

9th July 2009

The Rt Hon Alan Johnson MP
Secretary of State for the Home Office
2 Marsham Street
London SW1P 4DF

By email to privateoffice.external@homeoffice.gsi.gov.uk

Dear Home Secretary

Re: The Path to Citizenship

Congratulations on your recent appointment. As you will be aware, the Borders, Citizenship and Immigration Bill, introduced by your predecessor, Jacqui Smith MP, is currently making its way through Parliament. Part 2 of the Bill, which reforms the law on acquisition of citizenship (naturalisation), remains the subject of significant controversy, while Government thinking on key elements of this is not finalised. Accordingly, ahead of Report Stage in the Commons we are writing to express our concerns about Part 2 and to urge you to reconsider the path to citizenship proposals. We note that the draft Immigration Simplification Bill, due to be published later this year, provides an early opportunity to return to this if that proves desirable when thinking on this important matter is complete.

The difficulties with Part 2 have been exposed during its passage through Parliament. Amendments have been made in an attempt to give effect to the Government's intentions, and these have resulted in far greater complexity than was originally envisaged, is necessary or is desirable. This is also contrary to the original intentions of Government (see annexe).

The provisions in the Bill add complexity to the path to citizenship; and for no obvious benefit. The general aims that citizenship should be dependent upon matters such as obeying the law, knowledge of English and life in the UK and paying taxes are already part of the path to citizenship; and do not depend on the Bill's provisions. The only new element is the active citizenship requirement yet this is one element in respect of which Government thinking is neither finalised nor well-developed – quite apart from the practical and resource difficulties of implementing such a scheme.

Part 2 provides that in order to qualify as time spent towards naturalisation, the period of time spent in the UK has to be spent while resident on a certain type of visa or entitlement. Time spent in the UK on a visa which is time limited as to duration will only count if the leave is granted for a purpose that is set out in Rules made by the Secretary of State. It is therefore impossible to know at this stage what categories of persons this will apply to. There may well be large numbers of people on certain visas who do not fall within this category.

The indication from Ministers is that discretion is to be the means to deal with readily foreseeable, unavoidable and regrettably all-too-common events, which do not fit with the strict requirements that will be new or changed under the Bill's provisions. These include where migrant workers face harassment or exploitation or redundancy, or migrants who are required to be absent from the UK for extended periods due to family crises abroad or being posted abroad by a UK-based employer. This does nothing to promote clarity or predictability; and runs counter to the previously stated intention to reduce the need for discretion by decision-makers. The lack of certainty (for migrants and the wider public) in such cases is compounded because at the time of the relevant event the migrant will not know whether or how discretion will be exercised – hence migrants may be faced with invidious choices, such as whether to stay in employment where they face harassment or exploitation, whether to seek alternative employment where they may be asked to work abroad for lengthy periods or whether to be absent from close family at times of serious illness or death in order to avoid the future risk to them and their families that their path to citizenship may be delayed by several years or curtailed altogether.

It is not yet explained how transitional protection will be provided for migrants already on the path to citizenship, including where they have received letters explaining when and how they may progress to indefinite leave to remain or citizenship, at the time the Bill's provisions are commenced. This is also a significant problem in respect of those in the asylum legacy backlog (Case Resolution Directorate) who have been consistently informed over the last 3 or so years that they may have to wait until July 2011 for their cases to be dealt with. For those who are among the last in that queue, the changes may cause significantly and previously unanticipated prejudice.

There is also a problem, highlighted during the debates in the House of Lords (e.g. *Hansard* HL, Committee, 2 Mar 2009: Column 535 *et seq* on Amendment No. 54) in relation to those whose initial grant of temporary stay in the UK is delayed while they are on temporary admission (or in some instances detained) pending a decision on their case. This particularly affects asylum-seekers. For those who are granted status, their integration is effectively delayed if the period during which their application was under consideration is excluded (as the Bill envisages) from the period that may count towards qualification for citizenship. Reasons to date advanced for this exclusion do not promote integration of the individual migrant or family, or clarity or efficiency of the system – particularly where resolution of the individual claim may be delayed by months or, has been the case in the past, years. While the UK Border Agency aims for more speedy resolution in most cases (targets do not apply in 100% of cases), it is difficult to see what the Government or UK Border Agency loses by allowing this period while the person is in the UK waiting for a decision to count towards the qualification for citizenship if it turns out to be a short period; and conversely readily appreciated how the prejudice to an individual may be greatly aggravated if the period turns out to be long.

Accordingly, we urge you to postpone introduction of legislation to amend the path to citizenship. Instead, revised provisions could be included in the draft Simplification Bill that is to be published in the autumn, once further thought has been given to addressing the problems and controversies highlighted here. If that is unacceptable,

then we urge you to undertake that the provisions will form part of that draft Bill so that they can be further refined and improved.

Yours sincerely

Alasdair Mackenzie
Acting Chair
Immigration Law Practitioners' Association

Hina Majid
Director of Legal Policy
Joint Council for the Welfare of Immigrants

Eric Metcalfe
Director of Human Rights Policy
JUSTICE

Isabella Sankey
Director of Policy
Liberty

Don Flynn
Director
Migrants Rights Network

Annexe

In June 2007, the Government published an initial consultation on its project to simplify immigration law (*Simplifying Immigration Law: an initial consultation*). The consultation document set out various aims and principles the Government considered key to any changes to immigration law. In February 2008, the Government published a further consultation on the simplification project, including in particular plans for changes to the path to citizenship (*The Path to citizenship: next steps in reforming the immigration system*). That document restated the aims and principles set out in the earlier document.

Jacqui Smith MP, then Home Secretary, explained in her foreword to the February 2008 document that:

“We want to make the journey to citizenship simpler, clearer and easier for the public and migrants to understand. Our proposals to achieve this aim are an integral and central part of our wider work to overhaul the legal framework for immigration.”

Aims and principles that were set out included:

- to maximise transparency for applicants and the wider public
- to maximise clarity and predictability for applicants
- to maximise public confidence in a comprehensible system
- to minimise the need for decision-makers to exercise discretion

The February 2008 document also identified what the Government considered to be the three problems that changes to the path to citizenship should address:

- the complexity of the path to citizenship
- lack of clarity as to the three stages of the path to citizenship
- insufficient incentive for migrants to complete the path to citizenship

The Borders, Citizenship and Immigration Bill now includes provisions in Part 2 to introduce changes to the path to citizenship.

We are concerned that the premise for reform in this area is based on misunderstandings about the present framework for naturalisation. At Committee stage, Phil Woolas MP, Minister for Borders and Immigration, said (*Hansard HC, Fourth Sitting, 11 Jun 2009 : Column 97*):

“The strategy is to try to break the automatic link that is in some people’s minds, and in some cases in statute, between temporary stay and automatic right to citizenship, and to help the migrant to integrate.”

There is however no automatic link between obtaining any type of temporary stay in the UK and having a right to citizenship. The Government’s consultation did not suggest any such link, and made no proposals for breaking any such link which it may have thought to exist.