McCarthy in the Court of Justice of the European Union

Is the Zambrano party over? So soon?
The decision of the Court of Justice in McCarthy v UK (C-434/09) on 5 May has caused confusion, not to say consternation.

Ms McCarthy, a dual Irish/British national born in the UK who had never worked or been self employed in the UK or anywhere else in the EU and relied on State benefits, sought family reunification with her third country national husband.

The Court of Justice held that Directive 2004/38 is not applicable to a dual national Union citizen who has never exercised their right of free movement and has always resided in a Member State of which they are a national.

The Court further held that Article 21 of the Treaty on the Functioning of the European Union is not applicable to such a person providing that ‘...the situation of that citizen does not include the application of measures by a Member State that would have the effect of depriving him of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member States.’

It held that Article 21 was not applicable in Ms McCarthy’s case. What of Chen (C-200/02)? Surinder Singh (C-370/09)? Let alone Zambrano (C-34/09 – which is addressed in the judgment), you cry? Quite.

See enclosures for reflections on the McCarthy case. See also ILPA’s training programme, with Jonathan Kingham’s Introduction to EU free movement law on 9 June (1303) for those feeling at sea and Simon Cox’s In-depth: Rights of residence under European Union law (DT 1311), all day on 28 June.

Those interested in following this debate should ensure that they are signed up to the European subcommittee email list, and your reflections are welcome.

New ILPA publication

On 20 May 2010 ILPA held the first conference associated with the Refugee Children’s Project, ILPA’s programme of work funded by the Diana, Princess of Wales Memorial Fund. At the conference, ILPA launched a new publication Working with refugee children: current issues in best practice.

Copies of the publication are available to all ILPA members free of charge, with no postage charges. Please get in touch with Lisa.Woodall@ilpa.org.uk if you would like a copy. The publication is also available on the publications page of www.ilpa.org.uk

This is a collection of essays on topical issues in work with refugee children, drawing on ILPA’s work, including the work of the children’s subcommittee and on the training that has been done under the auspices of the project. The essays cover best interests, working with child clients, legal aid and age disputes.

Ian MacDonald QC, ILPA’s President, has written the forward and contributing authors are Syd Bolton of the Refugee Children’s Rights Project, based at the Children’s Legal Centre, Kalviri Kaur of the Immigration Advisory Service, Jackie Peirce, Shuh Shin Liu of Garden Court Chambers and Colin Yeo of Renaissance Chambers, and it is edited by Lisa Woodall, Refugee Children’s Project Coordinator. Our thanks also go to Pat Kahn, Sue Shutter and Helen Williams for their work on the publication.

A report of the conference will appear in next month’s mailing.
may news

Refusal of entry to students at port

ILPA and others continue to receive worrying reports of students subjected to ‘English language testing’ at port and then refused entry, including in cases where the port has got in touch with the sponsoring college and invited them to withdraw sponsorship. Removals have been effected or attempts made to remove students.

We are interested in hearing from members instructed by clients with similar experiences; we and English UK are seeking a meeting with the Border Force on this matter.

Subcommittees and email lists

Ali Bandegani steps down from his role as co-convenor of the access to justice subcommittee and is replaced by Alison Pickup of Doughty Street chambers. Thanks to both, and welcome to Alison.

We have also introduced a new email list for asylum, if you would like your name to be added to it please get in touch with elizabeth.white@ilpa.org.uk.

You can also get in touch with Elizabeth if you wish your name to be added to any of our subcommittee lists.

Domestic violence – and legal aid

The April mailing highlighted the requirement, introduced from 6 April 2011 by Statement of Changes in Immigration Rules HC 908, to be free from unspent criminal convictions when applying for settlement.

Its effect on survivors of domestic violence is something on which ILPA and others have been working hard ever since. Eaves Housing, ILPA, Rights of Women and Southall Black Sisters held a meeting with officials at which officials agreed to refer the matter to the Home Secretary. Rights of Women coordinated a joint letter to the Home Secretary which over 166 organisations have signed. The Lord Avebury’s motion to regret the changes will be debated on 16 May (as this mailing goes to print).

The debate has put ILPA in touch with a wide range of organisations and individuals, as well as officials, nationally and internationally. It sends a message loud and clear that there are a very large and diverse range of people who do not regard foreign nationals with criminal convictions as pariahs, and expect them to enjoy the full protection of the law. See enclosures.

The strength of feeling on domestic violence and immigration that this and the broader “no recourse” debate have generated may be one reason why Minister Jonathan Djanogly MP indicated in a Westminster Hall debate on 12 May that the Government is revisiting its proposals to exclude survivors of domestic violence making immigration applications from the scope of legal aid. Good news, but it does suggest that plans to exclude immigration as a whole are proceeding apace. The Minister indicated on 12 May that an announcement on the outcome of the Legal Aid consultation is expected in the next few weeks.

Do not forget the Justice for All day of action on 3 June. If you would like a campaign action pack (complete with stickers), please get in touch with the ILPA Secretariat. If you can get local MPs and councillors into your firm, chambers or organisation, or meet them with other lawyers and providers of advice in your area that would be splendid, but writing an email to your MP or a letter to your local paper or councillor is also very worthwhile.

Legal aid 11 May 2011
Hansard Westminster Hall debate Col 451WH
www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110511/halltext/110511h0001.htm#11051169000003

Justice for all day of action
www.justice-for-all.org.uk/Take-part

Reform of Legal Aid – response of Administrative Justice and Tribunals Council to Ministry of Justice consultation
14 February 2011
www.justice.gov.uk/a/jtc/news/450.htm

Deputy Prime Minister’s speech on refugees

The Deputy Prime Minister made a speech on 10 May 2011 at the Refugee Council’s party for its 60th birthday, and the 60th birthday of the UN Convention Relating to the Status of Refugees, emphasising the importance of the Convention and of protection for those fleeing persecution.

In answer to questions after the speech, the Deputy Prime Minister placed emphasis on limits on funding. He appeared not fully to understand questions about resettlement of refugees currently living as refugees in Libya, and focused his answer on the question of ‘migrant workers’ arriving in Lampedusa. Asked about the detention of adults, he indicated that in his view there was a ‘moral distinction’ between the detention of children, and that of adults.

Text of the speech
www.dpm.cabinetoffice.gov.uk/news/60-years-refugee-council
11.05.01 Joint letter from Eaves, ILPA, Rights of Women, Southall Black Sisters to Theresa May MP, Home Secretary of 4 May 2011 and Theresa May MP, Home Secretary to Rights of Women of 16 May 2011 re domestic violence and Statement of Changes in Immigration Rules

11.05.02 House of Commons Hansard Written Answers 3 May 2011 on Domestic Violence and Convictions

11.05.03 Correspondence between Refugee Children’s Consortium and Sarah Teather MP, Minister of State for Children and Families of 14 March – 20 April 2011 re enforced returns of separated children to Afghanistan

11.05.04 Jonathan Djanogly MP, Parliamentary Under-Secretary of State for Justice to Fiona Mactaggart MP of 18 April 2011 re legal aid reform

11.05.05 ILPA to Jonathan Sedgwick, Acting Chief Executive, UK Border Agency of 16 May 2011 re application for Entry Clearance by ‘Posted Workers’ under ‘Van der Elst’ criteria

11.05.06 Correspondence between ILPA and Jonathan Sedgwick, Acting Chief Executive, UK Border Agency to ILPA of 26 April and 9 May 2011 re resumption of enforced returns of failed asylum seekers to Zimbabwe

11.05.07 Eddy Montgomery, Director of Operations, North West Region, UK Border Agency to ILPA of 9 May 2011 re EEA Premium Service at Liverpool Public Enquiry Office

11.05.08 Public Enquiry Office, UK Border Agency to all Third Party Representative Companies of 6 May 2011 re EEA applications

11.05.09 Public Enquiry Office, UK Border Agency of 6 May 2011 re Senior Caseworker telephone numbers

11.05.10 Correspondence between James and Co Solicitors and International Group, UK Border Agency of 2 – 5 May 2011 re English language testing for spouses The Gambia

11.05.11 ILPA to Third Country Unit, UK Border Agency of 4 May 2011 re separated children in Third Country Unit removal procedures

11.05.12 Jonathan Sedgwick, Acting Chief Executive, UK Border Agency to ILPA of 21 April 2011 re the welfare and best interests of children

11.05.13 ILPA note on meeting with UK Border Agency on the changes to the Immigration Rules in respect of requiring those applying under the domestic violence rule to be free of unspent criminal convictions 20 April 2011

11.05.14 Penningtons Solicitors LLP to Assistant Director, Sponsor Compliance, UK Border Agency of 20 April 2011 re Tier 4

11.05.15 Ian Robinson, Immigration Policy, UK Border Agency to ILPA of 19 April 2011 re Tier 4 students switching to Tier 2

11.05.16 UK Border Agency to Wesley Gryk Solicitors LLP of 19 April 2011 re Masters, PhDs and the English Language Requirement

11.05.17 International Group, UK Border Agency to Camden Community Centre of 15 April 2011 re freedom of information request re new immigration Rules – English Language Test Centres
11.05.18 ILPA note of National Asylum Stakeholder Operational Forum meeting 14 April 2011

11.05.19 The GEO Group UK Ltd Harmondsworth Removal Centre Stakeholders Development Plan March 2011

11.05.20 Action points from UK Border Agency International Group User Panel meeting February 2011

11.05.21 Freedom of Information Team, UK Border Agency to Blokh Solicitors of 3 August 2010 re Sponsor Licensing mechanism and the Points Based System

11.05.22 Correspondence between ILPA and Legal Services Commission of 11 – 12 May 2011 re new matter starts

11.05.23 Legal Services Commission note on billing rejects and e-form service 10 May 2011

11.05.24 ILPA note and data from Legal Services Civil Contracts Consultative Group meeting 9 May 2011

11.05.25 ILPA to Vice-President, Commission for Justice, Fundamental Rights and Citizenship, European Commission of 13 May 2011 re EEA charges

11.05.26 Independent Chief Inspector of the UK Border Agency Inspection Calendar for 2011-12

11.05.27 Most recent reported determinations of the Upper Tribunal (Immigration and Asylum Chamber) 14 May 2011

11.05.28 Note on McCarthy by Helena Wray 15 May 2011

11.05.29 What did McCarthy decide? note by Bernard Ryan, 15 May 2011

11.05.30 Residence, ‘Static’ Nationals and Self Sufficiency: Zambrano and McCarthy by Keith Pottick 13 May 2011

11.05.31 A Shock to the System: The CJEU judgment in McCarthy on Dual nationals and third country national family members C-434/09 by Elspeth Guild 5 May 2011


11.05.33 Note by Universities UK on Tier 4 and language requirements April/May 2011

11.05.34 ILPA note of meeting of specialist practitioner groups at The Law Society 19 April 2011

11.05.35 Wornham and Co Solicitors to ILPA of 18 April 2011 re new fee exemption for certain Tier 2 extension applications

11.05.36 ILPA note of members and non-members’ meeting on Running Zimbabwean Cases Following the New Country Guidance EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98(IAC) 24 March 2011

11.05.37 LGBT Asylum: In Conversation with the UK Border Agency’ invitation to panel discussion and debate 9 June 2011 at Mishcon de Reya

11.05.38 New Statutory Instruments for ILPA mailing May 2011
New Chief Inspector’s reports of the UK Border Agency

The Chief Inspector of the UK Border Agency has published two new reports, one where the inspectorate made a visit at short notice to shadow arrest teams, and one looking at the Agency’s use of intelligence.

The Inspection Plan for 2011–12 is also available and a summary of upcoming inspections is included in the enclosures.

Current inspections include foreign national prisoners and the Detained Fast-Track, New York, Scotland and Northern Ireland, and Africa.

Members are reminded that inspection reports now frequently contain material that may be useful evidence in appeals or to support, for example, complaints, and also helps representatives to understand how the UK Border Agency works.

- Preventing and detecting immigration and customs offences: A thematic inspection of how the UK Border Agency receives and uses intelligence published 13 May 2011

- A short-notice inspection of a UK Border Agency Arrest Team (Croydon) published 13 May 2011

The Inspection Plan 2011–12

consultations

If you would like to be involved please contact info@ilpa.org.uk

- Migration Advisory Committee full review of jobs and occupations skilled to NFQ Level 4 and above to inform the Tier 2 shortage occupation list – call for evidence Deadline: 10 June 2011


- Tribunal Procedure Committee judicial review of ‘fresh claim’ decisions in immigration and asylum cases – consultation on proposed amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 Deadline: 17 June 2011

meetings

subcommittees
(all members welcome)

- Monday 23 May and Monday 18 July 2011
  Family and general subcommittee 6.30pm, ILPA

- Monday 6 June 2011
  Children subcommittee 5.30pm, ILPA

- Tuesday 28 June 2011
  European subcommittee 6.30pm, Kingsley Napley, Knights Quarter, 14 St John’s Lane, London EC1M 4AJ

training

Latest information on courses available can be found at www.ilpa.org.uk/train.html

All courses are in London unless specified.

- Wednesday 25 May 2011
  NEW Deportation and exclusion of European Union nationals and family members

- Friday 27 May 2011
  NEW An introduction to immigration law, getting started, the first steps to accreditation

- Thursday 9 June 2011
  Introduction to EU free movement law

- Thursday 16 June 2011
  NEW Challenging immigration decisions, appeal rights and other remedies

- Wednesday 22 June 2011
  NEW Challenges in the High court and appeals to the Court of Appeal

- Thursday 23 June 2011
  NEW Challenging immigration detention, an update

- Tuesday 28 June 2011
  NEW In-depth: Rights of residence under European Union law

- Monday 18 July 2011
  NEW Home Office policy, concessions and the exercise of discretion outside the immigration rules

- Thursday 21 July 2011
  NEW The general grounds of refusal and applications for leave to enter: mandatory bans and significant contrivance

Please send any requests or suggestions for training sessions to info@ilpa.org.uk
Izmir declaration – Rule 39 27.4.11
European Court of Human Rights
www.echr.coe.int/NR/rdonlyres/E1256FD2-DBE5-41E8-B715-
4DF6D922C756/0/20110428_Declaration_Izmir_EN.pdf

Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea
20.4.11 UNHCR
www.unhcr.org/refworld/docid/4daleoec2.html

Best Value Review: Immigration and Asylum 22.3.11
Scottish Legal Aid Board
www.slab.org.uk/news/documents/ImmigrationandAsylumBestValueReview
final.pdf

Saving Justice – Where next for legal aid? 4.11
www.justice-for-all.org.uk/dyn/
1303119811180/Saving-Justice_final.pdf

What have I done? The experiences of children and families in UK detention: Lessons to learn 4.11
The Children’s Society
www.childrenssociety.org.uk/sites/
default/files/tcs/research_docs/
immigration%20experiences_full%20report.pdf

Guidance: Libyan nationals experiencing temporary loss of funds 4.11
No Recourse to Public Funds Network
www.islington.gov.uk/
DownloadableDocuments/
CommunityandLiving/Pdf/
guidance_libyan_nationals_temporary_
loss_of_funds.pdf

100 Images of Migration competition
Migration Museum Project
www.migrationmuseum.org/competition/

documents available from elizabeth.white@ilpa.org.uk
Letter to Rt Hon Theresa May MP, Home Secretary and Minister for Women and Equalities of 10.5.11 re domestic violence and Statement of Changes in Immigration Rules (106 endorsements)

UK Border Agency to ILPA re enforced returns by charter flight
Afghanistan: 27.04.11, 18.05.11

UK Border Agency guidance for sponsor applications – Tiers 2, 4 and 5 of the Points Based System

Minutes of National Asylum Stakeholder Forum meeting 22.3.11

Papers from Legal Services Commission Civil Contracts Consultative Group meeting 7.3.11

responses and briefings available from www.ilpa.org.uk

ILPA comments on UK Border Agency draft EEA forms April 2011

ILPA Briefing for the debate on 3.5.11 on the motion by the Lord Hunt of Kings Heath (HC 863) April 2011

ILPA response to Home Office consultation on changes to immigration-related Home Office statistical outputs May 2011

ILPA response to OISC consultation on the intention to produce an Equality Scheme May 2011

ILPA briefing for Westminster Hall debate on legal aid 11 May 2011

ILPA submission to Independent Chief Inspector of the UK Border Agency re 2011/12 inspections on immigration detention May 2011

ILPA comments on UK Border Agency draft Asylum Instruction on gender identity May 2011

ILPA monthly news for members is prepared by Alison Harvey, Steve Symonds and Elizabeth White 13.5.11