



Family and Employment Matters – Legal Notes

1. Abolition of family visit appeals.

- (i) The Crime and Courts Bill had its second reading in the House of Lords on 28 May. Its main purpose is to establish the new National Crime Agency, but among its other miscellaneous provisions are two which are intended to make changes in the immigration appeals system. The important one of these two is Clause 24, the purpose of which is to abolish the right of appeal against refusal of a visa for a family visit. Such visas are granted for six months and applicants are required to show that while in the UK they will have enough money to support themselves without working and without recourse to public funds.
- (ii) At present a person whose application for a visit visa has been refused has a full right of appeal. The right was removed in 1993 but was restored in 2000. Provision was made in the legislation for charging for the bringing appeals, but this was later abandoned. There were 49,000 such appeals in the financial year 2010/2011 at a cost of £29 million.
- (iii) A recent sample of appeals allowed by the Tribunal's Immigration and Asylum Chamber showed that more than half involved consideration of new evidence which was not produced to the United Kingdom Border Agency (UKBA) when the original application was made. The UKBA takes the view that the availability of such evidence ought to give rise to a new application rather than an appeal. The rule used to be that except in asylum appeals no evidence arising after the date of the original decision could be considered on appeal. This was amended by section 85(4) of the Nationality, Immigration and Asylum Act 2002, which provides that any evidence arising after the date of decision may be considered. This is subject to certain exceptions which are not material for present purposes.
- (iv) Clause 24 of the Bill abolishes the right of appeal against refusal of a family visit visa, though appeals on human rights or discrimination grounds are preserved. It is expected that the Bill will become law in early 2013 and that abolition should become effective in early 2014.
- (v) In my own experience between 1992 and 2002 successful family visit appeals were often of no ostensible value to the appellants. Applications were always made for visits at specific times, often to enable the applicant to attend a family wedding or other event. By the time the appeal was heard the date of the event was long past so if the purpose of the intended visit was genuine success was nugatory.

2. Forced marriage – new criminal offence to be created

[Legal Paper MW 252](#) refers to the consultation undertaken by the government in late 2011 on the question whether it should be made a specific criminal offence to force persons into marriage without their consent. Migration Watch responded to the consultation in support of criminalisation, as recorded in paragraph 8 of that briefing paper. The government has today, 8 June 2012, published a paper setting out the results of the consultation, summarising the views for and against and announcing its intention of legislating for criminalisation. We fully support this intention and will keep a close eye on the introduction and passage of the necessary legislation.

3. Immigration and illegality of contract

The recent Court of Appeal decision in *Hounga v. Allen* [2012] EWCA Civ. 609, was an appeal against a decision of the Employment Appeal Tribunal in an unfair dismissal case which gave rise to issues of relevance to immigration law. The appellant was a Nigerian national and reached an agreement with the respondent that she would travel to the UK on a visitor's visa, which would allow her to stay for 6 months only and would not allow her to work. She applied for the visa under a false name and provided a forged letter which showed her as being invited to the UK to visit her grandmother. She repeated these lies to the immigration officer on arrival. She was met by the respondent on arrival and taken to the latter's home where she began to work as an *au pair*. She worked in this capacity for 18 months, during which time she was physically abused by the respondent and told that if she left the house and was found by the police she would be detained as an illegal immigrant. After she was dismissed she brought a claim for unfair dismissal. The employment tribunal found that she was well aware of the illegal nature of the arrangement made between her and the respondent, and that her claim for unfair dismissal was therefore tainted with illegality and could not succeed. This finding was not contested by the appellant and the Court of Appeal was more concerned with a separate claim for racial discrimination.

The appellant had been badly treated in her employment but she was undoubtedly aware that her employment was illegal and could not therefore expect to succeed with her claim. Even if she had not been so aware it would probably not have made any difference. The contract would still have been illegal and ignorance of the law is no defence.

It is worth noting that the respondent employer would have been liable to civil penalties under section 15 of the Immigration, Nationality and Asylum Act 2006 because she knowingly employed an illegal immigrant. Such action is also made a criminal offence under section 21 of the same Act and on conviction is punishable with a fine, imprisonment or both. We do not know whether proceedings were taken against the respondent in this case under either section.

Harry Mitchell QC
Honorary Legal Adviser
Migration Watch
8 June 2012