Bail for Immigration Detainees
1b Finsbury Park Road, London N4 2LA
Tel: 020 7456 9762, Fax: 020 7226 0392
Email: rudy@biduk.org

Briefing on Clause 27 of the Nationality and Borders Bill
Bail for Immigration Detainees

Amendment to delete Clause 27 (which seeks to remove rights of appeal in certain asylum and human rights claims) as it is an attack on the Rule of Law

Commentary

Clause 27 seeks to introduce a system of certification to remove ***all*** appeal rights, both in-country and out-of-country appeal rights from persons whose claims are decided to be 'clearly unfounded'. It will harm individuals and their families, including British nationals, who have to argue that deportation may be unduly harsh in violation of Sec 117C(5) of the Immigration, Nationality and Asylum Act 2002, and/or not in the 'best interests of the child in contravention of Section 55 of the Borders, Citizenship and Immigration Act 2009.

It will build on the culture of disbelief within the Government and the Home Office, and encourage the disregard of human rights and asylum rights in cases that are meritorious and would meet the required threshold were it not for the fact that they have been 'certified'.

The Government argues in paragraph 285 of its Explanatory Notes that these appeal rights should be abolished as claimants 'will very rarely (if ever) exercise their out-of-country appeal right'. However the current out of country certification system under Section 94 of the Nationality, Immigration and Asylum Act 2002 was found to be unlawful by the Supreme Court in the case of Kiaire and Byndloss [2017] UKSC 42 (where BID intervened).

The Supreme Court found that people were discouraged from appealing from abroad as such an appeal was found to be ineffective and almost impossible to pursue. As Lord Wilson, delivering judgment noted:

> *But in my view that public interest [in early deportation] may be outweighed by a wider public interest which runs the other way. I refer to the public interest that, when we are afforded a right of appeal, our appeal should be effective. [35]*
>
> *It is one thing further to weaken an appeal which can already be seen to be clearly unfounded. It is quite another significantly to weaken an arguable appeal: such is a step which calls for considerable justification. [58]*

The Government ignores findings such as these, and it also ignores the successful cases that BID and others have represented where persons were wrongly certified, and subsequent appeals were successful. The Government now seeks to remove any possibility that persons in similar situations will have any chance of succeeding with their claims to remain.

The government suggests in its Explanatory Notes (para 285): "Far more likely is that the claimant will challenge the section 94 certification decision by way of Judicial Review." This ignores the fact that appellants are ***'far more likely'*** to challenge certification decisions so that they can appeal ***from within the UK***. It also ignores the evidence that is available, and which the Government has accepted (see the case of SM [2021] EWHC 418 (Admin), decided in February this year) that access to legal advice is restricted to people in prison who face legal steps to deport them.

Bail for Immigration Detainees
1b Finsbury Park Road, London N4 2LA
Tel: 020 7456 9762, Fax: 020 7226 0392
Email: rudy@biduk.org

The Government may argue that access to legal advice will be provided to people before they are removed from the UK. But that does not allow for two issues: the need to restore legal aid advice ***before*** a decision is made to deport a person, ***and*** the need to allow people a meaningful right of appeal from within the UK so that wrongful decisions can be challenged.