



**Borders, Citizenship and Immigration Bill
House of Lords Report
Part 2 Citizenship**

Clause 45 Good character

Amendment 51 Hong Kong War Wives and Widows

ILPA supports amendment 51, laid in the names of the Lord Avebury and the Lord Thomas of Gresford:

Clause 43

LORD AVEBURY

LORD THOMAS OF GRESFORD

51 Page 38, line 21, leave out subsection (2)

Purpose

To remove from Hong Kong War Wives and Widows from the list of those who must satisfy a good character requirement to register as British. An opportunity to probe the use of the good character requirement more generally.

Briefing

Sometimes one must oppose a requirement simply because it is ridiculous. As the Baroness Hamwee stated at Committee stage

‘This seems to be the most curious inclusion in the BNA of a very small number of people. However, we are not talking about individual decisions, but about the principle. The principle here is wrong... (4 Mar 2009 : Column 751)

‘Most curious’ is an extremely polite way of saying ludicrous.

The Immigration, Asylum and Nationality Act 2006 section 58 made provision for certain categories of applicant for British citizenship by registration to have to satisfy a good character test.

The Hong Kong War Wives and Widows Act 1996 provides a discretion to register as British citizens by descent women who were married to men who fought in the Second World War. It is now 64 years since the end of the Second World War. The

UK Border Agency's own instructions say that it affects a maximum of 53 women¹ of whom the vast majority are thought to be already British, or to have died. In 2006 it was argued that this group should not be subject to the good character requirement. The Baroness Ashton of Upholland, responding for the government said;

"[...] when we consider groups such as the wives and widows of those who fought in the defence of Hong Kong, we believe that we have brought them all into the system in one way or another. We do not believe that anyone remains outside. However, I am sure that the noble Lord and others listening to or reading our debate will let me know if that is not the case." (The Baroness Ashton of Upholland, HL Report, Report Stage of Immigration, Asylum and Nationality Bill, 7 February 2006, col 621)

What the Baroness Ashton did not explain was why this group of women should be brought into the system at all and made subject to a good character test if they were all taken care of. Nor indeed why there was a need for separate good character requirement in a discretionary category. Nationality law is complicated enough without unnecessary amendments to legislation and the indiscriminate use of the good character test, which to date has been limited only through the strenuous efforts of parliament, is an example of this.

At Committee stage of this Bill, the Lord Brett evinced no great appetite for arguing for a good character test for this group. He stated

'A powerful case has been made. I have the brief. The sensible thing is for the Government to reconsider the issue' (4 Mar 2009 : Column 751)

However, when the Lord Brett wrote to the Lord Avebury on 20 March 2009 he picked up his pen to defend the indefensible. He stated that the number of those women who have not yet taken the opportunity to register is 'in single figures' and that the number of potential beneficiaries is 'very small indeed'. But these de minimus arguments militate against the Lord Brett's own case – why bother, in 2006 (for he states that there have been no registrations in the last eight years) and again now, to impose a good character test if you do not expect anyone to register.

The Lord Brett goes on to assert that 'The good character requirement is a core principle to nationality law'. Well, the good character requirement is certainly not. It was only introduced in 2006. Let us be clear on what the good character requirement does. What a good character requirement does is to prohibit the Secretary of State from registering a person who is not of good character. It in no way fetters or limits the Secretary of State's powers to *decline* to register a person who is not of good character. The Secretary of State has all the powers to decline to register a war wife or widow who is not of good character, because registration under the 1996 Act is by discretion. All that Clause 45 can do in these cases is to fetter her discretion to register such a lady – to force her to decline to register such a lady if the lady is not of good character whether she wishes to do so or not.

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www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/nationalityinstructions/nichapter14/ch14annexc?view=Binary

The Lord Brett contends in his letter that discretion could be exercised in favour of a war wife or widow . But the whole purpose behind clause 45 is precisely to seek to fetter that discretion. Discretion can be exercised not to register a war wife or widow if not of good character, as has always been the case. But including them in clause 45 is designed to have the effect of denying the Secretary of State power to register a lady if her character did not meet the requirements of the good character test. If the statement of the law in the Lord Brett's letter is correct, why bother with clause 45 at all? If it does not, in reality, impose a good character test, then what does it do?

The government has no good reason for resisting this amendment. The number of beneficiaries may be tiny, even non-existent. But there are times when governments should be held to account for trying to pass bad, 'most curious' and ludicrous laws and this is arguably one of them.

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