

HOUSE OF COMMONS: COMMITTEE

November 2013

IMMIGRATION BILL (HC Bill 110)

Bail for Immigration Detainees (BID)

BID is a national charity that provides immigration detainees with free legal advice, information and representation to secure their release from detention. Over the last year BID has assisted 3,367 immigration detainees.

This briefing sets out BID's view that:

- Clause 12 should not stand part of the Bill because, in practice, it would prevent people from challenging their deportation, including where they would have won a deportation appeal if they had been able to bring one while in the UK. This would have grave consequences for child welfare.
- Amendment 35, tabled by Dr Julian Huppert, is a helpful opportunity to examine the consequences of Clause 14 for child welfare.
- Clause 14 should not stand part of the Bill, because it does not allow for a proper consideration of children's best interests in decision-making on deportation or removal of parents.

CLAUSE 12 STAND PART

1. BID considers that Clause 12 should not stand part of the Bill. Clause 12 (3) of the Bill would 'ensure foreign criminals can be deported first and appeal after, unless that would cause serious irreversible harm.'¹
2. There are serious problems with the quality of Home Office decision-making and in 2012/13, 32% of deportation appeals were successful.² Many of these will have concerned people who have lived in the UK for very long periods, including parents with British children who would be significantly harmed by their parent's deportation. The Home Office already has the power to prevent repeated appeals by certifying claims as clearly unfounded. Clause 12 (3) would prevent people with arguable cases from accessing the courts in the UK; very many will simply be denied justice.
3. The draft Bill and appeals 'Impact Assessment'³ entirely ignore the needs of children in the UK who would be split from their parent by deportation. The Bill proposes that decision-makers only consider the risk of 'serious irreversible harm' to parents who are denied the right to appeal in the UK, and not the risk of harm to their children, who may be British Citizens.

¹ Home Office October 2013 *Immigration Bill Factsheet: appeals (clauses 11-13)* <http://bit.ly/1gOp7y8>

² Home Office 15/7/12 *Impact Assessment of Reforming Immigration Appeal Rights*, p7 <http://bit.ly/1cygmWm>

³ Home Office 15/7/12 *Impact Assessment of Reforming Immigration Appeal Rights* <http://bit.ly/1cygmWm>

4. This can only exacerbate a situation which is already extremely bad. In April 2013, BID produced *Fractured Childhoods*, a report on the separation of families for the purposes of immigration control (<http://bit.ly/11qcGhl>). It examined the cases of 111 parents who were separated from 200 children by immigration detention, and found that the Home Office repeatedly failed to safeguard children when making decisions to detain and deport parents.

The Home Office detained and planned to deport Christine, a single mother.⁴ Her two children were left in the care of their elderly and seriously ill grandfather. Her 15 year old daughter 'Beth' left school and missed her GCSEs while caring for her brother and grandfather. She struggled to look after her seven year old brother, who has very limited motor control and severe behavioural problems. A Children's Services assessment found that the younger child was at risk of emotional and physical harm; he was later hit by a car while playing alone in the street. The children's welfare was not taken into account by the Home Office, but after the mother's release on bail she was reunited with her children and successfully appealed her deportation through the courts. **If Clause 12 becomes law, people in Christine's situation will be deported before they can appeal.**

5. Furthermore, BID regularly deals with cases where people who came to the UK as children face deportation. In one case, we provided advice to a man who came to the UK aged four, whose mother and six siblings were British, and who was facing deportation as a result of an offence committed when he was 27. This client successfully appealed his deportation, but if Clause 12 becomes law, most detainees would be deported before they could appeal.
6. There will be huge practical barriers to individuals appealing their deportation from abroad, including obstacles to accessing advice, collecting evidence and appearing in court. Even in cases where, for example, parents are able to bring an appeal from abroad, children will be subjected to damaging and unnecessary disruption while this takes place, as they will either have to accompany their parent or be separated from them.
7. The Home Office claims that appeals could be partly replaced by a system of '**administrative review**' whereby the Home Office would correct its own errors. This is an absurd assertion. The Home Office already has a system whereby senior staff review decisions to detain and deport parents, and this does not prevent parents being separated from their children unlawfully.⁵ If Home Office caseworkers know that their decisions are unlikely to be scrutinised by a court, because individuals will be deported before they can appeal, the quality of decision making is likely to deteriorate even further.

⁴ Bail for Immigration Detainees 2013 *Fractured Childhoods* <http://bit.ly/11qcGhl>

⁵ See for example *NXT, R (on the application of) & Ors v Secretary of State for the Home Department* [2011] EWHC 969 (Admin). BID is aware of a number of recent unlawful detention cases which have settled outside court. In one case which settled in early 2013 the parent and child were given £68,500 in compensation.

CLAUSE 14

Amendment 35 – Dr Julian Huppert

Clause 14, page 14, line 3 at end insert 'or

- i. (c) was born in the United Kingdom and has always lived in the United Kingdom;’.

Presumed Purpose

8. Amends the definition of a qualifying child to include a child who was born in the UK and has always lived in the UK. BID regards this as a probing amendment that will allow the multiple deficiencies of the clause as regards children to be explored.

Briefing

9. For the reasons set out below, BID considers that this would be a welcome amendment, but that far greater changes are needed to Clause 14 if children’s welfare is to be safeguarded. Children who were not born in the UK, but who for example came to the UK as two year olds and have lived here for six years, may be very significantly harmed if their parent is removed or deported.

CLAUSE 14 STAND PART

10. BID considers that Clause 14 should not stand part of the Bill. Clause 14 seeks to limit the circumstances in which someone can successfully appeal their removal or deportation on the basis of the right to private and family life (Article 8 of the European Convention on Human Rights).
11. Although the Government’s public rhetoric on Article 8 focuses on cases where migrants have committed criminal offences, this clause would affect anyone involved in an immigration claim based on private and family life, including law-abiding migrants and family members who are British Citizens. BID has dealt with cases where the Home Office has sought to remove non-criminal parents from the UK without their children, and this clause seeks to further curtail families’ ability to appeal such action.
12. Clause 14 suggests that in a very wide range of circumstances, the best interests of children should be routinely subordinated to considerations of immigration control. **This is at odds with 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.**
13. For example, Clause 14 provides that where a parent is a ‘foreign criminal’, the public interest requires their deportation. ‘Extremely rare’⁶ exceptions may be made in a few of the (many) cases involving children who are British or who have lived in the UK for seven years. However, if a parent has a six year old child who was born in the UK, the draft Bill would requires that the parent be deported, no matter how desperate a situation this would create for the child.

⁶ Home Office October 2013 *Immigration Bill Factsheet: Article 8 (clause 14)* <http://bit.ly/17OnUyN>

14. Wide powers already exist for the state to remove migrants without leave and deport foreign national ex-offenders. According to Home Office figures only 177 appeals against deportation in 2011/12 succeeded on Article 8 (right to private and family life) grounds.⁷ Many of these cases will have raised very serious child welfare issues.
15. It is wholly unacceptable that the Government is now seeking to remove the legal requirement to fully and properly consider the best interests of all children before a decision is made to remove or deport their parent.

One of BID's clients, 'Simone' was trafficked to the UK and forced to work in prostitution for three years. After escaping from this situation she was convicted of a drug-related offence. She was detained by the Home Office after serving her sentence.

Simone's son, Ray, was less than one year old when she was arrested and nearly four by the time she was released from detention. During her prison sentence Simone was regularly released on weekends. However, once she entered immigration detention this did not happen. Ray repeatedly asked after his mother, cried in his sleep, stopped eating properly, and would scream uncontrollably when his mother had to finish phone conversations with him.

The Home Office argued that Ray could leave the UK with Simone. However, Ray had extremely close bonds with his father, who cared for him from when he was one to four years old. Ray's father could not leave the UK as he had another child here from a previous relationship. After being released from detention Simone successfully appealed her deportation. Under the measures proposed in Clause 14, Ray's interests would not have been considered by decision-makers as he is less than seven years old.

⁷ Home Office October 2013 *Immigration Bill Factsheet: Article 8 (clause 14)* <http://bit.ly/17OnUyN>