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Dear Mr Elliot

Immigration Appeals consultation response

The Joint Council for the Welfare of Immigrants is an independent, voluntary organisation working in the field of immigration, asylum and nationality law. We provide legally aided immigration advice to migrants and actively campaign for changes in immigration, asylum and nationality law, and practice. Our mission is to promote the welfare of migrants within a human rights framework. Please treat this letter as our response to the proposals identified in '*Immigration appeals- fair decisions; faster justice.*'

Whilst we agree that any immigration appeals system should be swift and efficient, a commitment to rule of law principles requires that the appeals system in place should afford effective scrutiny both in relation to decision making by the executive and by other tribunals. This is critical in the immigration arena given that decision making often touches upon fundamental rights.

In so far as the proposals in the consultation paper go, whilst we welcome the reintroduction of a two tier system and in general, the integration of immigration appeals into the scheme established by the Tribunals, Courts and Enforcement Act 2007, we are deeply concerned about the following;

1. The suggestion that decisions by the Upper Tribunal to refuse leave to appeal will, save for in exceptional circumstances be immunised from further scrutiny by judicial, or statutory review in the light of the Upper Tribunal's status as a court of superior record and its inclusion of judges drawn from the High Court;
2. The proposal that permission to appeal against a decision of the First Tier Tribunal will only be granted in circumstances where the Upper Tribunal believes that the First Tier Tribunal '*has*' (rather than *may have*) made an error in law and there is a real possibility that the Tribunal would decide the case differently;
3. The removal of the statutory bar (under Section 19 of the 2007 Act) on judicial review cases being heard by the Tribunal;

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4. The possible narrowing of the grounds on which leave to appeal to the Court of Appeal may be granted through section 13 of the 2007 Act. This empowers the Lord Chancellor by order to provide that permission should only be granted where (i) the proposed appeal raises some important point of principle or practice, or (ii) there is some other compelling reason for the appeal to be heard.

The cumulative effect of the above gives rise to a risk that the proposed system will simply not adequately check decision making by the executive and by tribunals and will thereby limit access to justice for migrants, and potentially increase the likelihood of violations of their human rights. The underlying justification for these measures in paragraph 8 of the paper that there is large scale abuse of the system which is overburdening the system is not in our view compelling given that:

- a. It is not substantiated. Indeed as we understand it, the Government has at no point commissioned any detailed study into immigration and asylum appeals, the outcomes of such cases and the reasons for this. So far as the few statistics cited go, we note that they are incomplete, and do not for example in the context of reconsideration orders identify what proportion of reconsideration orders are successful;
- b. Even if assertions about wide-scale abuse are accepted, it is disproportionate to withdraw the safeguards for others as a means of dealing with such abuse.

In the light of the above, we urge you to undertake a thorough and detailed analysis of existing problems with the current appeals scheme and the reasons for this, with a view to establishing a more appropriate, and just framework for immigration appeals.

Yours faithfully

The Joint Council for the Welfare of Immigrants