



## **THE BORDERS, CITIZENSHIP AND IMMIGRATION BILL**

### **PARLIAMENTARY BRIEFING**

**House of Lords**

**Committee stage**

#### **1. Amendment – No.54**

Clause 37, page 28, line 21, at end insert “;or

“(f) detention, temporary admission or release within the meaning of section 11 of, and Schedules 2 and 3 to, the Immigration Act 1971 if immediately following that detention, temporary admission or release the person had a status listed in paragraphs (a) to (e) above”

#### **2. Presumed purpose**

By clause 37(11) periods spent on temporary admission, release and detention pending determination of immigration/asylum applications will all be discounted for the purposes of the naturalisation qualification period.<sup>1</sup> In practice periods spent holding these statuses can amount to several years, with the attendant consequence that qualifying periods could be in excess of a decade for certain migrants. This amendment would ensure that these periods are all capable of counting towards the naturalisation qualification period.

#### **3. Detailed reasons for supporting this amendment**

- a. Ensuring compliance with The UK’s legal obligations under the 1951 Convention Relating to the Status of Refugees as well as the spirit and principles that underlie them;
- b. Meeting the policy objective behind this Bill i.e. facilitation of integration;

- c. Ensuring that migrants are not penalised (through delaying naturalisation and associated rights entitlements) on account of inefficiency of the UK Borders Agency in dealing with their applications;

### **a. Compliance with the text, spirit and principles that underlie the 1951 Convention Relating to the Status of Refugees**

The UK has signed and ratified the Refugee Convention. Article 31 of the Convention requires that refugees should not be penalised on account of illegal entry or presence. Article 34 states:

*“The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings...”*

The principle underlying the above is that refugees are individuals who have been effectively stripped of their own citizenship rights and *required* to remain outside of their own home country. Consequently international law should recognise the strength of their moral claim to enjoy privileged access to the full set of rights associated with citizenship. This principle ought logically to extend to those who have been accorded some human rights protection.

Whilst existing provisions are far from satisfactory in fulfilling the above obligations, and the principles that underlie them, the proposed exclusion altogether of these periods takes the UK in a direction where it is yet further removed from the text, principles and spirit that underlie the Convention.<sup>1</sup> The proposals are also inconsistent with European standards as reflected in the 1997 European Convention on Nationality which use a benchmark of 10 years for the very maximum period of residence required for naturalisation.<sup>2</sup>

### **b. Integration**

The primary aim of part 2 of the Bill is integration<sup>3</sup>, yet the above proposals seem likely to achieve the opposite. As one established expert on refugee integration states (with a similar logic being applicable to those who seek

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1. Temporary admission/detention can count towards the current qualifying periods in certain circumstances for which see Annexe B of Chapter 18, Nationality Instructions.

2. See Article 6(3) of the Convention. The UK has not signed or ratified this Convention, though 28 other European states have signed it.

3. *The Path to Citizenship: Next Steps in Reforming the Immigration System*, UK Borders Agency, February 2008, para.186, p.55

human rights protection)

*“ The danger of [host] countries not taking positive steps to promote the full social inclusion of people whom they accept as refugees is that this can lead to a withdrawal of their emotional commitment to, and social engagement with, the [host] country. Refugees who perceive themselves to be excluded... may continue to reside there, but turn inwards and identify themselves in terms of their ethnic minority status... This leads to the racialization and ethnicization of social relations, which in turn leads to further experience of social exclusion for the group concerned. The downward spiral of a vicious circle becomes established. Logical outcomes are that the ethnic group adopts an oppositional stance vis a vis the mainstream, and that ghettos develop.”<sup>4</sup>*

### **c. Ensuring that refugees and other migrants are not penalised for inefficiency by the UK Borders Agency**

It is unknown precisely how many cases there are in which migrants will have waited in excess of 6 months for a decision. What is known is that:

- i. In 2006 there were some 450,000 ‘unresolved asylum cases’ and that the legacy case directorate was established to clear these;
- ii. ‘Legacy cases’ are not likely to be cleared until at least summer 2011;
- iii. Many of the cases have been in the system for ‘more than three years’<sup>5</sup>;
- iv. At least some of the individuals within the scheme will be refugees.

As a matter of basic fairness migrants should not be penalised for the inefficient operation of the UK Borders Agency. A case study demonstrating how the qualification periods might affect some of the migrants within the scheme appears below:

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4.D Barnes, ‘Resettled Refugees’ Attachment to Their Original and Subsequent Homelands: Long –Term Vietnamese Refugees in Australia’ (2001) 14(4) Journal of Refugee Studies 394, at 409-410  
5. Hansard : 18 February 2008, Col 448W

M has been granted indefinite leave to remain the UK. He came to the UK over nine years ago, claimed asylum on arrival and was granted temporary admission. His case was eventually referred to the Case Resolution Directorate who finally granted him indefinite leave to remain after having spent 9 years on temporary admission. Were this gentleman to apply for naturalisation under the current proposals he would be prevented from having his nine years count towards his “qualifying period”. He would potentially be required to wait some 15-17 years in total before being able to secure British citizenship.

#### **4. Assurances**

If the clause is remain in its current form then we would seek an assurance that it will not be applied in such a way as to discount periods of temporary admission/release or detention in cases where individuals are recognized as refugees or secure human rights based protection.

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