

## HOUSE OF LORDS: SECOND READING

February 2014

### **IMMIGRATION BILL: Clause 14 - Article 8 ECHR – Right to private and family life**

**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: 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. 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>1</sup> Clause 14 seeks to further narrow the circumstances in which appeals can succeed.

#### **‘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.

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<sup>1</sup> Home Office October 2013 *Immigration Bill Factsheet: Article 8 (clause 14)* <http://bit.ly/17OnUyN>

### **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>2</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>3</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?

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<sup>2</sup> *Hansard Immigration Bill Deb*, HC Committee, 5 November 2013, c213

<sup>3</sup> Home Office 15/7/12 *Impact Assessment of Reforming Immigration Appeal Rights*, p7 <http://bit.ly/1cygmWm>