

HOUSE OF COMMONS: WESTMINSTER HALL DEBATE 19TH JUNE 2013

EFFECTS OF THE NEW FAMILY MIGRATION RULES - MR. VIRENDRA SHARMA

Bail for Immigration Detainees (BID) is a registered charity that provides legal advice and representation to asylum seekers and migrants held in immigration detention to secure their release. BID supported a total of 2,510 people in detention in the last year, 506 of whom were released.

Briefing

On 9th July 2012, new Immigration Rules were introduced (HC 194). This briefing concerns the effect of these rules on families where a foreign national parent has committed a criminal offence.

The rules suggest that in a very wide range of circumstances, where parents have committed criminal offences, the best interests of their children should be routinely subordinated to considerations of immigration control. In our view, this is at odds with the need to properly consider children's individual circumstances in order to safeguard their welfare, and the provision in Article 3(1) of the UN Convention on the Rights of the Child that the best interests of children should be a primary consideration.

Wide powers already exist for the state to deport foreign national ex-offenders. According to Home Office figures only 185 appeals against deportation succeeded on Article 8 (right to private and family life) grounds in 2011.¹ Many of these will have been cases where the courts found that grave harm would be caused to a child by deporting their parent. The Government is now seeking to prevent the courts from upholding the laws that protect these families.

Under the UK Borders Act 2007, any individual who has been sentenced to 12 months or more in prison is subject to automatic deportation unless specific exceptions apply in their case. Parents may be liable to deportation where, for example, they have been sentenced for non-violent crimes such as false document offences.

Child welfare

In BID's experience, the best interests of children are often not taken into account when the Home Office takes enforcement action against parents. BID works with large numbers of families where children are separated from parents who have served criminal sentences and are being held in immigration removal centres. We recently published a report, 'Fractured Childhoods' which examines the cases of 111 parents who were separated from 200 children by immigration detention (<http://bit.ly/11qcGhI>).

Our research shows that living with the prospect of their parents being deported often has an extremely harmful effect on children. Children and carers report to us that during their parent's detention children lose weight, have nightmares, suffer from insomnia, cry frequently, and become deeply unhappy, socially isolated and withdrawn. Siblings and carers report that young children cannot understand why their parent is not with them, and repeatedly ask where their parent is or why they had left them. Stephanie, aged eight, wrote to her father in immigration detention:

'I don't understand why you are not coming back... I am very upset because you did not come for Christmas.'

¹*Hansard* HC Deb, 11 June 2012, c50

Jenny, who cared for two year old Mary during her mother's immigration detention, said:

'She didn't want to eat; you had to force her to eat. You know, even if she start to eat she just didn't want any more, she just start crying "mummy, mummy"... you know, the constant crying. Even when she was sleeping sometimes she just wake up crying "mummy, mummy." Whenever she hear the door open she would go to the door, knocking on the door saying "mummy, mummy."'

In many cases, the children of BID's clients have been born and brought up in the UK, and are British Citizens. They may have been separated from their parents by prison and immigration detention for years. When parents are deported, children face the impossible choice of being separated from their parent or leaving behind their life in the UK.

In cases involving single parents, children are placed in local authority care or private fostering arrangements during their parent's detention. In some cases, the care arrangements which children are left in give rise to serious child safeguarding concerns. We are aware of cases where the Home Office has forcibly removed parents from the UK without making any proper checks as to the whereabouts and care arrangements of children who are left behind – see case study overleaf.

The new immigration rules

Paragraph 399 of the Immigration Rules sets out the circumstances in which the Government deems that deportation will not be proportionate when a parent has received a sentence of four years or less:

- '(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
- (i) the child is a British Citizen; or
- (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; **and in either case**
 - (a) it would not be reasonable to expect the child to leave the UK; **and**
 - (b) there is no other family member who is able to care for the child in the UK.'

In our view, these measures do not allow for adequate consideration of the child's best interests. For example, the fact that there is a family member in the UK who is able to care for a child does not demonstrate that it is in the child's best interests to be brought up by this family member and split permanently from their parents. In addition, the rules do not allow for a proper consideration of children's best interests in cases where, for example, the child was born in the UK and has lived here for the past six (rather than seven) years.

The 'Explanatory Memorandum' attached to the 'Statement of changes in Immigration Rules' states at paragraph 7.5:

'Where a child would have to leave the UK as a consequence of the decision to remove their parent... The best interests of the child will normally be met by remaining with their parents and returning with them to the country of origin, subject to considerations such as long residence in the UK and any exceptional factors.'

It gravely concerns us to see this kind of flawed reasoning being used to determine children's best interests. In many of the deportation appeals which currently succeed on Article 8 grounds, children will have been separated for periods of years from parents serving prison sentences. They may have formed strong bonds with their foster carers, and being suddenly separated from these carers could be very harmful to them. In such cases, the involvement of their parent in their daily care is likely to be of vital importance to the child's well-being. However, it is unlikely that their best interests will be served by being reunited with this parent while boarding a plane to a country which they have never been to as part of a forcible deportation. In these and other situations, what is most likely to be in children's best interests is to have the opportunity to re-establish their relationship with their parent in the UK.

Paul

Paul, a single father, was deported from the UK without his two sons, aged twelve and nine, who were left in the care of his ex-girlfriend. The Home Office did not investigate the children's care arrangement before deporting their father.

Paul arrived in the UK ten years ago and claimed asylum. His children remained in his country of origin with their mother, who subsequently abandoned them. Paul arranged for his children to travel to the UK with a people smuggler to join him. After living in the UK for seven years without the right to work legally, Paul was convicted of a cannabis production related offence. The judge described Paul as being part of a criminal organisation where "the people who make most of the profit use people like you to do the work and take the punishment when caught."

After completing his criminal sentence, Paul was held in immigration detention for over a year before being deported. The Home Office was aware of Paul's children, who were living with his then girlfriend. The children's welfare is not mentioned in Paul's 'Notice of decision to make a deportation order' or any of the monthly progress reports or bail summaries which are in his BID file, and the Home Office never made any enquiries to the children's carer about them. The Home Office deported Paul from the UK without taking any effective steps to investigate the children's care arrangement or the impact which his removal would have on their welfare.

For further information please contact Sarah Campbell, Research and Policy Manager, Bail for Immigration Detainees at sarahc@biduk.org or on 0780 363 0406