



CATHOLIC BISHOPS' CONFERENCE OF ENGLAND AND WALES

Office for Refugee Policy

19th December 2004

ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS ETC) BILL

Asylum seekers are already stigmatised socially by the popular press and marginalized politically. Proposals in the present Bill, which could contribute to that process are therefore particularly worrying. The quality of initial decision-making regarding asylum determinations is in urgent need of reform, yet the Government has chosen to restrict legal aid for asylum seekers and to legislate for a reduction of rights of appeal and for further restrictive measures affecting those who are seeking asylum.

The **Asylum and Immigration (Treatment of Claimants etc) Bill** is the third asylum Bill since 1997. It proposes a single tier of appeal against asylum decisions; and provides penalties for those who destroy travel documents. While Section 55 of **Nationality Immigration and Asylum Act 2002** withdraws support from asylum seekers who do not apply "as soon as reasonably practicable", the present proposals would deny benefits to families whose claims are rejected.¹ The Asylum and Immigration Bill seeks to remove much of asylum policy from the scope of legal control yet does nothing to address the poor quality of initial decision-making. Home Office research suggests that in the 12 months leading up to October 2003, a fifth of applicants (15,130 cases) turned down initially were successful on appeal.

Rule of Law

Many decisions of the Home Secretary regarding deportation and removal will be immune from judicial scrutiny by the higher courts. The Asylum and Immigration Tribunal (AIT) will be the only avenue of appeal for immigration decisions and will not be subject to judicial review (Clause 10). The only person who can require the Court of Appeal to look at decision of the Tribunal is the President of the Tribunal.

These proposals curtailing rights of appeal are probably the most damaging part of the Bill. Errors by the Home Office and immigration adjudicators may be impossible to remedy and some applicants face return to persecution. Asylum seekers would be the only group of people denied access to the Higher Courts. The changes proposed are discriminatory and may therefore be in breach of both the European Convention of Human Rights and the Human Rights Act.

Documents

It will be an offence for a person to enter the United Kingdom without a passport (Clause 2). Someone who arrives in the United Kingdom without a passport may be assumed to have destroyed it. These

¹ Baroness Scotland: "It will encourage properly managed legal migration that benefits the United Kingdom economically and socially and will help to integrate legal migrants, genuine refugees and new citizens. The new legislation will [introduce] clarity and decisiveness into the appeals and removal process." 01.12.03



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provisions may be in breach of UK obligations under Article 31 of **Convention Relating to the Status of Refugees**² providing that those fleeing persecution should not be penalised for their manner of entry.

Measures providing that destruction of documents may be taken into account by decision-makers are unnecessary since manner of arrival is already a factor, which may be taken into account in their applications (Clause 6). The Bill fails to show an understanding both of the exceptional circumstances in which documents may be destroyed or of the pressures that asylum seekers may be put under from people-smugglers who facilitate their entry.

Children

Financial support and accommodation will be withdrawn from the families of failed asylum seekers (Clause 7). Restricting rights of appeal makes it more likely that people who would otherwise be recognised as refugees could now fall into this category. As a consequence of destitution children may therefore be taken into care.³

Safe Third Countries

The Bill would expand the list of “safe third countries” to which asylum seekers can be returned. For the first time this would include countries with which they have had no prior connection (Clause 12) and could be used to develop the controversial idea of “zones of protection”. The Home Secretary’s list of safe countries would not be subject to any legal scrutiny. Provisions deeming human rights claims relating to removal to a third country to be “unfounded” and therefore not subject to the scrutiny of our judges could be in breach of the European Convention of Human Rights.

Electronic Tagging

Any asylum seekers given temporary admission could be tagged and monitored electronically (Clause 15). There would be no avenue for appeal to the higher courts regarding these provisions. The only other group of people who are currently tagged are convicted criminals.

Action

There is very little time to influence this Bill and it is not yet clear what amendments will be offered in the House of Lords. Readers wishing to raise these concerns with MPs may find the most effective way of doing so is to arrange ecumenical delegations to MPs in their constituency surgeries or to invite MPs to meet with them in their worshipping communities. Such meetings may be most effective in commanding the attention of MPs where it is possible to include members of non-Christian faiths.

Among issues that are not included in the Bill and which might be raised in this context are:

- The necessity of measures to improve the quality of initial decision making by the Home Office
- Repeal of provisions removing support from categories of asylum seekers
- Return of in country right of appeal against fast track home office decisions

² “The contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened...”

³ Although not mentioned in the Bill, there are already provisions for this under Children Act 1989.



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- Allow asylum seekers who have been fast tracked to appeal against their decisions before deportation
- An end to the detention of children of asylum seekers
- Provisions for automatic bail hearings for detained asylum seekers

For further information, please contact:

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