

THE BORDERS, CITIZENSHIP AND IMMIGRATION BILL, FIRST SET OF PROPOSED AMENDMENTS BY THE JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS

INTRODUCTION

The Joint Council for the Welfare of Immigrants is an independent, voluntary organisation working in the field of immigration, asylum and nationality law and policy. Established in 1967, we provide legally aided immigration advice to migrants and actively campaign for changes in the above areas. Our aim is to promote the rights of migrants within a human rights framework.

What follows below are JCWI's first set of amendments in relation to Part 2 of this Bill, specifically in relation to naturalisation. We have in brief supported a number of other important amendments instigated by the ILPA during the passage of this Bill through the House of Lords on the following: what counts as qualifying leave, qualifying periods generally, powers to amend the qualifying period and permitted absences, and given that those issues have not yet been resolved our concerns remain. Parliamentarians are therefore referred to our parliamentary briefings for those amendments available from www.jcwi.org.uk. Doubtless the ILPA will be taking those/some of those issues forward at the Committee stage. As such, what follows below are in the main a series of new amendments. Further amendments may follow in due course.

AMENDMENTS

Amendment no.1

After Clause 41 insert the following new clause -

“Consequences of failure to fulfil requirements for naturalisation

(1) A decision to refuse a certificate of naturalisation on account of non-fulfilment of the requirements set out in Schedule 1 to the British Nationality Act 1981 (c.61) shall not exclude the possibility of the grant of a further period of probationary citizenship, or other immigration leave.”

Aim of the new clause

This amendment probes the Government about the effects/ consequences of a refusal of a certificate of naturalisation for want of compliance with the various new naturalisation requirements the Bill introduces (i.e. new paragraphs 1 and 3 of

Schedule 1 of the British Nationality Act 1981) for migrants, in particular those with probationary citizenship leave.

The Earned citizenship team have confirmed to JCWI that those with probationary citizenship leave who are unable to demonstrate that they have complied with the ‘continuous employment requirement’ will, subject to international obligations, be removed from the UK.¹ In contrast, on a number of separate occasions, references have been made to non satisfaction of naturalisation criteria simply resetting the naturalisation clock to zero by parliamentarians with the *assumption* that these requirements have no implications for ongoing leave but simply extend the qualifying period for naturalisation.

There must be clarity at this stage whilst this Bill is debated about the precise effects of the failure to fulfil the relevant criteria for naturalisation applications made pursuant to section 6(1) and (2) of the British Nationality Act 1981.

Amendment no. 2

In Clause 40

Page 29, leave out lines 32-36

This amendment is designed to delete the new requirement for citizenship that migrant workers demonstrate that they have been in ‘continuous employment’ for the duration of their ‘probationary citizenship.’ In its present form it is highly likely to discriminate against women, the disabled and certain ethnic groups given that they are more vulnerable to discrimination in the labour market.² It is also likely to lock them into exploitative and unlawful situations given concerns that exiting a situation of exploitation and discrimination, may lead to the rejection of their citizenship application and their ultimate removal from the UK.

1. Confirmed in a conversation between Hina Majid, JCWI and Neil Parkin from the Simplification Team, UK Borders Agency on 10.02.09 and reiterated again on 01.06.09

2. For a 600 word summary of JCWI’s concerns about this see *Keeping Citizenship Just Out of Reach*, Guardian Comment is Free, 02.06.09 <http://www.guardian.co.uk/commentisfree/libertycentral/2009/jun/02/citizenship-british-bill>

2. C

Amendment no. 3

In Clause 50

Page 43, line 14, insert the following new sub-clause:

“(10) The following periods of absence from the labour market shall be disregarded for the purposes of establishing whether an applicant is or has been in ‘continuous employment’

- (a) periods of involuntary unemployment duly recorded by an employment agency or office lasting no more than 6 months;
- (b) periods of involuntary unemployment duly recorded by an employment agency or office exceeding 6 months in circumstances where an applicant is able to demonstrate that they are:
 - i. continuing to seek work; and
 - ii. have a genuine prospect of being engaged in employment
- (c) all authorised employment absences either expressly or by custom including maternity/paternity leave, illness, temporary cessations of work and sabbaticals.”

Amendment 3 is **proposed a second and less preferable option to amendment no. 3.** Its purpose is to define “continuous employment” given that the Bill effectively leaves this to the discretion of the Executive. It defines the term by reference to the circumstances in EC law when an individual remains a ‘worker’ (see Directive 2004/58/EC Article 7(3)(c)), and the Immigration (European Economic Area) Regulations 2006, and *ex parte Antonissen*, [1991] 2 CMLR 373 ECJ. In our view this is more preferable for the term to be defined in the European way than in a way that is aligned with the points based system (which will in any event be subject to change- but which currently also offers a far less generous approach to the question of when a migrant is in ‘continuous employment’. This itself raises concerns from the point of view of legal certainty, discrimination and locking migrants into exploitative situations.) This amendment can also be theoretically justified on the basis that probationary citizenship is a creature that lies between temporary leave as a migrant and full citizenship. Consequently as a form of demi-citizenship, it should carry with it a far more extensive set of rights entitlements. Further the clause will have no discernible impact on the welfare state given that these migrants will in any event be subject to a public funds restriction and will therefore have no access to non contributory benefits.

Amendment no. 4

In Clause 42

Page 34, after line 37, add the following new sub-clause-

“In the case of an applicant with humanitarian protection leave or refugee status the number of years in the period is-

- (a) 5 years in the case of an applicant who does not meet the activity condition;
- (b) 3 years in the case of an applicant who does meet the activity condition .”

Aim of this new clause

This clause reflects the obligation contained within Article 34 of the Refugee Convention requiring states to facilitate the naturalisation of migrants. At present there is absolutely no facilitative mechanism contained within the structure of this Bill. Debates have thus far fixated on inclusion of temporary admission, whilst this is extremely important, this would only equalise the position of refugees with other migrants and not *facilitate* it.

The effect of this clause would be to respect the above obligation and the spirit of it, whilst also aligning the position of refugees and those with humanitarian protection in way that is compatible with the proposed scheme in this Bill. This is achieved by linking the qualifying period for refugees and those with humanitarian protection to that of those possessing a ‘family association’ with a British citizen.

Amendment no. 5

In Clause 50

Page 42, after line 25, insert the following;

“(3) The following are purposes by reference to which a grant of probationary citizenship may be made:

- (a) all work under tier 1 of the Points Based System;
- (b) all work under tier 2 of the Points Based System.”

Aim of the new clause

Given that the intention is to introduce ‘a points based system’ for the path to citizenship,³ the purpose of this amendment is, in so far as is possible, designed to probe about future eligibility for probationary citizenship - the gateway to British citizenship.

In the event of any further queries about this paper or for copies of Bill briefings please contact Hina Majid who is the legal policy director at JCWI. Her e mail address is hina.majid@jcw.org.uk and her phone number is 0207 553 7463. She will be out of the office from 4th June and will return on 26 June. In her absence please contact Habib Rahman who is the chief executive of JCWI. His e mail address is habib@jcw.org.uk and his direct line is 0207 553 7456

³. Hansard HCC, 2 Jun 2009: Column 176.

