



Immigration Law eBrief

Immigration, Asylum & Nationality Law Group



Welcome from the Head of Immigration at No5 Chambers, Abid Mahmood

Welcome to the No5 Chambers' Immigration Law eBrief. Barristers from No5 are amongst the country's leading lawyers in immigration law. Our aim is to draw on this expertise to produce this eBrief quarterly. The Immigration Group's newsletter aims to provide up-to-date commentary on developments in this fast changing and dynamic area of the law. At No5 Chambers we are unique in having practitioners across the Country to enable us to cover hearings at all Tribunals and Courts. We have specialist practitioners that live all over the country and we have offices in London, Birmingham and Bristol.



In this issue S Chelvan addresses the European Parliament's Committee on Civil Liberties, Justice and Home Affairs. Abid Mahmood, Head of the Immigration Group at No5 discusses the issue of Immigration and Security concern, as given at The International Bar Association Conference in Dubai. Becket Bedford takes a retrospective look at asylum law in 2011. Also coming up in this eBrief, collaborative efforts from the No5 immigration team including "Does the Points Based System include Discretion after all?", "Migration Advisory Committee recommendations will result in reduction of 'family immigration' by up to 63%", "*Quila and Bibi v Secretary of State for the Home Department*", and "*Zambrano and Dereci*".

I hope that you will find this Newsletter useful and of course both I and the rest of the Group take this opportunity to thank you for your support over the last 12 months. We wish you a Merry Christmas and a Prosperous New Year!

Best wishes,

Abid Mahmood

If you have any comments which you would like to share about the eBrief please email marketing@no5.com.

To view all of the Immigration Group members, [please click here](#)

Chelvan Gives Evidence to European Parliament on EU Asylum Policy

by S Chelvan

Chelvan gave evidence to the European Parliament's Committee on Civil Liberties, Justice and Home Affairs on 20th October 2011.

At the invitation of the Committee, Chelvan's intervention concentrated on the gaps in the current and proposed EU Qualification, Procedure and Reception Directives with respect to LGBTI asylum seekers in Europe. The day covered issues surrounding a Common Asylum Policy for the European Union post-2012 with experts from around Europe providing evidence on the multitude of demands individual Member States face when determining refugee status. Chelvan's session focussed on the needs of Vulnerable Persons: Special Needs as applied to sexual and gender identity asylum claims, highlighting the differences between Member States on issues ranging from self-identification, gaps in the country evidence, concealment and violence in accommodation centres.

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Abid Mahmood addresses International Bar Association Conference in Dubai

by Abid Mahmood - Head of Immigration Group

Abid Mahmood, Head of the Immigration Group, spoke at the International Bar Association Conference in Dubai.

The Conference took place on 30th October 2011 to 4th November 2011. Over five thousand people attended. The key note speaker was Dr El Baradei, the Egyptian Presidential Candidate, nobel laureate and international lawyer.

Abid Mahmood spoke on the issue of Immigration and Security Concerns. He addressed the audience in respect of human rights issues which relate to the United Kingdom, but also in respect of security issues which arise on an international basis. He then shared a platform dealing with questions along with speakers from other countries including from Mexico, India and Peru.

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Asylum Law in 2011: A Retrospective

by Becket Bedford

For those of us privileged still to be arguing points of law with the permission of the Court of Appeal in asylum cases, there may soon be times potentially to rival the heady days when a Blake, a MacDonald or a Manjit Gill fought for, and won or lost, those first principles of a domestic asylum law by which today we, unreflecting, rate the chances of success.

Can we imagine an asylum system without a *Ravichandran principle* in which the Upper Tribunal is not the extension of UKBA's decision-making function, where, on the contrary, it is an ordinary appeal body, with no different function from that of the Court of Appeal. Should we yet examine this, a fundamental tenet of our asylum law, when the point was argued by Ian Macdonald QC and lost before Simon Brown LJ, as he was then, in *Ravichandran v SSHD* [1996] Imm AR 97?

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Zambrano and Dereci – what does the enjoyment of rights under Article 20 of the Treaty on the Functioning of the European Union really mean?

The Court of Justice of the European Union's judgment in *Ruiz Zambrano v Office national de l'emploi (ONEm)* [2011] 2 C.M.L.R. 46 in March of 2011 led to considerable interest regarding how far the principle which provided the basis for the Court's judgment could be taken.

The case concerned the applications for regularisation of their stay made by the Colombian parents of two children who had been born in Belgium. Central to the facts was the parents' immigration status in Belgium. Although they had failed in their asylum applications it had not been possible for the Belgian authorities to remove them to Colombia due to the general tumultuous situation prevailing in that country.

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Sledgehammers, nuts and Human Rights – the Supreme Court's judgment in Quila

The Supreme Court's October judgment in *Quila and Bibi v Secretary of State for the Home Department* [2011] UKSC 45 (12 October 2011), in which by a majority of 4 to 1 the Court dismissed the Secretary of State's appeals against the Court of Appeal's judgment last year already looks like a landmark in the development of the way in which rights to respect for family life are understood.

The subject of the judgment was the 2008 amendment to the Immigration Rules relating to marriage visas - the granting of entry clearance and leave to remain in the UK to people who are married to UK citizens or to people who have indefinite leave to remain in the UK.

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If adopted by the UKBA Migration Advisory Committee's recommendations will result in reduction of "family immigration" by up to 63%

The United Kingdom Border Agency's announcement on 16 November 2011 that the Migration Advisory Committee (MAC) had recommended that the minimum salary which has to be

demonstrated by people settled in the UK who wish to be joined by their spouses or partners should be drastically increased. As they stand the Immigration Rules covering applications for such visas require only that the couple can show that they will be maintained in the UK "adequately".

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Does the Points Based System include discretion after all?

Way back when what was then the Asylum and Immigration Tribunal conducted its first reconsideration of a Points Based System appeal, in *NA & Others (Tier 1 Post-Study Work-funds)* [2009] UKAIT 00025 the Tribunal was quick to note both that the new system was intended to be "discretion-free" and that it had largely achieved this aim.

The absence of any such discretion is thrown into relief in cases where an application is refused or rejected as invalid due to the applicant's failure to meet the strict requirements of the Agency's "policy guidance." The rejection cases frequently result in challenges by way of judicial review since the person whose application is rejected has no right of appeal to the First Tier Tribunal.

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