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Immigration briefing from Magrath LLP published in the
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- Effective amnesty in UK asylum system: an agency
'not fit for purpose'
- Consultation on settlement

THE 
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Effective amnesty in UK asylum system: an agency 'not fit for purpose'

IN EARLY JUNE THE HOUSE OF COMMONS Home Affairs Committee published a report called 'The Work of the UK Border Agency (November 2010 – March 2011)', which accuses the UK Border Agency (UKBA) of effectively creating an amnesty for hundreds of thousands of asylum seekers whose cases have been delayed for many years.

This is not a new problem, as the asylum system has been bogged down for over a decade in case backlogs, with many applicants waiting several years before a decision is taken on their case. The government has implemented numerous initiatives over time, including 'certified' cases (to limit appeal rights) and 'one-stop' appeals to prevent failed asylum seekers from using extended appeal rights to prolong UK residence. However, the system remains slow and recent cutbacks to public funding do not give much scope for likely process improvements.

Many media reports have noted the conclusion that the Committee reaches that UKBA's success in clearing a backlog of around 400,000 to 450,000 unresolved asylum cases has been achieved:

'Through increasing resorts to grants of permission to stay or the parking of cases in a controlled archive, signifying that the applicant cannot be found and the agency has no idea whether or not the applicant remains in the UK, legally or otherwise.'

The Committee also state that it is 'indefensible' that:

'About 74,500 of the 400-450,000 cases – approximately one in six – the UKBA has been completely unable to trace what has happened to the applicant.'

Finally, the way the backlog has been dealt with effectively amounts to an 'amnesty':

'We understand that ministers would have been unwilling to announce an amnesty for the applicants caught up in this backlog, not least because this might be interpreted as meaning that the UK was prepared more generally to relax its approach towards migration:

"But we consider that in practice an amnesty has taken place, at considerable cost to the tax payer."

As to immigration generally, the Committee repeats its view that it is a 'mistake to include students as migrants unless or until the student makes an application or demonstrates that intention to wish to settle'. It also highlights the problem of hundreds of thousands of immigrants overstaying their visas.

In respect of Tier 2 of the points-based system for immigration (the route that provides for economic migration for employees), the Committee says:

'It can function effectively only if there is confidence that sponsors will not abuse the system and that anyone who no longer qualifies for leave to remain is compelled to leave the UK.'

The Committee identifies the lack of resources that the UKBA has at its disposal to properly monitor and undertake compliance checks on Tier 2 sponsors.

Robust response

The immigration minister, Damian Green, responded to the report on 2 June:

'We have known for some time that the asylum system we inherited was chaotic; some of these cases date back more than a decade and the UKBA was always clear that, because of the length of time that many of these individuals



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have been in the country, there would be no alternative to granting them leave to remain. There is no amnesty.'

Clearly the minister is seeking to underscore the fact that he inherited his department a year ago and this backlog was created under a previous regime.

Responding to the reports observations on the immigration system in general, Green added:

'We are already radically reforming the points-based system and other routes of entry that have been subject to widespread abuse, and will reintroduce exist checks by 2015.

'The House of Commons Home Affairs Committee identifies the lack of resources that the UK Border Agency has at its disposal to properly monitor and undertake compliance checks on Tier 2 sponsors.'

We are making greater use of intelligence to remove people with no right to be here and are concluding individual cases faster.'

It appears that confidence in the efficiency of the UKBA remains

at a low ebb. Given the need to reduce rather than enhance resources as a consequence of deficit reduction, it is unclear how confidence in the mechanisms of immigration control can be established.

Consultation on settlement

ON 9 JUNE 2011, THE HOME SECRETARY published a consultation on how those who come to work in the UK under Tiers 1 and 2 may be granted indefinite leave to remain (also known as 'settlement'). The consultation also looks at Tier 5 and overseas domestic workers.

Immigration minister Damian Green said:

'The proposals I am making today are aimed at breaking the link between temporary and permanent migration. Settlement has become almost automatic for those who choose to stay. This needs to change.'

As part of the government's strategy of reducing net migration from the hundreds of thousands to the tens of thousands, the government now intends to be more selective of those who are able to stay. The consultation also reviews the routes by which migrants can enter the UK to work and then apply for settlement, other than through Tiers 1 and 2 of the points-based system. This includes Tier 5 (temporary workers and youth mobility), overseas domestic workers in private households and UK ancestry.

The government proposes that Tier 1 will only give an entry to settlement for investors and entrepreneurs. The government recently implemented changes for Tier 1 (General) migrants to demonstrate, as part of the settlement application process, that

they continue to meet the Tier 1 salary requirements and pass a new criminality test.

The government also believes that Tier 2 should, in the future, be regarded as a temporary and not a permanent migration route. The government will consult on allowing certain categories of Tier 2 migrants, including those who are earning over £150,000 or occupations of a specific economic or social value to the UK, to retain their right to indefinite leave to remain, or settlement.

In addition, the government will consult on creating a new category into which after three years in the UK, the most 'exceptional' Tier 2 migrants may switch to, then apply for settlement and those who do not switch can only stay in the UK for a maximum of five years. The government intends for the UK Border Agency to apply robust selection criteria to those Tier 2 migrants who wish to switch; and then to introduce a limit on the total number of migrants allowed to move into this new immigration category.

The consultation considers restricting the maximum period of leave in Tier 5 (temporary worker) to 12 months, although they propose no changes to the Tier 5 (youth mobility category).

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