

## HOUSE OF COMMONS: REPORT

January 2014

### IMMIGRATION BILL (HC Bill 110)

**Bail for Immigration Detainees (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.

#### **Clause 14 and New Clause 15 – Article 8 ECHR – Right to private and family life**

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.

Sarah Teather has proposed **amendments 2 to 5 and amendment 58** to Clause 14. These amendments would not create additional rights of appeal – they would simply ensure that when the courts consider an appeal, they take into account the best interests of all affected children.

Dominic Raab et ors have proposed **new Clause 15 ‘Exceptions to Automatic Deportation’**. Under Clause 15, when deciding whether to deport somebody, the Secretary of State would only consider whether they faced a risk of death, torture or inhuman or degrading treatment on return. There would be no consideration of family life or, for example, whether they had been trafficked and were at risk of re-trafficking.<sup>1</sup> Under Clause 15, the Secretary of State would also consider whether a parent’s deportation would cause ‘manifest and overwhelming harm to his children.’

BiD opposes new Clause 15, and believes it would lead to human rights breaches. It may well not be proportionate to deport somebody who has, for example, committed a false document offence where this would cause very serious harm to their children, even if this did not meet the ‘manifest and overwhelming’ threshold. It is unacceptable to disregard harm to children simply because the harm is not ‘overwhelming.’ BiD deals with many cases where children would be seriously damaged by their parent’s deportation, but Dominic Raab estimates that under new Clause 15 ‘about one Article 8 case every five years would meet the qualifying grounds we have set out.’<sup>2</sup>

#### **Clause 14 as it stands**

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.

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.<sup>3</sup> Clause 14 seeks to further narrow the circumstances in which appeals can succeed.

---

<sup>1</sup> Article 4 of the European Convention on Human Rights pertains to trafficking

<sup>2</sup> The Telegraph (24/1/14) *New bid to block ‘human rights’ claims by foreign criminals*

<sup>3</sup> Home Office October 2013 *Immigration Bill Factsheet: Article 8 (clause 14)* <http://bit.ly/17OnUyN>

### **‘Qualifying’ children**

Clause 14 does not allow for proper consideration of the best interests of children who have lived in the UK for less than seven years, and do not have British citizenship. These children do not fall within the Clause’s definition of ‘qualifying children’ whose welfare is taken into account. A parent’s deportation may create a desperate situation for a six year old. For example, they may be severely disabled, or their other parent may be unwell and unable to care for them adequately.

The Government is arguing that it will normally be straightforward for children who have lived in the UK for less than seven years to accompany their parent and adapt to life abroad. This ignores the fact that, in two parent families, the parents may well be divorced, and children often face the appalling choice of leaving one parent behind in the UK or being split from the removed or deported parent for the rest of their childhood.

BID’s 2013 report *Fractured Childhoods* looked at the impact on children who were separated from parents for the purposes of immigration control. Children in the study described losing weight, having nightmares, suffering from insomnia and crying frequently. In some cases, children were split from single parents, and moved between unstable care arrangements, experienced neglect and were placed at risk of serious harm.

### **Parents ‘using’ children**

It has been argued that the provisions in the Bill protect children by stopping parents from using their children as a means to remain in the UK.<sup>4</sup> This argument is illogical. Children cannot be protected by ignoring their best interests out of concern that parents might benefit from action to safeguard children. The courts must consider every child’s best interests, even when their parent’s immigration history is poor. Any proper assessment would look at whether their parent had a genuine, caring relationship with the child or was simply claiming to have family ties to serve their own interests. 68% of deportation appeals do not succeed.<sup>5</sup> Clause 14 does not adequately protect children, and disregards entirely the best interests of ‘non-qualifying’ children.

### **Law-abiding migrants**

Public rhetoric on Article 8 focuses on cases where migrants have committed criminal offences, but Clause 14 would affect anyone involved in an immigration claim based on private and family life, including law-abiding migrants and family members who are British. 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.

### **Questions for the Minister**

1. If the Government believes that children’s best interests will be properly considered within Clause 14, why shouldn’t the need to safeguard children be made explicit in the Bill?
2. How does Clause 14 take account of the best interests of children who are under seven?
3. Will the Government carry out a child welfare impact assessment of Clause 14?
4. Has the Minister assessed how many children might be separated from their parents as a result of the provisions in this Bill?

**Contact:** Sarah Campbell, Bail for Immigration Detainees, 0207 650 0727, sarahc@biduk.org

---

<sup>4</sup> *Hansard Immigration Bill Deb, HC Committee, 5 November 2013, c213*

<sup>5</sup> Home Office 15/7/12 *Impact Assessment of Reforming Immigration Appeal Rights*, p7 <http://bit.ly/1cygmWm>