

## **“Challenging Deportation”**

The Criminal Casework Directorate, which is the part of the UK Border Agency who are responsible for deporting foreign nationals convicted of criminal offences, has had its budget increased by a factor of ten in recent years. This has resulted in more and more people being deported.

Being the subject of deportation action can be a bewildering and extremely frightening prospect. This Article sets out the main situations in which you may be liable to deportation and in which situations you may be able to challenge it.

### **Who can be deported?**

In short, anyone who is not a British citizen or person with the right of abode (and certain commonwealth citizens) is liable to deportation if it is believed to be conducive to the public good. Unfortunately, this also includes people who have indefinite leave to remain.

Deportation action is usually pursued by the UK Border Agency in the following situations:

- 1) Where a criminal court, as part of its sentence, makes a ‘recommendation’ that a person be deported; and
- 2) Where a person has been convicted of an offence and given a sentence of imprisonment of 12 months or greater.

The UK Border Agency also has the discretion to pursue deportation in other circumstances. Therefore, if you have been sentenced to imprisonment, regardless of the length of your sentence, it is probably best to seek the advice of a specialist legal representative.

### **How can deportation be challenged?**

The UK Borders Act 2007 took effect in August 2008, and has introduced the concept of ‘automatic deportation’ where a person is given a sentence of 12 months or more for a single offence. However despite deportation being described as automatic, there are a number of situations under the UK Borders Act 2007 in which you can challenge deportation. These are:

- 1) You would be at a real risk of harm if you were returned to your country of origin, or you are a refugee. Regardless of the seriousness of the crime you have committed, if it is accepted that you would be at a real risk of harm upon return to your country of origin, you cannot be deported.
- 2) You would be separated from your family or you have lived in the UK for a long time. The stronger your ties to the UK are, the more difficult it is for the UK Border Agency to justify deporting you. Factors that will be taken into account include whether you are in a serious relationship, whether you have

children, how long you have lived in the UK, what your health condition is and whether you are likely to re-offend again in the future.

- 3) You are an EEA national and your rights under European law would be breached by your deportation. There are increased levels of protection for EEA nationals, which makes it harder for the UK Border Agency to exclude you.
- 4) You were under 18 years of age at the time of your conviction. Where deportation of minors is concerned, more serious grounds are required for the UK Border Agency to deport you, in part due to the need to act in the best interests of children.
- 5) You are facing extradition or have been ordered to serve your sentence in a psychiatric institute under certain provisions of the Mental Health Act.

Whilst this is an overview of your rights, it is important that if you think you may face deportation, you seek the advice of a specialist legal representative at the earliest opportunity.