ILPA information sheet

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Family Visit Visa Appeals

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The Immigration Rules include provisions to allow foreign national relatives of British citizens and settled persons to visit their family members in the UK. Those who wish to visit family in the UK may need to apply for entry clearance (a visa). These applications are decided by entry clearance officers. More information on entry clearance is provided by the February 2012 "Entry Clearance Decisions" information sheet [**http://tinyurl.com/bqj4ebp**].

Currently, there is a right of appeal against a refusal of entry clearance for the purpose of a family visit. The Government intends to remove this right of appeal by the Crime and Courts Bill. More information on that Bill is available from this month's "Crime and Courts Bill" information sheet. This information sheet provides information about the right of appeal in family visit cases.

Background information

In 1993, the Conservative Government removed the right of appeal against a refusal of entry clearance, including in family visit cases. The Labour 1997 Manifesto committed that party to reintroduce a right of appeal in family visit cases; and this was done in 2000. This was strongly supported by the Liberal Democrats, and by some Conservatives. Debates in Parliament show the strength of feeling about the issue, both among parliamentarians and in communities outside Parliament. Simon Hughes MP (Liberal Democrat) said:

> "*The Conservative Government led by the right hon. Member for Huntingdon (Mr. Major) abolished the right of those who had applied for visas to enter this country to appeal against rejection. That caused widespread disapproval, dissatisfaction and anger. Understandably, the Labour Opposition, like the Liberal Democrats, were committed to restoring the right of appeal...*" (*Hansard* HC, 20 Nov 2000 : Column 109)

Sir Teddy Taylor (Conservative) said:

> "*After the previous Conservative Government abolished the right of appeal, the Labour party made its appeal proposal in 1993, which was genuinely welcomed by large parts of the immigrant community. As we know, subsequently, many of those people voted for the Labour party. They thought that the Labour party cared about them, and, quite wrongly, that the Conservative party did not.*" (*Hansard* HC, 20 Nov 2000 : Column 131)

The Earl Russell (Liberal Democrat) recounted the following story:

> "*I can confirm what has been said by the noble Lord, Lord Judd, about the anger felt in 1993 at the withdrawal of the right of appeal for visitors' visas. I was in my place on this Bench. I still hear, ringing in my ears, the voice of the noble Baroness, Lady Flather, exclaiming, "My brother will be subject to this Bill". She went into the Opposition Lobby and a group of about half a dozen Conservative Peers followed her.*

"*I was standing next to her in the Lobby when the noble Baroness, Lady Thatcher, coming late into the Division and inadequately briefed, saw a group of Conservatives and followed them into the Lobby. The noble Baroness, Lady Flather, who is an honourable lady, explained to the noble Baroness, Lady Thatcher: "I am sorry, Lady Thatcher. This is not the Conservative Lobby". That is one of my favourite memories of 12 years in this House.*" (*Hansard* HL, 2 Nov 2000 : Column 1208)

Crime and Courts Bill

Clause 24 of the Crime and Courts Bill (HL Bill 4) is intended to remove the right of appeal in family visit cases, except where the appeal is on the basis that the refusal of entry clearance is contrary to human rights or race discrimination laws. The Government says that it is better for applicants to make a new application rather than bringing an appeal, because this will be cheaper and quicker. However, a new application will be made to the same entry clearance post (and possibly considered by the same entry clearance officer). Last year, the Chief Inspector made several serious criticisms about the quality of entry clearance decisions (see the "Entry Clearance Decisions" information sheet). As was highlighted in 2000 (e.g. by Fiona Mactaggart MP and Jack Straw MP, *Hansard* HC, 20 Nov 2000 : Column 123), one reason the right of appeal is so important is that it gives the applicant an opportunity to 'clear their name' of any false allegation by the entry clearance officer, without which any future application for entry clearance is also likely to be refused. It was also highlighted in 2000 that, where the integrity of family members was doubted by the entry clearance officer, it was important to have a right of appeal that enabled the family member or members in the UK to appear before an independent tribunal to answer questions to address those doubts (e.g. by Lord Judd and Lord Dholakia, *Hansard* HL, 2 Nov 2000 : Columns 1206 & 1216; and David Winnick MP, *Hansard* HC, 20 Nov 2000 : Column 124).

The Government says that many appeals are only successful because new evidence is presented to the immigration judge at the appeal. However, as the Chief Inspector's report highlighted, many applications are refused for reasons the applicant could not have anticipated – including where the entry clearance officer refuses an application because particular evidence was not included, yet there was no way the applicant could have known the evidence was wanted or needed. The number and cost of appeals could be reduced if entry clearance officers improved the quality of their decision-making, if they asked for any new evidence they needed before refusing the application, and if they properly considered any new evidence before the appeal took place.

Changes before the Crime and Courts Bill takes effect

The Government has said that it expects clause 24 of the Crime and Courts Bill to take effect in 2014. However, it intends to make changes before then. The Government has said it intends to make changes in June 2012 so that those applying to visit a cousin, uncle, aunt, niece or nephew cannot appeal against a refusal of entry clearance – except where the appeal is on the basis that the refusal of entry clearance is contrary to human rights or race discrimination laws. This appears to treat families as limited to parents and children, yet in many families these wider relationships are of great importance.

Further comment

In August 2011, David Cameron MP, the Prime Minister, said: "*If it hurts families, if it undermines commitment, if it tramples over the values that keep people together, or stops families from being together, then we shouldn't do it.*" Clause 24 of the Crime and Courts Bill, and the changes intended to be introduced before the Bill takes effect, will stop families being together, including at especially important times when families come together or provide support for each other – e.g. weddings, funerals, when someone is ill, when or after a child is born. In 2000, Sir Teddy Taylor highlighted how restrictions on appeals against refusal of entry clearance for family visits would discriminate against certain communities (*Hansard* HC, 20 Nov 2000 : Column 132). The same discrimination against black and Asian communities which he highlighted in 2000 is likely to be the result of the changes the Government now intends to make.