

# ILPA immigration update 61

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June 2014

## **Modern Slavery Bill 2014**

The Government introduced the Modern Slavery Bill in the House of Commons on 10 June 2014. The substantive parts of the Bill are as follows:

- Part 1 attempts to consolidate existing criminal offences for human trafficking and slavery and increases the penalty to life imprisonment;
- Part 2 provides for the imposition of orders designed to prevent persons from engaging in trafficking in future;
- Part 3 establishes the office of an Anti-Slavery Commissioner;
- Part 4 provides some measures to support trafficked persons, including a (limited) statutory defence and provision for guardians for trafficked children.

The Bill is at an early stage of proceedings and has yet to be debated; it is to be hoped that the protection for trafficked persons can be strengthened during the course of its passage through Parliament. The Bill's second reading will be on 8 July 2014.

## **Immigration Act**

The full impact of the Immigration Act 2014, the biggest piece of Immigration legislation in several years, has yet to be felt. The government has yet to publish details of how the wide-ranging changes it heralds will operate in practice. ILPA is publishing a series of information sheets on discrete aspects of the Bill and will provide further updates when more detail is known. June's information sheets on the Act are as on the following topics:

[Healthcare](#)

[Appeals](#)

[Bail](#)

[Housing](#)

## **Victory in exceptional funding test case**

In the case of *Gudanaviciene & Ors v Director of Legal Aid Casework & Anor* [2014] EWHC 1840 (Admin) (13 June 2014) the High Court ruled that the refusal to grant legal aid 'exceptional funding' to the appellants was unlawful. It also held that refugee family reunion cases are already covered by legal aid, contrary to what was asserted by the Legal Aid Agency. The case concerned the exceptional funding regime set up under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This Act removed many areas of law from the scope of legal aid, including the majority of immigration work, leaving as a putative "safety net" a new scheme of "exceptional funding" for cases where human rights are at risk of being violated. However, this funding has proved very difficult to obtain in practice (in immigration cases, only around 1% of applications have been approved). ILPA submitted evidence to the Justice Select Committee on the impact of the 2012 act, which discusses the exceptional funding regime in detail, available [here](#). In the judgment, the High Court found that the refusal of funding in all six cases before it had been unlawful and further found that the Legal Aid Agency's guidance on the matter was unlawful. The government is appealing

to the Court of Appeal. Most legal representatives are taking the view that they should not use legal aid for refugee family reunion until this appeal is heard, because if it is ultimately decided that it is not covered by legal aid they would have to pay back the money spent.

### **Detention escorts to receive training in restraint techniques**

The Home Office has announced that staff who carry out removals on behalf of the Home Office are to be trained in safe restraint techniques. It is four years since Jimmy Mubenga died of asphyxiation on a flight to Angola in 2010 whilst being restrained by three G4S immigration escorts contracted by the UK Border Agency. A [report](#) released earlier this month by HM Inspectorate of Prisons was critical that staff carrying out similar removals had still not been trained in restraint techniques for confined spaces such as the aircraft in which they were working, despite this having been recommended as part of the inquiry into Mr Mubenga's death. The Home Office has now announced that such training will take place from next month. Meanwhile, the escorts involved in restraining Mr Mubenga have been charged with manslaughter and will be tried later this year.

### **Removals to Italy under Dublin Regulation upheld**

The High Court ruled this month that the removal of asylum seekers to Italy does not violate human rights law in a case called *Tabrizagh and others v SSHD* [2014] EWHC 1914 (Admin). The Court considered evidence which documented the situation for asylum seekers in that country, where many are left destitute and homeless. Despite this, the Court found that Article 3 of the European Convention on Human Rights (prohibition on inhuman and degrading treatment) would not be breached – only the most degrading of conditions amount to a breach of that article. However judgment is awaited on the same point from the European Court of Human Rights in an important pending test case, and UNHCR is due to report on the situation in July.

### **Pregnant women retain “worker” rights under EU law**

The Court of Justice of the European Union, in a welcome decision: *Saint Prix v UK* (Case C-507/12), has ruled that a woman who gives up work because of the physical constraints of the late stages of a pregnancy will retain the status of “worker” for the purposes of EU law protections, provided she returns to work after a reasonable period after giving birth. This means, among other things, that the woman can continue to reside in the other EU State without fear of expulsion while her pregnancy / early childcare is ongoing. The UK government, who were disputing this, lost the case in the European Court and the matter is now settled for the whole of the European Union.

### **Country guidance on Sri Lanka upheld**

In the case of *MP & NT (Sri Lanka) v SSHD* [2014] EWCA Civ 829 a recent country guidance decision on Sri Lankan asylum cases was upheld by the Court of Appeal (the Tribunal case of *GJ and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 319). The Court gave some further clarification; in particular, it explained that a person's political activity whilst abroad was not an absolute prerequisite for a finding of risk on return: the crucial issue was whether the Sri Lankan authorities would perceive the person as a threat. The appellants had argued that the Tribunal's guidance was, among other things, too narrow in scope. This was rejected. Permission to appeal to the Supreme Court is being sought.