised. It is not yet clear whether, after December 2020, there will be a consistent policy among remaining EU states as regards British citizens who seek to migrate to an EU state for work, whether such British citizens will be able to move freely from one EU state to another, and the extent to which the system the UK seeks to impose on EU citizens who seek to migrate to the UK will influence those choices.

Absent agreement between the UK and the EU and its member states, there may be a number of divergent and sometimes restrictive immigration regimes with which British citizens will have to contend in EU states.

What opportunities are there? The debate around the revision of the UK system of immigration control, occasioned by the UK's departure from the EU, affords an opportunity to seek to extend procedural and substantive rights for people who migrate to the UK from every part of the World. Foreign nationals are vulnerable to overbearing laws and policies being made about them by virtue of them being, largely, un-enfranchised at national level. Law and policy is made about them and not by them. Such opportunities as there are to enhance protection, assistance, and rights may be seized. Among ILPA members there will be much debate about the particular shape of the UK immigration system in the years to come, as regards particular economic migration and family reunion policies. Opinions will vary on what constitutes a good outcome. But on matters such as ending indefinite detention, providing access to tribunal remedies, and securing legal aid for those who cannot afford advice and representation, there is a consensus. Advancing such rights will be a common endeavour.

Adrian Berry, ILPA Chair

IN THIS ISSUE

ILPA ACTIVITIES

Each month, the ILPA Activities section of the ILPA Monthly will highlight what the Secretariat and members have been up to recently. It will feature meetings we have attended, and work undertaken to advance the interests of members.

ILPA Visit to the Home Office Nationality Casework Team in Liverpool

In late March, an ILPA delegation visited the UKVI's Nationality section at the Capital Building, Liverpool, meeting with the senior management (non-policy) team for an interesting 'shop floor' tour and discussion.

During the visit, we learnt that the nationality team processes more than 16,000 applications per month, a figure that is unlikely to decrease over the next few years. We were introduced to the 'road map' for digitisation, a massive project that will bring significant changes to the procedure and handling of in-country applications (both nationality and immigration applications) by the end of this year. Following the entry clearance model, a private provider will take over the majority of front end services, including premium service centres, for handling biometric capture and document scanning to be sent to UKVI for digital consideration only (whether within premium or postal timeframes). ILPA members present raised concerns over some of the existing failures in the use of document scanning in entry clearance applications, as well as the loss of face to face interaction at Premium Service Centres.

Upon receipt of nationality applications, cases are currently streamlined by risk category, primarily based on the applicant's immigration history, and allocated to caseworkers accordingly. This risk-based approach is being rolled out more widely and, as noted in other ILPA forums, greater transparency is needed regarding the criteria and process for such initial assessment, which may have a significant impact on timescales for processing and outcome.

As part of the increased digitisation of casework, the nationality team highlighted a new service, the 'Nationality Document Return Service' (in addition to the Joint Citizenship and Passport Service and Nationality Checking Service), modelled on the popular European Passport Return Service, to allow applicants to submit copies of their documents and retain originals, but only where the online application form is used. ILPA members gave constructive feedback on the online citizenship application process.

Following the tour, ILPA members raised a variety of issues – both practical and policy-related including the online forms, deprivation and nullity procedures,

applications by EEA nationals, the use of discretion in children's registration applications, status letters, fee waiver issues and the good character guidance. UKVI representatives were largely receptive to our concerns, with assurances that issues raised would be fed back to relevant policy makers. Despite a busy schedule, there was just enough time for shared nostalgia over the now-archived Nationality Instructions.

A reassuring note was the nationality team's commitment to handle 'Commonwealth cases' involving those freely landed before 1973 sensitively and with empathy.

A full note of the visit is being prepared for circulation.

Prepared by visit attendees Diana Baxter, Partner, and Anjana Daniel, Solicitor, of Wesley Gryk Solicitors LLP.

Latest Strategic Legal Fund (SLF) Grant and Upcoming Funding Round

ILPA is pleased to announce our latest grantee of the Strategic Legal Fund. Deighton Pierce Glynn and the Unity Project were awarded funds to gather evidence of the discriminatory impact and systemic failings in the implementation of the Home Office's policy of imposing a No Recourse to Public Funds (NRPF) condition on grants of limited leave to remain in the UK. This policy disproportionately impacts single mothers and leaves many children and young migrants destitute for prolonged periods.

The Strategic Legal Fund is now taking applications for its fourth round under ILPA management with a deadline of Friday 4th May. If you know of issues that affect migrant children and young people that could be improved by a change in law or procedure, and you are thinking of submitting an application, please contact Bella Kosmala (bella.kosmala@ilpa.org.uk) to discuss your proposal and for an application form. We welcome applications from firms of solicitors with a legal aid contract in a relevant area of law and not-for-profit organisations that provide specialist level legal advice to migrant children, families or young people under 25. We are currently particularly keen to hear from organisations outside of London. We make grants for up to £30k, with an average grant size around £12k.

To find out more about current work we fund and to find out more about the SLF, take a look at our website

www.strategiclegalfund.org.uk

STRATEGIC LEGAL FUND FOR VULNERABLE YOUNG MIGRANTS — Managed by ILPA

ILPA Meeting at British Future re Settled Status

On Tuesday 13 March, ILPA Chief Executive, Nicole Francis, and Legal and Parliamentary Officer, Claire Laizans, attended a session hosted by think tank British Future on the new settled status system. The meeting was well attended by civil society members, and featured a presentation from key Home Office representative focused on how the new system was being designed and implemented. Attendees were also given an overview of the 'app' which EU nationals and their family members will use to apply for the new status.

As part of this demonstration, attendees were given an indication about the information applicants would be required to provide. At this stage, it is envisaged that an applicant using the system will first be asked to declare whether they have been present in the UK for more or less than five years. After this, they will be asked to provide their contact information and confirm their identity by scanning a passport and potentially taking a photo of themselves. Applicants will then be asked whether they have a criminal record. If an applicant selects 'yes', they will be directed to further questions.

Once an applicant has applied through the app, HMRC and DWP checks will be automatically carried out, along with a criminal records check. Some applicants will be required to send in their documents/further documents if their identity cannot be verified, or if their work history cannot be established. In explaining the application process, the Home Office representatives reported to the group that very few aspects of the new system are 'set in stone' and there is a real drive in the Home Office to make it as accessible as possible.

While very useful, a great number of issues were not clarified by the session. Firstly, it remains unclear how long a standard application will take to process. ILPA also remains concerned about what will happen to individuals who do not apply during the required period. The Home Office representatives noted that such individuals would be granted an extension if their reason for not applying was 'valid'. No guidance was given, however, on what constitutes a 'valid reason'. ILPA also raised concerns about the 'criminality question' and whether mistakenly answering this part of the application incorrectly would be considered 'deceptive'.

In days following this discussion on 19 March , the latest version of the Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community was published by the EU Commission. Running to 168 Articles (excluding Protocols), this draft treaty provides for both the Brexit transition period, and the continuing relationship between the UK and the EU after the transition period. Negotiations are of course ongoing, and 'nothing is agreed until everything is agreed'. To this end, the Settled Status scheme will necessarily continue to be shaped by the negotiations, which are set to conclude in October 2018.

Please find the latest text of the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community here:

https://ec.europa.eu/commission/publications/draft-withdrawal-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community_en

Review of The Legal Aid, Sentencing and Punishment Offenders Act 2012

As previously reported, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO') is due for Post-Implementation Review. However, many of the key stakeholders, ILPA included, have been excluded from ministerial level consultation meetings regarding the review. Due to the glaring omissions, ILPA co-signed a letter dated 5 April 2018 drafted by the Public Law Project. The letter asked the Ministry of Justice to (1) publish the names of organisations invited to the consultative groups, (2) explain how they were chosen, (3) explain when excluded stakeholders will be allowed to provide evidence/submissions, (4) explain what form any individual engagement will take; and (5) clarify the email address to which evidence/submission may be sent.

In light of this letter, ILPA was also represented at a meeting hosted by Doughty Street Chambers, and organised by the Legal Aid Practitioners' Group ('LAPG'). The LAPG were helpfully able to provide information as to who had been invited to the 4 consultative groups. The consultative groups will focus on LASPO's effects in (a) criminal, (b) civil, (c) family; and (d) not-for-profit. It transpires that not a single practitioner has been asked to attend any of the consultative groups, and this raises concerns as to the depth and clarity of any review into the effects of LASPO on lawyers, clients and the justice system as a whole.

ILPA will continue to press the Ministry of Justice to ensure that the voices of immigration lawyers are represented in any LASPO review as we move forward from this position.

ILPA Evidence to the House of Commons Scottish Affairs Enquiry

On 29 March, ILPA submitted written evidence to the House of Commons Scottish Affairs Committee inquiry on Immigration and Scotland.

We would like to acknowledge in particular the input of ILPA Member Darren Stevenson of McGill & Co Solicitors. A copy of ILPA's evidence can be found on the ILPA website here:

http://www.ilpa.org.uk/resource/34105/ilpa-written-evidence-to-the-immigration-and-scotland-inquiry-of-scottish-affairs-committee-29-march

ILPA ACTIVITIES

Coming Up

ILPA Conference on Family Migration to the UK, 15th May 2018

This NEW full day conference will be held on 15 May and aims to provide practitioners with a broad overview and update on requirements and latest changes relevant to family-based migration applications.

The conference will provide an opportunity to exchange information and explore a range of topics on family migration including:

- The relationship between family law and immigration law
- Current issues in law and practice
- The financial requirements post MM
- Post-Brexit family reunification plans
- Parents applying to stay to care for children, Zambrano issues, and derivative residence permits.
- Adult Dependent Relative Rules
- Refugee family reunion

Chair: Katie Dilger, ILPA Family and Personal Migration Working Group Convenor.

Speakers include:

- Alison Stanley, Bindmans LLP
- Diana Baxter, Wesley Gryk LLP
- Kathryn Cronin, Garden Court Chambers
- Matthew Evans, The Aire Centre
- Ayesha Mohsin, Luqmani Thompson & Partners
- Mark Symes, Garden Court Chambers tbc
- Satbir Singh/Chai Patel, JCWI
- Sue Shutter, ILPA Family and Personal Migration Working Group Convenor

For further information go to: http://www.ilpa.org.uk/events.php or book now by contacting: training@ilpa.org.uk

ILPA Meeting re Civil Penalty Notices

ILPA members were invited to a meeting at the Government Legal Department ('GLD') chaired by HHJ Luba QC regarding civil penalty notices ('CPN') in immigration contexts. The purpose of the meeting was to bring the GLD and appellant lawyers together to discuss how to improve the functioning of the current appeals system in this context. As part of the background to the meeting, CPN appeals are most frequently brought by – in order, highest-lowest: (1) employers accused of employing people contrary to immigration rules, (2) hauliers accused of transporting undocumented migrants, (3) landlords accused of renting to people contrary to immigration rules; and (4) biometric identification appeals.

Although CPN appeals can be issued at any County Court, as a matter of practice, it is probably simplest to issue at the County Court at Central London. Appeals issued in other County Courts should be transferred to the County Court at Central London by the relevant Court. In a helpful set of discussions, recommendations were made to help make the procedure of CPN appeals more manageable. Most interestingly, HHJ Luba QC expressed reservations as to the number of immigration practitioners who are unfamiliar with the Civil Procedure Rules in these areas, especially with regards to witness statements for clients who require interpreters. Alongside procedures, discussions focussed on case management, payment by instalment, costs and the form of the hearing.

Moving forward, ILPA will look to continue ensuring that more immigration law practitioners are familiar with the CPN appeals regime, and to providing further feedback regarding case management issues arising from the meeting.

ILPA Meeting re Immigration Bail Regime

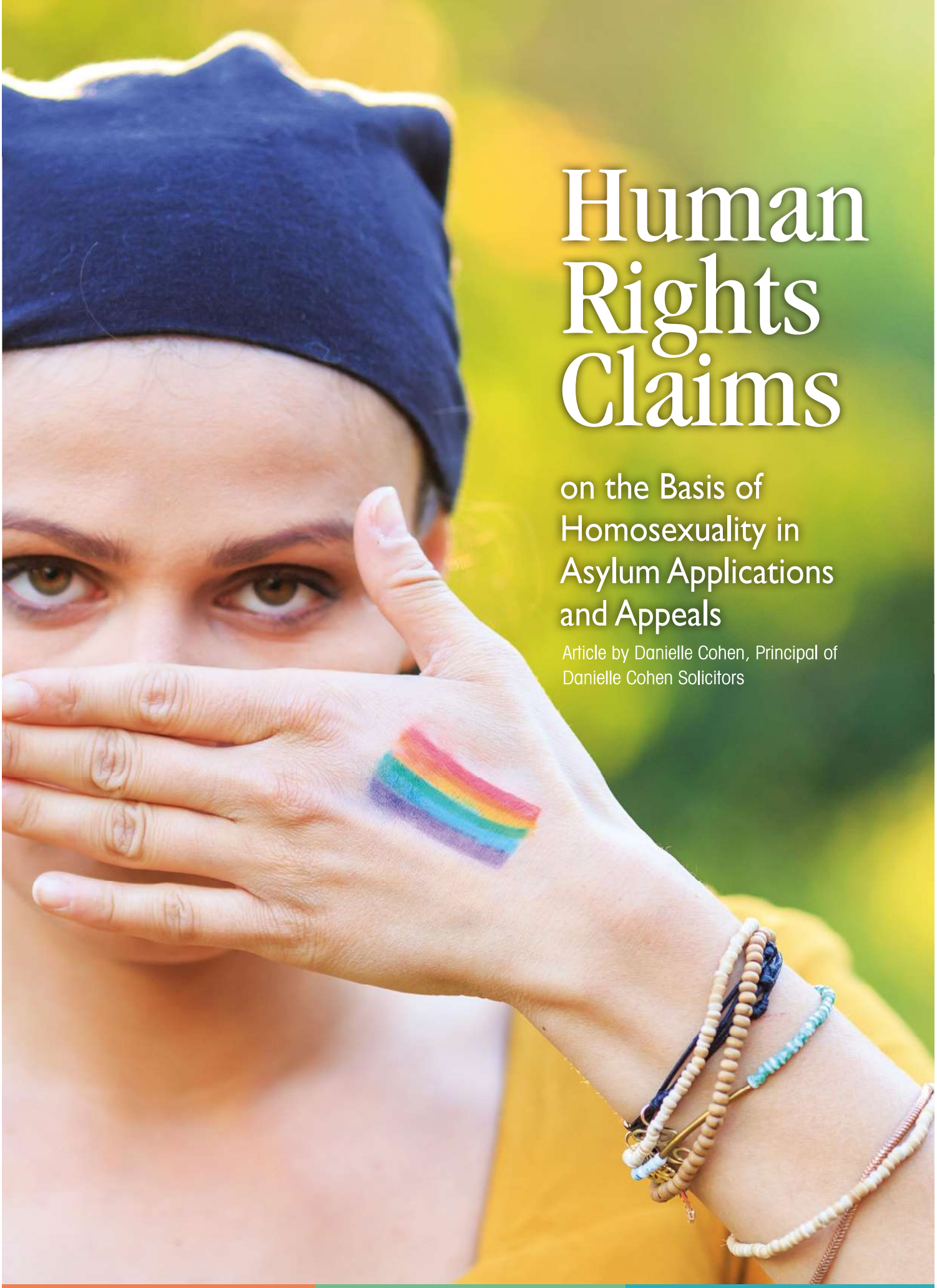
In an extremely well-attended meeting, the ILPA Removals, Detention and Offences ('RDO') Working Group met on 28 March to discuss changes to the immigration bail regime. On the agenda were discussions of accommodation, bail conditions, as well as automatic bail.

Attendees expressed concern that the Home Office are routinely bailing immigration detainees to street homelessness, and that this, coupled with onerous conditions to qualify for statutory support for those who have already made asylum claims and are destitute. Indeed, the destitution test itself sparked lively discussion amongst the group, especially when it is viable for a bailed detainee to depart from the United Kingdom. An unsettling outcome of this was reports from RDO members that some detainees have received bail summaries that release the detainee on to the streets first, and then allow them to apply for accommodation.

With regards to bail conditions, members highlighted that policy seems to dictate that at least one restriction be imposed upon detainees who are bailed. RDO members highlighted that these restrictions can include restrictions on studies, however, what constitutes study is not defined. Therefore, a migrant undertaking free English classes provided by an NGO could find themselves in violation of their bail conditions – a criminal offence. Finally, RDO members raised concerns around detainees being asked to sign opt-outs from automatic bail hearing provisions, in circumstances where many detainees do not understand what they have been asked to sign.

As the new bail regime beds in, this will continue to play a key role in the work of the RDO group. A follow up meeting will be convened in early May. A notice will be sent out to members of the working group.

ILPA ACTIVITIES



Human Rights Claims

on the Basis of Homosexuality in Asylum Applications and Appeals

Article by Danielle Cohen, Principal of Danielle Cohen Solicitors

Danielle qualified as a solicitor in 1998. She is the Principal of Danielle Cohen Solicitors, an Immigration and Human Rights firm, established in 2004. Prior to that she worked at Bindmans LLP between 1998 and 2003, and after that ran the Immigration Department for Scott Moncrieff Harbour & Sinclair, where she developed an expertise in the overlap between mental health issues and asylum law. Having extensive experience in all aspects of UK Immigration Law, she focuses on private Immigration and Human Rights. She attended the Home Affairs Select Committee as a witness on 10th October 2017. She has volunteered for Liberty, Refugee Women's Legal Group, Justice for Women, Westminster Women's Aid and Hammersmith & Fulham Law Centre.

We all represent individuals, both in asylum applications and appeals, who ask for asylum or make a human rights claim on the basis of homosexuality. They fear persecution as members of a particular social group and or ill-treatment in breach of Article 3 on account of their sexuality. Despite the fact that in the 1951 Refugee Convention there is no explicit recognition of persecution for reasons of sexual orientation or gender identity, the drafters of the convention used broad enough language to cover such instances, notably by recognising that people could be persecuted for membership of a particular social group.

There has been a growing awareness of the rights of LGBT individuals. In particular the UN has documented violations against LGBTI people and articulated the human rights strands in the context of sexual orientation and gender identity. Jurisprudence in the area of refugee law also continues to evolve.

Members of the LGBTI community are persecuted for many reasons, one of which is their departure from the 'majority norm', or from the accepted status quo. Society seems to be afraid of social changes and the gay way of life is perceived to be a threat to home, family and culture.

As a practitioner I have seen a number of trends in the treatment of asylum claims by LGBTI people refused by the UKVI. The first trend was to demand discretion. This trend questioned whether the 1951 Convention protects persons who could have avoided persecution by simply concealing their sexual orientation. The idea that gay people should tolerate the requirement to be discreet about their sexual orientation was dismissed by the UK Supreme Court in 2010 in *HJ and HT*[1] .

The second trend was criminalisation and the challenges involved in determining whether the existence of a law criminalising same sex relations amounted to persecution. There was a time when the mere existence of laws criminalising same sex conduct was insufficient for recognition of refugee status, and regular enforcement of the law was required.

The third and current trend is sexualisation. This means the over-emphasis by decision makers on sexual acts, rather than on sexual orientation as an identity. This trend leads to intrusive and humiliating questioning about our clients' sexual lives and overlooks the fact that LGBTI people are often persecuted just because of the threat they represent to the social and cultural mores. The threat of persecution is rarely simply about the enforcement of laws against a particular sexual act.

There is also an over-emphasis, in refusal letters, of the applicants' alleged failure to deal with feelings about sexuality or feelings of attraction towards the same sex. This approach is unfair and unreasonable in the context of questioning, for example, a gay man from a conservative Islamic background about his sexuality. The approach that the Home Office takes is often contrary to their own policy instructions on sexual orientation issues in asylum claims, published on 3rd August 2016, which acknowledge that some lesbian, gay and bisexual people may originate from countries in which they are made to feel ashamed, humiliated and stigmatised due to their sexual orientation and may feel a strong sense of shame and stigma. The Home Office doesn't take into account the fact that feelings about intimate and sexual matters are hard to explain to anyone, let alone for an asylum applicant to explain to an unknown civil servant, in the stressful environment of a Home Office asylum interview.

The fourth trend is stereotyping. Sexual orientation and gender identity are not visible in the same way that race and nationality and perhaps other particular social groups may be. This has meant that the Home Office are preoccupied with obtaining evidence of whether an applicant is in fact LGBTI. For lack of guidance and knowledge, the Home Office relies on their own personal assumptions or stereotypes to decide whether somebody is LGBTI or not, which risks undermining the impartiality of the decision maker. In particular, in the case of men, some are not believed because they do not frequent LGBTI venues, do not have tattoos or other markers of homosexuality, nor do they dress in a manner considered to be stereotypically gay. Some are not believed because they have not provided witnesses, or shown evidence of making public displays of affection towards individuals of the same sex. It is obvious that an individual can be considered to be authentically heterosexual or homosexual in orientation without complying with certain given stereotypes.

In social psychology it is acknowledged that stereotypes may or may not accurately reflect reality. While we acknowledge that stereotypes can be positive in functioning as time and energy saving mechanisms for understanding the world, these same stereotypes can also reflect biased perceptions of people's own social context. My point is that the Home Office should not use stereotypes as short cuts to make sense of applicants' cases.

One of our clients reported in his assessment to a psychologist that he was a gay man but also a shy person, who therefore did not show affection towards partners in the way stereotypically considered to be normal for a gay man. He never goes clubbing, but that doesn't mean he is not gay. Social psychology theories of stereotyping concur that just because an individual does not correspond to the stereotype of a particular social group, does not mean that he or she is not a valid member of that group.

The fifth trend, which often goes hand in hand with stereotyping, is that of disbelief. Not all Courts or the Home Office accept the self-identification of the applicant as LGBTI. The Home Office interview is often the stage at which LGBTI persons self-identify and when the most vital decisions concerning their future occur. And yet the asylum interview process is a lottery, and many asylum interviews are rushed, biased and resolved by cut-and-paste decisions.

On 11th February 2018 The Guardian newspaper published an article about a former Home Office staff member employed in deciding asylum claims. The staff member said that colleagues had a harsh, even abusive attitude towards applicants, mocking them to one another and employing intimidation tactics during interviews. The journalist spoke to three former decision makers or caseworkers, each employed at a different regional office, who all stopped working in these roles in 2016 and 2017. They all said that they had tried to do their job fairly but struggled owing to productivity targets and would use their own stock paragraphs which they would put into the refusal minutes. Two of the whistle blowers talked about cultural disrespect among some colleagues towards asylum seekers, and that 'many caseworkers looked at asylum seekers as liars'.

Such attitudes lead to difficulties for people to gain effective access to protection and such practices may be incompatible with the principle of the Refugee and Human Rights law. As practitioners, we should emphasise that there should not be over-emphasis on sexual acts and one should concentrate on sexual orientation as an identity. We should not allow our clients to be subjected to intrusive and humiliating questions about their sexual lives and the Home Office should humbly accept that even those responsible for providing protection and assistance may not always fully appreciate the challenges LGBTI refugees and asylum seekers face.

[1] [2010] UKSC 31.

The Brexit Effect

EU Nationals and the impact on net migration

The Office for National Statistics (ONS) has recently published the quarterly data on UK migration and, as usual, net migration - which is the difference between people coming to the UK and people leaving the country - is on the increase.

However, there appears to be a new trend. The number of EU nationals coming to the UK is shrinking, whilst the number of EU citizens leaving has risen. This has caused non-EU net migration in the UK to be now larger than EU net migration.

Around 130,000 EU nationals have decided to leave the United Kingdom during the past year. Although the ONS states that there may be various reasons for this phenomenon, the impact of Brexit cannot be denied.

The uncertain future has impacted heavily on the number of EU nationals arriving to look for work in the UK, i.e. on those who would come to "try", whilst those who already have a job offer continue to come.

EU students start to prefer other universities, concerned about the possible fee hike after 2019 and others have decided to leave simply because they believe they are no longer welcome after the referendum.

Those who have decided to stay feel threatened by the uncertainty and lack of clear information from the government.

The gov.uk website continues to state that "there is no need for EU citizens living in the UK to do anything now. There will be no change to the status of EU citizens living in the UK while the UK remains in the EU".

This message is perhaps supposed to be reassuring, but it is not. It is quite obvious that nothing will happen until the UK remains in the Union, however with less than a year to go until 29 March 2019, there is no information on how the new "settled status" and "temporary status" applications will work in practice.

Thousands of EU nationals who have already been here for five years or more are rushing to apply for permanent residence, which is a necessary step for adults who want to acquire British citizenship.

The most recent Home Office statistics indicate an unprecedented increase of naturalisation applications on the part of European nationals, with around 32,000 submitted in 2017.

Considering that over three million EU citizens reside in the UK, many more applications for settlement are expected in 2019, with the risk that the new and yet untested "settled status" system may not be able to cope.

More worries lie ahead. European nationals arriving in the UK after the cut-off date of 29 March 2019 will be required to "register", but it is not yet clear what this process entails.

After the so-called implementation period, which is supposed to end in December 2020, anyone entering the United Kingdom will not benefit from quasi-European rules and can expect a much stricter immigration system. It will also be mandatory for EU nationals to hold settled status or a temporary residence permit by 1st July 2021 (or have a pending application).

Whilst EU nationals in the UK apply to settle and become British, a by-product of Brexit is the increase of citizenship applications experienced by various EU nations on part of British nationals who wish to retain their EU citizenship.

The status of European Union Citizen is enshrined in the EU Treaty: 'Every person holding the nationality of a member state shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship'.

EU citizens are entitled to freely travel, live and work in any EU state; they can vote and stand as candidates in local elections in their county of residence and in elections to the European Parliament.

Brexit may signify that UK citizens will lose these precious rights and this is why it may be a good idea to acquire a second nationality to retain EU citizenship status.

Some EU countries allow citizenship to be acquired by descent without limiting the number of generations and therefore for example a British national with an Italian great-grandfather may be entitled to Italian citizenship even if they do not and never have resided in Italy.

Residence in the relevant EU country is often not required to gain citizenship through marriage either.

However, the most preoccupied by Brexit are the one million British nationals living abroad.

In February 2018, five British migrants living in the Netherlands succeeded in requesting that the national court referred a question to the Court of Justice of the European Union (CJEU), to decide whether their EU citizenship would survive Brexit.

Article 20 of the Lisbon Treaty defines EU citizenship as a separate status from national citizenship. The question is therefore whether such status could survive the fact that one's country of citizenship exits the Union.

An affirmative answer to this question would have huge implication not only for British citizens abroad but also for the whole negotiation process.

However, it appears that the Dutch government has appealed against the reference to the CJEU and therefore the issue may not in fact reach the European Court. A decision is expected in April, so we have to wait and see.

Article by Gabriella Bettiga, Consultant Solicitor

Gabriella Bettiga is a consultant solicitor and accredited as Level 3 Advanced Caseworker under the IAAS scheme. She is the chair of the independent cost and funding adjudicators at the Legal Aid Agency (MoJ). Gabriella is involved in policy work with various NGOs, particularly concerning women asylum seekers, and LGBT claims. She trains on various immigration topics and writes on immigration journals and newspapers.

The Hostile Environment

Is it working?

Since 2012 it has been the government's policy to create a "hostile environment" for allegedly illegal migrants, by making it harder for those without immigration status to open bank accounts, secure tenancy agreements and secure work.

The defining feature of policy in these recent times has been the increased outsourcing of immigration enforcement to banks, landlords and employers, with employers effectively becoming Immigration Officers. The theory is that an indirectly enforced "hostile environment" would make it hard for allegedly illegal migrants to build and sustain their lives in the UK that more would be inclined to voluntarily depart. Media reports point to the crackdown being felt, but it remains up for debate whether the policy has succeeded in its main aim of deterring illegal migration.

The policy's effectiveness depends on these indirect enforcers, such as employers, conducting more rigorous identity checks and acting on discrepancies. The government's approach has been characterised by enforcing the enforcement, and in the work context the main weapon has clearly been the civil penalty. The Home Office has the power to inflict fines upon employers of up to £20,000 per illegal worker found. These penalties are particularly potent as compared to criminal sanctions since they do not require proof of the employer's knowledge (or their reasonable cause to believe) that an employee is here illegally. Since 2011, the government has been publishing region-by-region statistics recording the frequency of these penalties, their total gross value, and the number of illegal workers found. But can measures such as these credibly evidence the effectiveness of heavier immigration enforcement since 2012?

Comparing the July to September quarter year-on-year from 2011 to 2017, the civil penalty statistics reveal an overall ~75% increase in the number of penalties issued, with their gross value increasing well over threefold. The number of illegal workers found increased as well, yet at a far lesser rate of 47.5% over this period. These figures demonstrate that the Home Office is continuing to take a tough stance on suspected illegal working and employers have paid the biggest price as the number of civil penalties has increased significantly.

Within this six-year period, the bulk of the increase in these figures occurred between 2013 and 2014. There is scope to attribute this spike to the introduction of the Immigration Act 2014, which saw the maximum civil penalty per illegal worker being doubled, amongst other measures aiming to "strengthen and simplify" the system. Responsibilities to conduct checks were more clearly elaborated upon in guidance, with the government reassuring employers that they would be excused from civil penalty liability if they could demonstrate having done sufficient checks. These legislative changes were evidently the product of political pressure to reduce annual net migration to below 100,000, and the government was no doubt keen to follow up on the reforms by enforcing employer enforcement more regularly.

The fact that the civil penalties issued has increased since 2014 might suggest that the reforms did their job in making the system more effective. Indeed, the latest net migration statistics show that in the year ending September 2017, net migration to the UK was 244,000 compared to 332,000 in 2015.

The question remains: will these "hostile environment" policies achieve the intended aims of the government?

Article by Chetal Patel, Partner, Bates Wells Braithwaite

Brexit: Certainty at last?

Miglena Ilieva and Eva Doerr at Laura Devine Law examine the latest position in relation to citizens' rights.

"The settled status application is expected to be a highly simplified, streamlined procedure, made online or via a phone app, with very few questions and the ability to scan a passport or upload a selfie"

With less than a year to go until Brexit, the UK and the EU finally reached an agreement on citizens' rights in the recent draft Withdrawal Agreement in March, following the earlier agreement in principle in December.

Timeline

While the Withdrawal Agreement is preluded with 'nothing is agreed until everything is agreed', it provides the most comprehensive plan to date for what EU citizens, their families and employers should expect immediately post-Brexit. Key features of the agreement include:

- the transition period following Brexit has been agreed to be between 30 March 2019 and 31 December 2020;
- the cut-off date for the end of free movement has effectively moved to the end of the transition period. This means that EU nationals moving to the UK and UK nationals moving to the EU27 can do so on the basis of free movement rights until 31 December 2020 and may remain after that date under the terms of the Withdrawal Agreement. Similarly, employers would continue to have access to an EU migrant workforce until at least that date;
- EU citizens wishing to remain in the UK after 31 December 2020 must apply for a status document—the deadline for doing so will be no earlier than 30 June 2021;
- family members of EU nationals whose family relationship predates the end of the transition period will be able to join the EU national on EU law terms (less restrictive than UK law); and
- EU arrivals coming to the UK after the end of the transition period are expected to be subject to a new (yet to be determined) immigration system.

New status

A new status scheme will be introduced for eligible EU nationals and their family members. Those with five years' continuous lawful residence in the UK prior to 31 December 2020 will be eligible for 'settled status'. Those with less than five years lawful residence would be given 'temporary' status to allow them to complete five years and become eligible for settled status. Lawful residence is to be interpreted as exercising 'Treaty rights' by either working, being self-employed, studying and/or being self-sufficient. However, the government has made indications that it will adopt a more generous interpretation than required by the Withdrawal Agreement, for example by not requiring comprehensive sickness insurance for students and self-sufficient people.

Settled status differs from EEA free movement as it is not automatically conferred. Instead, EU citizens wishing to remain in the UK after 31 December 2020 would be required to make an application to the Home Office for a status document under the Withdrawal Agreement (even if they already hold a document certifying that they have acquired permanent residence).

Application process

Under the terms of the agreement, the UK government is required to allow a minimum of six months from the end of the transition period (ie until at least 30 June 2021) for EU citizens and their family members to apply for a status document. However, to avoid an avalanche of applications, the Home Office is expected to roll out the new scheme on a voluntary basis from later this year.

The settled status application system is expected to be a highly simplified, streamlined procedure, made online or via a mobile phone app, with very few questions and the ability to scan a passport and upload a selfie. In an attempt to further simplify the process, the Home Office is expected to carry out checks directly with other government departments (eg HMRC) to reduce the need for voluminous evidence as has historically been the case. Those who already hold a Permanent Residence document will be able to swap it for a settled status, free of charge. The status document is expected to be electronic rather than a physical document.

Resubmitting applications

Before 31 December 2020 EU nationals may remake applications for settled/temporary status should the application be refused in the first instance. However, any application submitted from 1 January 2021 can only be challenged by way of appeal (with no option of reapplying).

Family members

Family members may continue to join EU nationals until the end of the transition period in the same way they are able to now. They will also be eligible for the new temporary and settled status scheme.

From 1 January 2021, only the following family members will be allowed to enter the UK under free movement rules, provided they can evidence that their family relationship with the EU national existed before 31 December 2020:

- spouse / civil partner;
- durable partner in a duly attested relationship;
- children under 21;
- dependent children older than 21; and
- dependent direct relatives in the ascending line.

Children born or adopted after 31 December 2020 may also qualify, in certain circumstances.

Chen and Zambrano carers are also covered, in addition to the Home Office having confirmed that it is their intention for *'family members of UK nationals who have exercised their free movement rights in another EU Member State before returning to the UK … as per Surinder Singh case law, [to] be eligible for the UK's settled status scheme.'*

Further clarity needed

While the agreement is undoubtedly a step in the right direction, a lot more detail is required to provide complete clarity and certainty to EU citizens, their families and employers. It remains unclear whether those arriving during the transition period will be subject to a mandatory registration requirement which appears to be the government's intention.

Miglena Ilieva

Eva Doerr

Miglena Ilieva, Senior Solicitor and PSL Team Manager and Eva Doerr, Senior Paralegal, PSL Team at Laura Devine Law specialise in all aspects of UK immigration law as well as EU free movement law.

ILPA LEGAL UPDATE

The Legal Update section of the ILPA Monthly will provide a regular snapshot of key level developments over the past month.

Upper Tribunal Decision - Best Interest of the Child

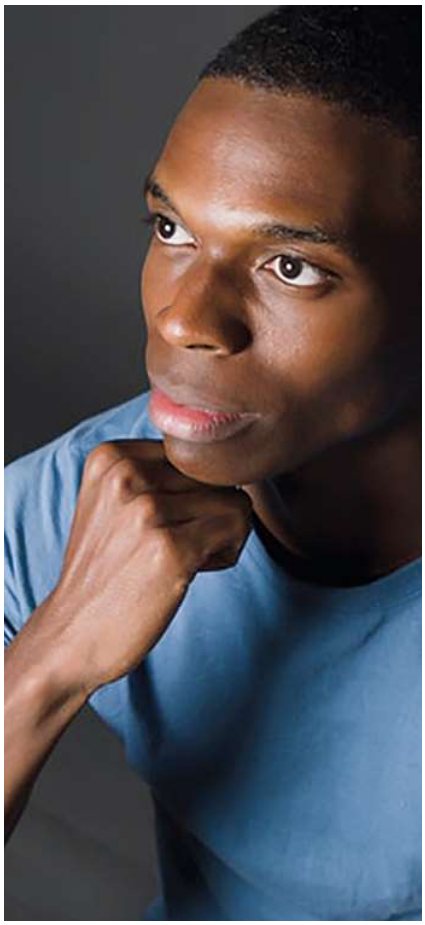
The Upper Tribunal handed a decision in the case of MT and ET *(child's best interests; ex tempore pilot) Nigeria* [2018] UKUT 88 (IAC) on 1 February 2018. There were two major components to this decision from the President of the Upper Tribunal, UTJ Lane, and UTJ Lindsley. The facts of the case were as follows. MT, the mother of ET, arrived in the UK in July 2007 when ET was 4 years old. MT overstayed and applied for leave to remain on Article 8 grounds, which were refused. In 2011, MT then claimed asylum which was also refused. After more applications on human rights grounds, which were refused, MT gained permission to appeal to the Upper Tribunal in September 2017.

These appeals were heard using the extempore judgment pilot, where the Secretary of State for the Home Department ('SSHD') made clear, by way of a letter, that if the Appellants were to prove their case factually, then their appeal failed to be allowed. Nothing in the letter suggested that any further proportionality tests would need to be carried out. The only question, factually, was whether ET, who had arrived at the age of 4, and was now 14, should remain in the United Kingdom pursuant to the best interests test of s.55 of the *Borders, Citizenship and Immigration Act 2009*.

The Upper Tribunal upheld the decision of *MA (Pakistan) and Ors v Secretary of State for the Home Department* [2016] EWCA Civ 705, that powerful reasons would be needed to remove a child whose best interests were served by staying in the UK. The Upper Tribunal held that:

"…A much younger child, who has not started school or who has only recently done so will have difficulty establishing that her Article 8 private and family life has a material element…This position, however, changes over time, with the result that an assessment of best interests must adopt a correspondingly wider focus, examining the child's position in the wider world, of which school will usually be an important part.

In the present case, there are no such powerful reasons. Of course, the public interest lies in removing a person, such as MT, who has abused the immigration laws of the United Kingdom… MT was what might be described as a somewhat run of the mill immigration offender who came to the United Kingdom on a visit visa, overstayed, made a claim for asylum that was found to be false and who has pursued various legal means of remaining in the United Kingdom. None of this is to be taken in any way as excusing or downplaying MT's unlawful behaviour. The point is that her immigration history is not so bad as to constitute the kind of 'powerful' reason that would render reasonable the removal of ET to Nigeria."



Please find the full decision here:

https:/tribunalsdecisions.service.gov.uk/utiac/2018-ukut-88

The Burden of Proof in Modern Slavery Cases

The Court of Appeal handed down its decision in the case of *R v MK* [2018] EWCA Crim 667 28 March 2018. This case conjoined appeals regarding whether the legal burden of proof is reversed to the defendant when a defence is raised under s.45 of the *Modern Slavery Act 2015*. S.45 of the 2015 Act provides a defence for victims of trafficking who commit an offence. It was the Court of Appeal's position that the opening lines of s.45 of the 2015 Act that a person *"is not guilty…"* provided a strong indication that if the section did impose a reverse legal burden of proof, then it would require defendants to prove specific elements establishing their innocence. Even though the prosecution contended that not reversing the legal burden of proof would render *"real difficulty"* for them in disproving the defendant's story to the criminal standard of proof, the Court of Appeal held:

"We accept that in some cases that may be so, but are unpersuaded that it affects the overall question of where the legal burden lies. In practical terms, the task that the prosecution faces if it bears the legal burden is unlikely to be very different from the task it faces when disproving the common law defence of duress. We accept that duress is narrower in scope than the defence provided by section 45, but it bears some similarities."

Therefore, the position for victims of trafficking relying on defences pursuant to s.45 of the 2015 Act is that it imposes an evidential burden on defendants. That is: *"It is for the defendant to raise evidence of each of those elements and for the prosecution to disprove one or more of them to the criminal standard in the usual way."*

Please find the full decision here:

http://www.bailii.org/ew/cases/EWCA/Crim/2018/667.html

Migration Advisory Commitee Interim Report

As previously reported, the Migration Advisory Committee (MAC) has been commissioned by the Government to conduct an inquiry into EEA-workers in the UK labour market. With members input, ILPA submitted evidence to the MAC in November 2017. On 27 March, the MAC published the interim report of the inquiry. An almost 70 page long document, the report summarises key themes across the 417 responses submitted to the inquiry and provides initial response.

On the issue of what drives business to employ EEA workers, the interim report noted that many submissions stressed that employing EEA nations is not a deliberate decision. Rather, EEA nationals are naturally filling positions where employers are seeking the best, most qualified candidate. The report also highlighted that many employers reported the view that EEA migrants are 'more motivated and flexible than UK-born workers'. To this end, employers reported that EEA nationals showed 'a greater willingness to work long and unsociable hours, to welcome overtime, and a consistently strong work ethic'. In response, the MAC noted that many of these assertions, particularly in relation to work ethic and attitude are difficult to assess objectively.

The MAC report also focused on the 'skills shortage', noting it as another reason employers looked to employ EEA nationals. This shortage was reported across the board, from high to medium and low skilled jobs. With respect to whether an expanded version of the current Tier 2 system would be adequate to combat the skills shortage post-Brexit, employers were sceptical. Labelling the system as 'time consuming, costly and overly complex', employers were not convinced this would offer a solution. To this end, businesses looking to recruit across the full spectrum of skill levels were concerned about the current system being extended to EEA nationals post-Brexit. In particular, employers of lower-skilled workers expressed particular concern that the jobs they have on offer would not qualify under the current system.

The interim report touches on a wide range of other issues, from the impact investment in innovation will have on reducing the skills shortage and the need to bring in more workers, to the concerns of regional employers. In places, the report questions the views expressed in submissions. This was notable in discussion on the issue of the impact of higher wages on the ability to recruit and retain workers. While employers felt that offering a high wage did not increase the ability to find a suitable candidate, the MAC suggested that an individual employer should always be able to fill a job if a sufficiently high wage is offered.

The final report of the MAC is due to be released in September 2018. Please find the full interim report here:

https://www.gov.uk/government/publications/eea-workers-in-the-uk-labour-market-interim-update

Law Commission Review of the Immigration Rules

As previously reported, the Law Commission has included a review of the Immigration Rules in its 13th programme of Law Reform. The review was jointly proposed by the ILPA, the Law Society and the Bar Council in response to widespread discontent with legislative structure governing immigration law. The Terms of Reference (TOR) of the review were released in December 2017. As set out in the TOR, the purpose of the inquiry is to identify principles under which they could be redrafted to make them simpler and more accessible to the user, and for that clarity to be maintained in the years to come. As part of the original work plan, the Law Commission was intending to publish a consultation paper by April 2018. ILPA has been advised that the consultation paper will be published in early June 2018. ILPA will alert all members following publication.

Please find materials relating to the project here:

http://www.ilpa.org.uk/resource/34026/the-law-commission-simplification-of-the-immigration-rules-presentation-to-ilpa-members-20th-februar

Recent Reported Tribunal Determinations

The determinations below are reported with their head notes, which are produced by the Upper Tribunal (Immigration and Asylum Chamber).

AJ (s 94B: Kiarie and Byndloss questions) Nigeria [2018] UKUT 00115 (IAC)

(1) In the light of Kiarie and Byndloss v Secretary of State for the Home Department [2017] UKSC 42, the First-tier Tribunal should adopt a step-by-step approach, in order to determine whether an appeal certified under section 94B of the Nationality, Immigration and Asylum Act 2002 can be determined without the appellant being physically present in the United Kingdom.

(2) The First-tier Tribunal should address the following questions:

1. Has the appellant's removal pursuant to a section 94B certificate deprived the appellant of the ability to secure legal representation and/or to give instructions and receive advice from United Kingdom lawyers?
2. If not, is the appellant's absence from the United Kingdom likely materially to impair the production of expert and other professional evidence in respect of the appellant, upon which the appellant would otherwise have relied?
3. If not, is it necessary to hear live evidence from the appellant?
4. If so, can such evidence, in all the circumstances, be given in a satisfactory manner by means of video-link?

(3) The First-tier Tribunal should not lightly come to the conclusion that none of the issues covered by the first and second questions prevents the fair hearing of the appeal.

(4) Even if the first and second questions are answered in the negative, the need for live evidence from the appellant is likely to be present. A possible exception might be where the respondent's case is that, even taking a foreign offender appellant's case at its highest, as regards family relationships, remorse and risk of re-offending, the public interest is still such as to make deportation a proportionate interference with the Article 8 rights of all concerned.

(5) If the First-tier Tribunal concludes that the appeal cannot be lawfully determined unless the appellant is physically present in the United Kingdom, it should give a direction to that effect and adjourn the proceedings.

Charles (human rights appeal: scope) [2018] UKUT 00089 (IAC)

(i) A human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002") can be determined only through the provisions of the ECHR; usually Article 8.

(ii) A person whose human rights claim turns on Article 8 will not be able to advance any criticism of the Secretary of State's decision making under the Immigration Acts, including the immigration rules, unless the circumstances engage Article 8(2).

(iii) Following the amendments to ss.82, 85 and 86 of NIAA 2002 by the Immigration Act 2014, it is no longer possible for the Tribunal to allow an appeal on the ground that a decision is not in accordance with the law. To this extent, Greenwood No. 2 (para 398 considered) [2015] UKUT 00629 (IAC) should no longer be followed.

Baihinga (r. 22; human rights appeal: requirements) [2018] UKUT 00090 (IAC)

1. The scope for issuing a notice under rule 22 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (circumstances in which the Tribunal may not accept a notice of appeal) is limited. A rule 22 notice may be issued at the stage where the First-tier Tribunal scrutinises a notice of appeal as soon as practicable after it has been given. Where no rule 22 notice is issued at that stage and the matter proceeds to a hearing, the resulting decision of the First-tier Tribunal may be challenged on appeal to the Upper Tribunal, rather than by judicial review (JH (Zimbabwe) v Secretary of State for the Home Department [2009] EWCA Civ 78; Practice Statement 3).
2. An application for leave or entry clearance may constitute a human rights claim, even if the applicant does not, in terms, raise human rights. In cases not covered by the respondent's guidance (whereby certain applications under the immigration rules will be treated as human rights claims), the application will constitute a human rights claim if, on the totality of the information supplied, the applicant is advancing a case which requires the caseworker to consider whether a discretionary decision under the rules needs to be taken by reference to ECHR issues (eg Article 8) or requires the caseworker to look beyond the rules and decide, if they are not satisfied, whether an Article 8 case is nevertheless being advanced.
3. The issue of whether a human rights claim has been refused must be judged by reference to the decision said to constitute the refusal. An entry clearance manager's decision, in response to a notice of appeal, cannot, for this purpose, be part of the decision of the entry clearance officer.
4. A person who has not made an application which constitutes a human rights claim cannot re-characterise that application by raising human rights issues in her grounds of appeal to the First-tier Tribunal.

The determinations can be obtained directly from the Upper Tribunal website;

https://tribunalsdecisions.service.gov.uk/utiac/decisions

Williams (scope of "liable to deportation") [2018] UKUT 00116 (IAC)

(1) A person who has been deported under a deportation order that remains in force is a person who is liable to deportation within the meaning of section 3 of the Immigration Act 1971 and is therefore unable to bring himself within section 117B(6) of the Nationality, Immigration and Asylum Act 2002.

(2) By the same token, the fact that such a person has been deported does not mean he or she is thereby able to avoid the application of the considerations listed in section 117C.

Yussuf (meaning of "liable to deportation") [2018] UKUT 00117 (IAC)

Section 32 of the UK Borders Act 2007 impliedly amends section 3(5)(a) of the Immigration Act 1971 by (a) removing the function of the Secretary of State of deeming a person's deportation to be conducive to the public good, in the case of a foreign criminal within the meaning of the 2007 Act; and (b) substituting an automatic "deeming" provision in such a case. The judgments of the Supreme Court in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 make this plain. To that extent Ali (section 6 – liable to deportation) Pakistan [2011] UKUT 00250 (IAC) is wrongly decided.

Statutory Instruments

Please find below a selection of statutory instruments relevant to immigration, asylum and nationality law. The latest statutory instruments can be accessed anytime online at www.legislation.gov.uk

The Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2018

These Regulations bring into force revised guidance specifying matters to be taken into account in determining whether a person would be particularly vulnerable to harm if that person were to be detained or to remain in detention and, if so, whether that person should be detained or remain in detention.

The revised guidance replaces the guidance entitled "Immigration Act 2016: Guidance on adults at risk in immigration detention" which was brought into force on 12th September 2016 by the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2016.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. The revised guidance on adults at risk in immigration detention will be published by the Stationary Office and copies may be obtained from the Stationary Office bookshops or online shop. The guidance will also be available on the adults at risk in immigration detention pages of the gov.uk website.

The Immigration and Nationality (Fees) Regulations 2018

These Regulations replace (and largely revoke) the Immigration and Nationality (Fees) Regulations 2017 (S.I. 2017/515). They also revoke the Immigration and Nationality (Fees) (Amendment) Regulations 2017 (S.I. 2017/885).

These Regulations specify fees relating to immigration, nationality and associated functions. They are made further to the Immigration and Nationality (Fees) Order 2016 (S.I. 2016/177), as amended by the Immigration and Nationality (Fees) (Amendment) Order 2017 (S.I. 2017/440) and the Immigration and Nationality (Fees) (Amendment) Order 2018 (S.I. 2018/329), which sets out the functions in connection with immigration and nationality for which the Secretary of State may charge a fee, and the maximum amount that may be charged for each of these functions. The Regulations also make provision which is incidental to the specification of those fees.

Schedules 1 and 2 specify fees for applications for entry clearance to enter, leave to enter and leave to remain in the United Kingdom and approval letters connected with entry clearance and leave to remain.

Schedule 3 specifies fees payable when requesting certain documents relating to immigration and nationality, whilst Schedule 4 specifies certain fees payable by sponsors when requesting particular products or services.

Schedule 5 specifies fees relating to the provision of consular services, Schedule 6 provides for fees payable in relation to premium services provided in the United Kingdom, whilst Schedule 7 makes provision for fees payable in respect of such services provided outside the United Kingdom. Schedule 8 specifies fees payable for applications and services in connection with nationality.

Schedule 9 specifies fees relating to applications for entry clearance to enter the Isle of Man, including fees in relation to premium services provided outside the United Kingdom and the Isle of Man, whilst Schedule 10 makes similar provision in respect of the Bailiwick of Guernsey and the Bailiwick of Jersey.

Schedule 11 makes provision for fees payable in respect of miscellaneous matters including the administration of the Life in the UK Test.

Schedule 12 amends the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 (S.I. 2011/2841).

Provision is also made in the Schedules to these Regulations for exceptions to certain of the fees specified, and the circumstances in which certain of them may be waived or reduced.

Copies of the documents referred to in these Regulations can be obtained from the Home Office, Fees and Income Planning Team, Vulcan House, Sheffield, S3 8NU.

A note outlining the likely impact of these Regulations has been laid before Parliament together with these Regulations.

ILPA LEGAL UPDATE *continued*

The Immigration and Nationality (Fees) (Amendment) Order 2018

This Order amends the Immigration and Nationality (Fees) Order 2016 (S.I. 2016/177). In particular, it sets the maximum amount that may be set in regulations for the provision of services relating to the acceptance or processing of a claim or application in connection with immigration or nationality, at a place other than an office of the Home Office, where this is done by a contractor in the United Kingdom. It also specifies, in respect of the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man, the maximum amount that may be set in regulations for the provision of certain premium services in connection with obtaining entry clearance to enter those jurisdictions.

The Order will also omit the maximum amount that might be set by regulations in relation to the provision of copies of decision letters, correspondence or applications, relating to immigration or nationality status. A fee has never appeared in regulations further to this provision and there is currently no intention to set any fees using it.

Similarly, the Order deletes provision specifying the maximum fee which may be set for dealing with an application from a student with valid leave under Tier 4 of the Points-based system, for permission to change their sponsor or course of study.

The Order also broadens the circumstances in which a fee may be set in respect of the provision of biometric identity documents. Specifically, this amendment specifies a maximum which may be set by regulations where a person fails to collect such documents within the required time limit. A change is also being made in relation to the provision of consular functions to recognise that those functions are provided outside consular premises.

An Impact Assessment has not been prepared in respect of this instrument. This is because this Order does not itself impact existing fee levels, but simply sets the maximum amounts at which the Secretary of State might set such fees by way of future regulations.

ILPA JOBS

Immigration Supervisor - North Kensington Law Centre, London W11 4AT

NKLC NORTH KENSINGTON LAW CENTRE

Salary £33,000 pa (plus pension contribution)

Hours 35 hours per week. Accountable to Senior Solicitor

North Kensington Law Centre (NKLC) is seeking to recruit a full time Immigration Supervisor accredited under The Immigration and Asylum Accreditation Scheme (IAAS)

The ideal candidate will be a qualified Solicitor or Immigration Caseworker with LAA Level 2/OISC Level 3 and Supervisory accreditation. The successful candidate will have thorough experience in publicly funded immigration/asylum work under a Legal Aid Contract. The role holder will be responsible for building up and managing an existing and new caseload and supervising the Immigration Team

Applicants should complete the application form which can be downloaded from our website www.nklc.co.uk and send it by email to info@nklc.co.uk.

The closing date for applications is midnight on Sunday 13th May 2018. Initial interviews will take place in the week commencing Monday 21st May 2018.

We regret that we will be unable to consider applications received after the deadline.

Immigration Associate (at least 2 PQE) - Penningtons Manches, London

PENNINGTONS MANCHES

Salary Competitive

We are looking to recruit a full time associate with at least two years' PQE in a top tier business immigration practice to join our immigration team in London which is ranked by both Chambers UK and The Legal 500. The ideal candidate will have experience of dealing with multi-national companies and all aspects of Tier 2 along with experience of dealing with high net worth individuals. Knowledge of the education sector would also be beneficial. They will be responsible for supervising paralegals and legal assistants as well as handling their own workload.

Excellent academic qualifications, a professional manner and a commitment to high quality service delivery are required. No agencies please.

Website: www.penningtons.co.uk

Contact: Gemma Johnson - gemma.johnson@penningtons.co.uk or Tel: 020 7457 3141

The application deadline is ongoing.

ILPA TRAINING

For full details and booking go to: www.ilpa.org.uk

These are just some of the upcoming courses for 2018. We are always adding to our programme, so check our website: www.ilpa.org.uk/events/php and follow us on Twitter: @ILPAimmigration for the latest updates.

May 2018

DT 1760 Tier 2 - Refresher and Updates

Thursday 03 May 2018, 16.00, London

Tutors: Rose Carey, Partner at Charles Russell Speechlys and Simon Kenny, Eversheds Sutherland

This course takes an in depth look at Tier 2 of the Points Based System. This will include the recent changes that came into effect in April 2017 and November 2017.

DT 1758 Nationality Law

Tuesday 08 May 2018, 10.00, London

Tutors: Adrian Berry, Garden Court Chambers and Diana Baxter, Wesley Gryk Solicitors

The session is aimed at practitioners who want to develop their understanding of nationality law and who are interested in more than making applications for citizenship. It complements the ILPA courses on naturalisation and registration. Start in 1907 and consider that nationality legislation of 1914 and 1948 before turning to the development of the British Nationality Act 1981 to the present day: the Citizenship (Armed Forces) Bill currently before parliament. Understand the implications of status tracing for your client and emerge a better-informed and wiser immigration, asylum and nationality lawyer.

DT 1755 ILPA Conference on Family Migration to the UK

Tuesday 15 May 2018, 10.00, London

Chair: Katie Dilger, ILPA Family and Personal Migration Working Group Convenor

Speakers include: Alison Stanley, Bindmans LLP, Diana Baxter, Wesley Gryk LLP; Kathryn Cronin, Garden Court Chambers; Matthew Evans, The Aire Centre; Ayesha Mohsin, Luqmani Thompson & Partners; Mark Symes, Garden Court Chambers tbc Satbir Singh/Chai Patel, JCWI; Sue Shutter, ILPA Family and Personal Migration Working Group Convenor.

This NEW full day conference aims to provide practitioners with a broad overview and update on requirements and latest changes relevant to family-based migration applications and will be looking at the following topics:

- Appendix FM, implementation and changes
- The relationship between family law and immigration law
- Current issues in law and practice
- The financial requirements post MM
- Post-Brexit family reunification plans
- Parents applying to stay to care for children, Zambrano issues, and derivative residence permits.
- Adult Dependent Relative Rules
- Refugee family reunion

DT 1766 Civil claims for unlawful immigration detention: practice and procedure

Thursday 24 May 2018, 16.00, London

Tutors: Emma Cohen, Bindmans LLP and David Chirico, 1 Pump Court Chambers

Delegates will obtain an understanding of the impact criminality has on applications for entry clearance and leave to remain (including settlement). The course will cover consideration of the various different grounds for refusal set out in the general grounds and in Appendix FM and give delegates a knowledge of the impact of different criminal sanctions on immigration applications and how to address the issue in casework.

July 2018

DT 1763 Significant Others: Love in a cold climate

Tuesday 03 Jul 2018, 10.00, London

Tutors: Barry O'Leary, Wesley Gryk Solicitors LLP Tim Barnden, Bates Wells Braithwaite

Our popular Significant Others session is back: covering all aspects of applications for spouses, civil, unmarried and same sex partners. "The best course I have ever attended, brilliant", "outstanding", "informative, lively and important" says the feedback. Tim Barnden and Barry O'Leary are described as "particularly helpful tutors", with one participant commenting "I would be happy to attend any sessions conducted by Tim and Barry".

ILPA MEMBERSHIP

Each edition, the ILPA Monthly will focus on one aspect of ILPA membership to make sure you're getting the most out of your ILPA membership! This month, please find below an overview of how to tailor ILPA's communications to best suit your needs.

What Communication do you get from ILPA?

A key reason to join ILPA is to be part of our information sharing work, keeping you informed of latest developments.

In addition to this monthly magazine and our website, we communicate regularly by email. As with all your contact details, please let the office know if your preferred email address changes.

All ILPA members (and all contacts at organisation members) will receive emails that are considered relevant to all members. We will also send to all members our regular training update emails. By joining ILPA you will automatically be signed up to receive these but it is easy to unsubscribe by following the unsubscribe button included at the bottom of every email.

Other regular communication happens through our thematic working groups who, in addition to holding meetings, regularly communicate through their email lists. You will need to subscribe to these lists if you want to receive their information.

To subscribe, and to check which groups you have subscribed to, take a look at the working groups pages when you are logged in to the members' area of ILPA website.

The working groups are a great benefit of ILPA membership as they are a brilliant way to hear updates and developments, to share views and information, to influence policy and shape ILPA's positions, and to identify emerging issues. Check the list below to see if your area of work/interest, or region is covered.

The tech stuff

We use a software package called Campaign Monitor to manage our lists and to send these emails out, but the email sender will appear as a standard @ilpa.org.uk email address. Please do check your junk mail folders and filters if you think you are not receiving emails from us. And as ever, get in touch with any questions or comments.

Working groups

- Courts and Tribunals
- Children
- Economic migration
- European
- Family and Personal Migration
- Legal Aid
- New York
- North West
- Refugee
- Removals, Detention and Offences
- Scotland
- Southern
- South West
- Yorkshire and North East

ILPA KEY DOCUMENTS

Please find below a list of the key documents on immigration, asylum and nationality law published by ILPA over the past month. All documents below have been previously circulated to relevant ILPA Working Group and are categorised accordingly.

Economic Migration

UK Visas and Immigration

UK Visas and Immigration Guidance: Register of licensed sponsors: workers (11 April 2018)
http://www.ilpa.org.uk/resource/34155/uk-visas-and-immigration-guidance-register-of-licensed-sponsors-workers-11-april-2018

UK Visas and Immigration Guidance: Register of licensed sponsors: students (11 April 2018)
http://www.ilpa.org.uk/resource/34154/uk-visas-and-immigration-guidance-register-of-licensed-sponsors-students-11-april-2018

UK Visas and Immigration Guidance: Register of licensed sponsors: workers (10 April 2018)
http://www.ilpa.org.uk/resource/34150/uk-visas-and-immigration-guidance-register-of-licensed-sponsors-workers-10-april-2018

UK Visas and Immigration Guidance: Register of licensed sponsors: students (10 April 2018)
http://www.ilpa.org.uk/resource/34149/uk-visas-and-immigration-guidance-register-of-licensed-sponsors-students-10-april-2018

UK Visas and Immigration Guidance: Applying for a UK visa: approved English language tests (9 April 2018)
http://www.ilpa.org.uk/resource/34151/uk-visas-and-immigration-guidance-applying-for-a-uk-visa-approved-english-language-tests-9-april-201

UK Visas and Immigration Form: Application to extend stay in the UK as Tier 1 or Tier 5 dependant (6 April 2018)
http://www.ilpa.org.uk/resource/34110/uk-visas-and-immigration-form-application-to-extend-stay-in-the-uk-as-tier-1-or-tier-5-dependant-6-a

Home Office Guidance: Register of licensed sponsors: workers (6 and 9 April 2018)
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ILPA WHO'S WHO

ILPA's Board of the Directors is its Committee of Trustees which is elected annually by the membership. All members of the Committee of Trustees are members of ILPA. All aspects of ILPA's work are supported by its Secretariat of paid staff. ILPA's work is organised into working groups.

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To get in touch with members of the Committee of Trustees, please get in touch with the ILPA Secretariat.

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ILPA Working Groups

ILPA organises its work into working groups. The current range of working groups and their convenors are shown below. All convenors are members of ILPA. To contact a working group convenor, please get in touch with the ILPA Secretariat. ILPA also convenes ad hoc working groups around particular topics and the staff can help you identify who would be the best person to speak to on a particular topic.

Courts and Tribuanls

Sonia Lenegan, Duncan Lewis Solicitors and Rowena Moffatt, Doughty Street

Children

Email group only

Economic Migration

Tom Brett-Young, Veale Wasbrough Vizards LLP, Rose Carey, Charles Russell Speechlys LLP and James Perrott, Macfarlanes LLP

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Elspeth Guild, Kingley Napley LLP, Alison Hunter, Wesley Gryk Solicitors LLP and Jonathan Kingham, LexisNexis

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Training

Celina Kin-Armbrust, ILPA

Yorkshire and North East

Ish Ahmed, Bankfield Heath Solicitors and Christopher Cole, Parker Rhodes and Hickmott Solicitors

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All aspects of ILPA's work are supported by its Secretariat of paid staff who are here listed. ILPA's work is organised into working groups and all ILPA's work is carried out by its members, supported by the Secretariat.

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