Joint Parliamentary Briefing from the British Refugee Council, the Scottish Refugee Council and the Welsh Refugee Council:

Borders, Citizenship and Immigration Bill 2009

House of Commons Report and Third Reading, 14th July 2009

The Refugee Councils continue to have concerns about the Borders Citizenship and Immigration Bill, outlined in our House of Lords Bill briefing: http://tiny.cc/RCHoLbrief. In brief, these are:

- Refugees whose need for protection is recognised by the UKBA should immediately be given permanent rights of settlement so they can rebuild their lives. They should not be faced with further hurdles such as extra years of 'probationary citizenship'.
- Whilst the Refugee Councils welcome the duty to safeguard and promote the welfare of children, this duty should apply to UKBA staff wherever they are operating, not just in the UK as the Bill currently states.
- Judicial Review in the High Court is an essential safeguard against unlawful removal or detention, which should be retained for immigration cases.
- Urgent and important issues, such as the destitution facing many asylum seekers at the end of the process and the loss of talent and dignity resulting from restrictions on entitlement to work, have not been addressed in this Bill.

Although the Bill is now going through the final stages of the legislative process the Refugee Councils would welcome assurances being sought at Report Stage:

1. Transitional protection from probationary citizenship requirements for existing (legacy) cases (Clause 59)

The Refugee Councils remain firmly of the view that refugees and others with recognised protection needs should not be faced with a further period of delay of probationary citizenship before being given the right to permanently settle here. The government has so far been resistant to generally exempting refugees from these provisions.

There remain over 100,000 people seeking asylum who have been waiting for a decision

for several years, sometimes for more than a decade, and whose cases are now being processed by the Case Resolution Directorate (CRD).[1] Many of these people (whose cases are known as legacy cases) have been effectively deferred for consideration under the existing priorities of the CRD as they are neither in receipt of benefits, nor do they represent a threat of any harm to the community. It is therefore highly likely that many people will eventually be granted some form of leave but only receive confirmation towards the end of the CRD programme, in 2011. It is unduly onerous to then require those that do receive some form of leave to wait for further lengthy periods under the new citizenship provisions, that will by then be in force, before naturalisation or final settlement.

When the Bill was debated in the House of Lords, Peers amended it to include a new clause (Clause 39) which would maintain the current path to citizenship for people who were already progressing towards citizenship when the Bill's provisions to amend the path are commenced. However the government removed this Clause in the Commons Standing Committee and has tabled a substitute, but far narrower, amendment for Report Stage (to Clause 59) which exempts only those who have Indefinite Leave to Remain (ILR) or who have outstanding ILR applications on the date of commencement from the new provisions.

The Minister said that all other people would only be accepted under the old regime if they had a "legitimate expectation"[2] that they would be eligible. The "legitimate expectation" test is a high, legal hurdle that is likely to result in all applications, new and historical, being dealt with under the new provisions. There is a significant difference between "legitimate expectation" and fair treatment and we would ask that people with long standing asylum cases that had been delayed through no fault of their own should be treated fairly. This should, at a minimum, include regard to the length of time the person has been in the UK prior to commencement, including in particular where the person has been in the UK with leave or with an outstanding application or appeal. It should also include regard to any information given in official correspondence to the person or in published policy applicable to the person regarding whether and how he or she may naturalise in the future. At the very least, refugees and asylum seekers whose applications have been substantially delayed (i.e. those in the legacy backlog) should be exempt from the new provisions.

2. Assurance that time spent over six months by asylum seekers waiting for a decision will count towards their probationary citizenship period once they are recognised as refugees (Clause 39)

The government has stated that periods of temporary admission could count towards the probationary citizenship qualifying period where a refugee's claim suffered "undue delay" when being processed[3]. The government has yet to produce guidance to clarify what they mean by "undue delay" and we seek assurance that, as the government now aims to determine and complete asylum claims within six months, any amount of time spent waiting for a decision above six months will count towards a refugee's qualifying

[1] This is an estimated figure. Emily Miles, Director of CRD, reported 130,000 "conclusions" to the Home Affairs Committee in December 2008. The starting figure was 450,000 but many of these are known to be errors or duplications.
[2] Hansard HC, Committee, Fourth Sitting, 11 June 2009: Column 101
[3] Hansard HL, Report Stage, 25 March 2009: Column 717

period for citizenship.

3. Assurance that the transfer of judicial reviews and restrictions on appeals to the Court of Appeal will not put people at risk. (Clause 54)

i) **Transfer of judicial reviews:** Judicial review by a High Court judge has frequently proved a crucial safeguard for refugees facing the threat of unlawful detention or removal. The government has reinstated proposals, removed in the House of Lords, to allow the transfer of judicial review cases to the Upper Tier of the new Tribunal Service which began operating in 2008. This will become possible with the incorporation of the Asylum and Immigration Tribunal, which deals with asylum appeals, into the new service early in 2010.

We are concerned that, although the UK government has given assurances that the Upper Tier would be accorded the status of the High Court, it is far from clear what this would mean in practice. It does not appear to mean that a High Court judge will be present at every case which we would regard as a minimal requirement. It is questionable whether the Tribunal will have the status and independence of the High Court and hence whether this contentious area of law will continue to receive the anxious scrutiny it requires.

We believe that it is premature to legislate for this power in advance of the immigration jurisdiction itself being transferred to the new Tribunal and without any evidence of how it is functioning; or without any assessment of how the new Tribunal has managed the current, limited and less sensitive judicial review jurisdiction it has been given. We seek assurances that any such transfer will not take place until there is substantial and compelling evidence that it is working effectively and people are adequately protected.

ii) **Restrictions on appeals to the Court of Appeal:** It is of equal concern that the government has removed the provision introduced by the House of Lords, and retained the provision to limit the right of appeal to the Court of Appeal from the Upper Tier of the Tribunal. Not only will there have to be, as at present, an arguable error of law, but also a further compelling reason or point of principle or practice would need to be shown for a case to be allowed to progress to the Court of Appeal. This would apply equally to cases transferred from the High Court as under i) above.

This could create cases where there is strong evidence of an error in law but the individual will have no redress. We believe all cases where there has been an arguable error of law should retain the right of appeal to the Court of Appeal. We would welcome clarification of what measures will be in place to ensure that people are protected where there has been an error in law.

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