

House of Lords: Report - Immigration Bill

March 2014

Clause 16 – Amendment 15*: Deportation and child welfare

The Earl of Sandwich – Amendment 15 - Page 14, line 31, at end insert—*

“() An appeal to which subsection (3) applies must be brought from within the United Kingdom if the appellant has a child in the United Kingdom, and it would be in the best interests of that child for the appeal to be brought from within the United Kingdom.”

Purpose

To ensure that parents can appeal their deportation from within the UK, where this is in the best interests of any children they have in the UK.

Briefing

BID supports amendment 15*. Clause 16 (3) of the Bill proposes that ‘foreign criminals’ and people the Home Secretary deems not conducive to the public good ‘*can be deported first and appeal after, unless that would cause serious irreversible harm.*’¹ In practice, it would prevent challenges to deportation, including where deportees would have won their appeal if they had been able to bring one in the UK. The clause has been criticised by the Joint Committee on Human Rights.²

In 2012/13, 32% of deportation appeals succeeded.³ A number will have concerned parents with British or settled children who would be significantly harmed by their parent’s deportation. A 2013 UNHCR report highlighted cases where Home Office decision-makers failed to adequately consider children’s best interests, including in relation to Article 8 of the ECHR.⁴ The Home Office can already prevent repeated appeals by certifying claims as clearly unfounded— Clause 16 (3) will prevent people with arguable cases from accessing justice.⁵

Clause 9 of the UN Convention on the Rights of the Child sets out children’s right: “...*not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child... [and]... In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.*”

Simone was trafficked to the UK and forced to work in prostitution for 3 years. After escaping from this situation she was convicted of a drug-related offence, and detained by the Home Office after serving her sentence. Her son Ray is a British Citizen. He was less than 1 year old when she was arrested and nearly 4 by the time she was released from detention. During her prison sentence she was 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 close bonds with his father, who cared for him from when he was 1 to 4 years old. Ray’s father could not leave the UK as he has another child here from a previous relationship. After being released from detention Simone successfully appealed her deportation. **If Clause 16 becomes law, people in Simone’s situation will be deported before they can appeal.**

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

² Joint Committee on Human Rights 18/12/13 *Legislative Scrutiny: Immigration Bill* Eighth Report of Session 2013-14

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

⁴ UNHCR (December 2013) *Considering the best interests of a child within a family seeking asylum*

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

There will be huge **practical barriers** to individuals appealing their deportation from abroad. Such cases often turn on issues of credibility; appellants will be severely disadvantaged by not appearing in court. They will face barriers to accessing legal advice. Social workers will not be able to assess the parent-child relationship by observing their interactions, and experts in risk assessment will not be able to meet the parent to evaluate their risk of reoffending.

Even in cases where parents are able to bring an appeal from abroad, children will be subjected to damaging and unnecessary disruption while this happens. They will either accompany their parent or be separated from them. Children of two parent families may have strong ties to another parent in the UK, and be in the appalling position of having to choose between their parents.

In April 2013, BID produced *Fractured Childhoods*, a report on the cases of 111 parents who were separated from 200 children by immigration detention. Children lost weight, had nightmares and suffered from insomnia during their parent's detention. 15 parents were removed or deported without their children; of these, one parent had no criminal conviction, and a further 12 parents had committed non-violent offences including possession of false documents.

On 10th February, Lord Taylor of Holbeach wrote to the House of Lords addressing issues raised at Second Reading of the Immigration Bill. In relation to this clause, he stated: *'If there were dependent children in the UK and it could be shown that there were exceptional reasons giving rise to a real risk of serious irreversible harm, then the power to certify would not be exercised and the criminal could appeal from within the UK.'* However, a parent's deportation may result in grave harm to a child which is not *'irreversible'* – is the Government arguing that such harm is acceptable and should not prevent the parent being deported to appeal from abroad?

In the Committee debate on the Bill, Lord Wallace suggested that: *'If a person deported does not have the means to instruct lawyers to present their appeal, they may have family or friends in the UK who can make representations on their behalf.'*⁶ BID has dealt with numerous cases concerning single parents who the Home Office has sought to deport without their children.⁷ Is the Government suggesting the children of these deportees may present their parents' cases in court after the parents' removal from the UK?

The Government argues that where necessary individuals will be able to challenge their deportation via **judicial review**. However, the Government is simultaneously seeking to impose a residence test which would prevent deportees from accessing legal aid for judicial review, and to restrict the circumstances in which people can bring judicial reviews.⁸ Furthermore, judicial reviews are time-consuming and costly, and could be avoided by retaining in-country appeals.

The Government argues that **exceptional funding** provides a safeguard. However, the Joint Committee on Human Rights found in December 2013 that only 746 people had applied for exceptional funding. 15 were granted funding, including 2 immigration cases.⁹ In BID's experience, detainees seldom have the skills needed to make applications, and solicitors rarely make applications as this work must be done at risk of non-payment.

Questions for the Minister

1. How will Government consider a child's best interests before deporting a parent to appeal from abroad?
2. Will parents be deported before an appeal where this will cause grave harm to their child, but the Home Office deems that such harm will not be *'irreversible'*?

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.

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⁶Hansard HL Deb, 5 March 2014, c1367

⁷Bail for Immigration Detainees (2013) *Fractured Childhoods: the separation of families by immigration detention*

⁸Ministry of Justice (3/10/13) *Transforming Legal Aid: Next Steps* <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps>; Ministry of Justice 5/2/13 *Criminal Justice and Courts Bill Factsheet: Reform of Judicial Review* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277730/fact-sheet-judicial-review.pdf

⁹Joint Committee on Human Rights (2013) *The implications for access to justice of the Government's proposals to reform legal aid* Seventh Report of Session 2013-14, p42