

## **IMMIGRATION UPDATE.**

### **The Immigration Asylum And Nationality Bill 2005.**

The bill is at present the subject of debate in parliament. In so far as Immigration law is concerned, the proposals in the bill are to drastically curtail the current system of entry to the UK from the present system based on permanent residence after four years lawful residence in the UK in a particular immigration category, (*see the Immigration rules, HC 395 as amended*), to a single points based system (save for example marriage and unmarried partners applications, and other applications where a points system would clearly be inappropriate), comprising of four tiers, namely the highly skilled workers; skilled workers; low skilled workers; and students and specialists.

Those applicants who apply under tier one, (*the highly skilled based on the current Highly skilled migrant programme where to qualify for residency an applicant has to score 65 points*), will not require a sponsor, but those applying in other immigration categories will in the main require to show they have a sponsor. These include applications under tier two, skilled workers (those applying for example for work permits, the sponsor being their prospective employer), tier three, low skilled workers, for example trainees and those requiring leave to remain on the basis of work experience, and finally tier four students and specialists.

Those who apply under tier three and four who are from what is termed as "high risk countries", (that is to say countries from where there is a high rate of asylum seekers in the UK or who for one reason or another do not wish to return), may well be required to provide a deposit against guarantees that they will leave the UK at the termination of their period of temporary stay.

Permanent residence is at present granted to those who have completed four years in a particular immigration category, and the bill envisages that settlement will only be available to skilled workers, and the length of the qualifying period will be extended to five years.

The new law also envisages curtailing appeal rights. The current process of appealing against refusals of entry clearance for work or for student visas will be abolished, and oral hearings from decisions to refuse family visits will also be abolished. These appeals will be heard on the papers, in the hope of saving court time for other categories of appeals. Family paper appeals will also be restricted to "close family members". It is difficult however to define such members, particularly if a genuine family visitor has only a distant aunt or cousin in the UK, but no other family member alive.

It is submitted that the abolishing of appeal rights may defeat the purpose of the legislation which is to save time and money and to make the appeal system efficient and effective. Those who are refused entry clearance and have no remedy to appeal to the Asylum and Immigration tribunal, will no doubt be advised to proceed by way of judicial review in the higher courts in the UK thus clogging up the court system, which will result in delays, and further expense, the very mischiefs which the proposed legislation is drafted to cure.

Changes to the asylum process will mean that whereas at present a person classed as a refugee is granted indefinite leave to remain in the UK, the grant of refugee status under the Geneva Convention on the status of refugees 1951 and its 1967 protocol will only grant an applicant temporary stay in the UK for a period of five years, during the course of which the situation in the applicant's country of nationality or former residence will be monitored to ascertain any change of regime for the better. If there is then no further risk to the applicant, he/she will be asked to leave. but if the risk continues then permanent residence will be granted.

Further clauses have been added to the bill to combat terrorism. These include the possible deprivation of citizenship and permanent residence already granted, and defining in the new legislation the meaning of Article 1F of the Refugee Convention, this being an exclusion clause to the grant of refugee status, for acts of terrorism.

### **The Civil Partnership Act 2004.**

The Act will come into force on 5th December 2005, and will give an added boost to applications under the immigration rules, to those who wish to continue to remain as unmarried partners of persons settled here.

Furthermore, the registration of a civil partnership can take place if the foreign partner has extant leave to remain in the UK. Those who wish however to come to the UK under the proposed changes in the immigration rules, which will recognise the registration of a civil partnership as a immigration category, will require to obtain entry clearance, i.e. a visa form abroad to enter the UK in order to register their civil partnership here, or they will need to have a certificate of approval from the Home Office, but to do so they must have been granted more than six months leave to remain in the UK and have at least three months of that leave remaining. Alternatively they must show they have settled status in the UK..

### **Zimbabwean asylum seekers.**

In August 2005 Collins J put a stop to the removal of failed seekers from Zimbabwe, until full consideration had been given to the political situation there.

The Asylum and Immigration tribunal in the case of **AA (Involuntary returns to Zimbabwe) Zimbabwe CG (2005) UKIAT 00144**, allowed a Zimbabwean test case in which it held *inter alia*, that there was a risk to all those involuntarily returned to Zimbabwe, of persecution for a Convention reason, namely due to their political opinion or imputed political opinion.

### **Nationality applications.**

The new rules on nationality applications require applicants to demonstrate as from 1st November 2005, knowledge of life in the UK, and there are two ways of satisfying such requirements:

1. By the completion of an English with citizenship course, and thereafter obtaining the required certificate from the college;
2. By passing a computer based test on the knowledge of life in the UK which will also test the applicant's English language. This test is available at a number of testing centres.

The above test will cover all sections of Life in the UK publication, obtainable from stationers and booksellers. Candidates will have to pay £34 for each attempt, and will be given written notification of the results. There are some applicants who are exempt, such as those who clearly are elderly and infirm, and those who have learning difficulties

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