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Family Visitor Appeals

Summary

1. The number of family visitor appeals has increased eight fold, to over a thousand a week, since charges were abolished in 2002. The cost has reached approximately £1 million a week. The definition of family visitor is so wide that it could include as many as 120 relatives of a middle aged person in Britain. The definition should be tightened, charges re-imposed and bonds should be made an option (paragraph 11).

Introduction

2. The Immigration Appeals Act 1969 and the Immigration Act 1971 granted Rights of Appeal against a wide range of immigration decisions, including refusals to grant entry clearance. However, the Asylum and Immigration Appeals Act 1993 removed appeal rights for rejected visitors and short term students.

3. In October 2000, following disquiet, particularly in the Asian and Black communities, that family members were being refused visit visas without appropriate remedy, the Right of Appeal against refusal of visitors visas for "family visitors" was re-instated under the Immigration and Asylum Act 1999. Fees were originally set at £500 for an oral hearing or £150 for an appeal without a hearing. In January 2001 these fees were reduced to £125 and £50 but in May 2002 the fees were abolished entirely.

Definition of a family visitor

4. For these purposes a family visitor is defined in Section 90 (1) of the Nationality, Immigration and Asylum Act 2002 as any of the following persons:

(a) the applicant's spouse, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece or first cousin. In these Regulations "first cousin" means, in relation to a person, the son or daughter of his uncle or aunt;09.

(b) the father, mother, brother or sister of the applicant's spouse;

(c) the spouse of the applicants son or daughter;

(d) the applicants stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister; or

(e) a person with whom the applicant has lived as a member of an unmarried couple for at least two of the three years before the day on which his

application for entry clearance was made.

5. This definition of family visitor is so widely drawn that somebody from a third world country where the number of children per family is often four or five, could sponsor somewhere between 80 and 120 people under this scheme (Annex A). Furthermore, the provision for unmarried couples is particularly hard to verify and is therefore open to abuse.

6. A "family visitor" can generally appeal against refusal even if the applicant intends to do something else also during the trip. The legislation does not specify that visiting a family member has to be the sole, main or primary purpose of the trip. Nor does the sponsor have to be settled in the UK so someone still seeking asylum can sponsor a "family visitor".

7. The number of family visitor appeals has increased eight fold, to over a thousand a week, since fees were abandoned as the following table shows [1] [2] :

2000	2001	2002	2003/4	2004/5	2005/6	2006/7	2007/8
137	4,366	7,997	16,884	30,643	58,495	50,065	64,669

8. Of particular concern is the rapid growth of applications from certain countries. In 2006 India, Pakistan and Nigeria produced over ¼ million applications - up by a factor of 16 over a period of four years. 175,000 were approved. In 2008 applications from these three countries totalled 197,000 of which 134,000 were approved.[3] The worldwide total in 2008 was 414,000 of which 312,000 were approved.[4]

a) the definition of "family" is extremely wide, such as to include 50 - 120 relatives each.

b) The government's failure to remove those who stay beyond their visas must be now be well known.

c) It must also be widely known to relatives overseas that embarkation controls are due to be introduced in a few years time.

d) Talk of an amnesty for illegals can only encourage people to take a chance.

e) Those who are refused can appeal at the British tax payers expense.

Cost

10. The average unit cost of an Asylum and Immigration Tribunal Appeal in the financial year 2005/6 from receipt to final decision was £762. This figure represents the average unit cost of administration for all types of appeal before the tribunal and includes judicial costs, accommodation and the cost of providing an interpreter at the appeal hearing where this is necessary [5] . On this basis the cost of family visitor appeals in 2007/8 was £50 million. Even this is lower than an estimate of £60 million reported to be that of the Minister of Immigration.[6]

- Parliamentary Answer 5 July 2006 Col 333 –4 W and Parliamentary Answer 84607 12 J

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- Hansard 23 March 2009 Col 175 W
- Parliamentary Answer 20 July 2009 Col 920 W
- Hansard 26 March 2009 Col 649 W
- House of Commons reply to Mr Pelling [91629]
- Sunday Observer 3 Feb 2008 , Nicholas Watt's interview with Liam Byrne.

Proposed Changes

11. Given that there is no recording of visitors as they arrive and depart, there is no way of knowing whether those originally admitted as "family visitors" have left the UK, we propose that:

(a) The definition of "family visitor" should be substantially tightened, at least until embarkation controls are in place. In particular, uncles, aunts, nephews, nieces and first cousins should no longer be included. This would reduce the number of eligible relatives by up to 68.

(b) Fees should be re-instated at the original levels. There is no reason why the British tax payer should pay the costs of appeals by foreign visitors.

(c) The right to sponsor family visitors should be confined to British citizens. The relatives of others should apply as ordinary visitors.

(d) There should be provision for sponsors to deposit a bond in cases of doubt. The bond would be repaid as soon as the visitor reported back to the issuing Consulate.

30 December 2009

Annex A

Based on an average family sizes of 4 and 5 children per family a person resident in the UK could have up to 81 and 120 eligible family members in their country of origin, made up as follows:

	Based on 4 children	Based on 5 children	Notes
Parents	2	2	
Grandparents	4	4	
Uncles/Aunts	6	8	Each parent has 3 or 4 siblings
First cousins	24	40	4/5 children for each uncle/aunt
Brothers/sisters	3	4	
Nieces/Nephews	12	20	4/5 children of each brother/sister
Children	4	5	
Children's spouses	4	5	
Grandchildren	16	25	
Spouse	1	1	
Spouse's brother/sister	3	4	
Spouse's parents	2	2	
Total	81	120	

2 January, 2010