From: THE PRIVATE SECRETARY

cc Press

HOME OFFICE
QUEEN ANNE'S GATE LONDON SW1H 9AT

19 March 1981

Dear Mike,

An internal Home Office review of the immigration appeals system has now been completed. The review was undertaken primarily to try to find ways of enabling the appellate authorities to dispose of cases more quickly. It was linked with paragraph 10 of Chapter 11 of the Report on Non Departmental Bodies (Cmnd.7797) which said that the Immigration Appellate Authorities would be retained, but that their activities would be reviewed. The Home Secretary proposes to distribute the report, a copy of which is ..... enclosed, in the form of a discussion document.

The document considers ways in which the present structure could be made to operate more efficiently, while at the same time preserving a fair and reasonable system. It points out that the appeals system is under strain. During 1979 there were nearly 18,000 new appeals, and over 16,000 appeals were waiting to be heard. These delays benefit appellants in this country, but are disadvantageous to dependants appealing from abroad. The document aims to find ways in which these delays might be reduced.

Mr. Raison will be addressing the annual conference of the United Kingdom Immigrants Advisory Service (UKIAS) on 11 April. His speech would provide a good opportunity to announce the conclusions of the review, but publication of the document then may have implications for the Nationality Bill, which is being criticised for not providing for a system of appeals against refusal of applications for citizenship. The Home Secretary proposes to decide on 30 March whether to publish the document on 11 April.

The Home Secretary intends that the document should be published in the form of a booklet, although not as a Green Paper. Publication will be announced in an arranged Question and a press release will also be issued. Copies will be sent to the Council on Tribunals, the Immigration Appellate Authorities, UKIAS, the Joint Council for the Welfare of Immigrants, the Law Society, the Bar Council and the Commission for Racial Equality with a covering letter inviting comments. Other interested parties will be able to obtain copies on application to the Home Office.

I should be grateful if you are able to let me know by Friday, 27 March whether the Prime Minister is content that the document should be published as proposed on 11 April, subject to further consideration of the actual date by the Home Secretary in the light of progress on the Nationality Bill.

I am sending copies of this letter to the Private Secretaries to the members of the Home Affairs Committee, the Foreign and Commonwealth Secretary, the Law Officers, and Sir Robert Armstrong.

Yours,
Stephen

S. W. BOYS SMITH

M. A. Pattison, Esq.

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Immigration

23 March 1981

The Prime Minister has seen your letter of 19 March with which you enclosed the draft of a consultation document on the immigration appeals system.

Subject to any comments by colleagues, the Prime Minister is content that the document should be published on 11 April, unless the Home Secretary wishes to revise the date in the light of progress on the Nationality Bill.

I am sending copies of this letter to David Heyhoe (Chancellor of the Duchy of Lancaster's Office), and David Wright (Cabinet Office).

M A PATTISON

Stephen Boys Smith, Esq.,
Home Office.

Weekend 2

10 DOWNING STREET

PRIME MINISTER

The Home Secretary proposes to put out a consultation document (not formally a Green Paper) about the possible changes in the immigration appeals system. It may be published on 11 April, subject to the position on the Nationality Bill at that stage.

The paper is likely to generate mixed publicity. Most of the ideas seem designed to limit the number of avenues of appeal available to would-be immigrants/ visitors, although the net result should be a simplified system thereby speeding the clearing of appeals which are still eligible.

19 March 1981

HOME OFFICE

REVIEW OF APPEALS UNDER THE IMMIGRATION ACT 1971

A DISCUSSION DOCUMENT

Comments on the proposals in this discussion document whould be addressed to:-

B2 Division
Home Office
Lunar House
(Room 929)
40 Wellesley Road
Croydon
CR9 2BY

Copies of this booklet may be obtained from the same address.

Review of Appeals Under the Immigration Act 1971

A Discussion Document Prepared by the Home Office

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REVIEW OF APPEALS UNDER THE IMMIGRATION ACT 1971

A. INTRODUCTION

The relevant legislation

1. The present system of immigration appeals largely stems from the provisions of the Immigration Appeals Act 1969, which was re-enacted, with some changes, as Part II of the Immigration Act 1971. This sets out the current rights of appeal. These provisions were based in the main on the recommendations of the Committee on Immigration Appeals (Chairman: Sir Roy Wilson QC) whose Report (Cmnd. 3387) was published in August 1967.

2. Section 22 of the 1971 Act enables the Secretary of State to make rules of procedure for regulating the exercise of the rights of appeal conferred by the Act; for prescribing the practice and procedure to be followed (including the mode and burden of proof and the admissibility of evidence); and for other matters preliminary to or incidental to appeals. The current rules are laid down in the Immigration Appeals (Procedure) Rules 1972 (1972 No 1684). Also relevant are the regulations made under section 18 of the 1971 Act providing for notice to be given of matters in respect of which there are rights of appeal. The regulations currently in force are the Immigration Appeals (Notices) Regulations 1972 (1972 No 1683).

3. The powers to make rules of procedure and notices regulations are exercisable by statutory instrument subject to annulment by resolution of either House of Parliament.

Aims of the Government's review

4. The appeals system is under great strain. During 1979 appeals by nearly 18,000 individuals were referred to the appellate authorities and arrears rose from 11,700 to 16,350. The first 5 months of 1980 has seen a further 7,550 appellants whose cases were referred to the appellate authorities, with arrears reaching 17,800. At some hearing centres there is an average delay of up to 14 months before an appeal is heard. Such delays work to the advantage of appellants already in the country who may thereby achieve substantial extensions of stay, whatever the merits of their case, simply by appealing. But they adversely affect people overseas appealing against refusal of entry clearance for settlement as dependants. It is estimated that in 1979, out of

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a total of about 11,000 cases referred to adjudicators (where one case may involve several individual appellants), about 3,000 cases, involving some 9,500 appellants, related to applications by dependants overseas seeking settlement in the United Kingdom. It is thought that about half of the time of adjudicators is spent on such cases. If the time spent at present in dealing with appeals by persons in the United Kingdom could be reduced this would help to speed up the hearing of appeals by people overseas, particularly those seeking settlement.

5. The current overall cost of the immigration appeals system is estimated to be at least £4.5 million per annum; it employs some 320 full-time and about 100 fee paid staff. By comparison, the total estimated expendire on the administrative divisions of the Immigration and Nationality Department of the Home Office, which have a staff of 1,400, is about £13.9 million; and the cost of the Immigration Service, which has a complement of 1,550, is slightly in excess of £31 million. The prospects of more resources being made available are, and are likely to remain, remote. The main purpose of the Government's review has therefore been to consider ways in which delays might be reduced and resources used more efficiently. This might be achieved in two ways. The first is to rationalise the substantive rights of appeal set out in Part II of the Act. This would require legislation but it may be useful to set out the more realistic options which might be available should a suitable legislative opportunity arise. The second is to revise the procedure rules so as to ensure that scare resources of manpower and accommodation are devoted to the most serious issues which arise and that time is not wasted on less important matters.

6. Although implementation of the measures put forward for discussion in this paper might produce in due course a net saving in expenditure and manpower, the main aim at this stage is to make maximum use of the existing resources in order to speed up the hearing of appeals and thus to reduce the number of outstanding cases. It is not possible to give a precise estimate of the gains which would result, but if the proposals for amendments to the procedure rules in paragraphs 22-40 of the paper were put into effect they should enable the appeals system to handle a substantially increased number of cases with no increase in resources. Amendment of the Immigration Act 1971 on the lines indicated in paragraphs 7-14 could lead to further savings. On the other hand, if rights of appeal were given to illegal entrants before removal there would be a substantial increase in the number of appeals by such persons.

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B. RIGHTS OF APPEAL

Introduction

7. The Government believe that the existing rights of appeal set out in Part II of the 1971 Act form a broadly acceptable basis for the future. There could, however, be some modifications made which, without leaving anyone without a right of appeal at all, would lead to a fairer and more reasonable system. These modifications are discussed below.

Appeals against refusal to vary stay and against deportation

8. Under section 14 there is a right of appeal against a refusal to vary stay; and section 15 confers a right of appeal against a decision by the Secretary of State to deport. This effectively gives two opportunities to appeal where a person is admitted temporarily and is subsequently refused an extension of stay for which he has applied within his original time limit. That is to say, he may appeal against the decision not to extend his stay and, if he loses that appeal, may appeal again if he does not leave and a decision is taken to deport him.

9. The Government believe that this is wasteful of resources and far in excess of what a person aggrieved about an immigration decision could reasonably expect. They therefore propose that the two rights of appeal - that against refusal to vary stay and that against a decision by the Secretary of State to deport - should be combined. There would consequently be one right of appeal, in the course of which an appellant would be able to argue that he should have been granted an extension of stay under the immigration law and rules but that, if this claim is not accepted, he should in any case not be deported. Alternatively he would be able to argue that, despite any admitted absence of any claim to remain under the rules, he should nevertheless not be deported.

10. It is emphasised that it would remain open to an appellant to advance all the arguments that are available under the rules at present, particularly as to any relevant factors needing to be taken into account before a decision on deportation is reached. These are set out in paragraphs 141-149 of the Statement of Changes in Immigration Rules laid before Parliament on 20 February 1980 (HC 394).

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Rights of appeal of short-term visitors

11. It should be noted that section 14 of the Act confers a right of appeal exercisable in the United Kingdom on anyone who has a valid leave to enter or remain. This includes people who may have been admitted for a matter of weeks or even days as tourists. Visitors account for a large proportion of those admitted to this country. In 1979, out of a total of 6,900,000 persons admitted from all countries excluding the EEC, over 5,000,000 were visitors admitted for less than 12 months. The majority of these would have been admitted for six months or less. If a visitor applies for an extension within the time for which he is admitted and is refused he has a right of appeal. In some cases, because of the pressure on the appeals system, a person admitted for only a short visit may be able to prolong his stay for a quite disproportionate period by lodging an appeal. The system is open to abuse by appellants who lodge unmeritorious appeals and then withdraw them. In 1979 over half of all appeals against refusal to extend stay were subsequently withdrawn.

12. The Government would be reluctant to remove appeal rights altogether from short stay visitors, but at the same time they are concerned about the extra burden which these appeals place on the appellate authorities and the way in which the present system is abused. One way of meeting these concerns, without removing the right of appeal, would be to give a short stay visitor a right of appeal exercisable from abroad. However, this would clearly offer the appellant little advantage in practical terms. An alternative would be to remove altogether the right of appeal to an adjudicator. It would of course still be open to a visitor to make representations (through his MP) for his case to be re-examined administratively. It could be said that if a person has been admitted to this country for only a short visit, and he is refused an extension of stay, it is not unreasonable to require him to leave without a right of appeal. There is also an argument that if the right of appeal in these cases were removed it might be possible to take a somewhat more relaxed attitude about admission if the persons concerned could be removed more rapidly than is now the case. The Government will weigh up the conflicting arguments with care before reaching a final decision but would meanwhile welcome views on this matter.

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Appeals against refusal of leave to enter: double right of appeal of entry clearance holders, etc

13. The Government believe that there should continue to be a right of appeal against refusal of leave to enter, including refusal of an entry clearance, whether for settlement or for some temporary purpose. The success rate in appeals against refusal of entry clearance is comparatively high, being about 18% for persons seeking entry for temporary purposes other than employment and 24% in settlement appeals. Section 13(3), however, enables the holder of a current entry clearance or a person named in a current work permit to exercise his right of appeal, if refused leave to enter, before removal. And section 22(5) requires the rules of procedure to provide that leave to appeal to the Tribunal from a decision by an adjudicator dismissing an appeal by the holder of an entry clearance shall, if sought, always be granted. This has led to delays in deciding these cases since even in the most straightforward of them the passenger has every incentive to delay his departure by appealing to the Tribunal from an adjudicator's decision. People may be detained pending the outcome of their appeals and any provision which has the effect of unnecessarily prolonging detention is to be deplored.

14. The Government, therefore, while agreeing that holders of entry clearance or work permits should be able to exercise their right of appeal before removal, doubt whether if an appeal by the holder of an entry clearance is dismissed by an adjudicator, a further right of appeal to the Tribunal should be automatic. If there were no longer an automatic right, the passenger would, as in other types of case, have to apply to the adjudicator or the Tribunal for leave to appeal against the adjudicator's decision.

Appeals against revocation of a deportation order

15. The Government would question the need to preserve the right of appeal against a refusal to revoke a deportation order. A person who has been deported will have had the opportunity to appeal before removal and it seems over generous to permit him subsequently to apply for revocation of the deportation order, with yet further rights of appeal each time he does so. This particular right of appeal would appear to have been included for completeness alone. That no substantial injustice would result if it were absent is indicated by the fact that there were only 22 appeals under this provision in 1979, all of which were dismissed. Nevertheless, explanatory

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statements have to be written and time devoted by the appellate authorities, often at oral hearings, to reaching a determination. Given the present scarcity of resources, there is much to be said for removing any unnecessary extra burden, however small, from the appeals system.

Additional rights of appeal

16. There are certain directions in which it is from time to time suggested that rights of appeal should be increased. The most common suggestions are that:

(a) there should be a right of appeal to the courts from the Immigration Appeals Tribunal on a point of law and

(b) persons whom it is proposed to remove as illegal entrants should have a right of appeal before removal.

17. If a right of appeal were given as at (a), the appeal would probably lie to the Divisional Court of the Queens Bench Division, with a further right of appeal with leave to the Court of Appeal and the House of Lords. The case for such a right of appeal needs to be examined against the background of the remedies which are already available. An aggrieved person may at present appeal to an adjudicator, and, with leave, to the Tribunal. Where there is a point of law at issue he may further apply to the High Court for judicial review. This involves an aggrieved party making application to the High Court for one of the prerogative orders (those most commonly sought in immigration cases are certiorari by which the court quashes a decision; and mandamus by which the court requires something to be done).

18. The addition of a further right of appeal would inevitably add to the delays already experienced in the system. Immigration appeals are unusual in that delays work in favour of the appellant if he is already in the United Kingdom, and there is no doubt that a further right of appeal would be used by a number of appellants solely to delay their departure; as things are the appeal system is already abused in this way by hopeless appeals being lodged and withdrawn shortly before the hearing. There are already substantial safeguards in the existing appeals system, and in the absence of any prima facie evidence of injustice the Government are not disposed to accept that rights of appeal should be extended on these lines.

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19. The Government have considerable sympathy with the arguments of principle in favour of a right of appeal before removal of illegal entrants who have lived here for many years. Their cases often bear similarities to those of people on whom are served notices of intention to deport. It might also be hoped that the existence of a right of appeal before removal of illegal entrants would reduce the number of applications to the High Court for review of decisions in this area. There are nevertheless substantial difficulties in extending rights of appeal before removal. These are set out briefly below.

20. To confer a right of appeal before removal on an illegal entrant would place him in a more favourable position than people who seek to enter lawfully but who are refused entry and can only exercise their right of appeal after removal. Where the illegal entrant was apprehended in the act of seeking to enter, or even shortly afterwards, such a result would be manifestly unfair. It would not be practicable to extend rights of appeal before removal to everyone without quite unacceptable extra demands on resources. Such a situation would in any case be exploited by those who had no claim to enter but would seek entry nevertheless in the knowledge that by appealing they could at least stay in the country until their appeal was determined. Detention would ensue in those cases where the passenger could not be relied on not to disappear.

21. One way of avoiding these difficulties might be to confer a right of appeal before removal only on those illegal entrants who had resided in this country for a specified minimum period of time. The arbitrary selection of a period of time, however, could be said to be unfair to those who were on the wrong side (although they would still be able to appeal after removal). Also the setting of a period of time would benefit those who had been more successful in evading detection than those who had not. A major practical difficulty is that there is frequently no documentary evidence to establish precisely when an illegal entrant arrived. Thus even recently arrived illegal entrants might have to be given the opportunity to argue before the appellate authorities as a preliminary issue the question whether they fell within the time limits. This result (which would defeat the objective of distinguishing between one category of illegal entrant and another) could be avoided if illegal entrants were given a right of appeal before removal only if they first satisfied the Home Office that they had been here for a certain period. But this would leave the Home Office to some extent as judge in its own cause.

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22. The Government would welcome views on these matters but would wish to emphasise their determination to continue to deal firmly with illegal entry and other breaches of the immigration laws. Cateful consideration will have to be given to the substantial problems identified in paragraphs 18-20 above.

23. There is a related point on bail. If illegal entrants were given a right of appeal in this country against the decision to remove them it would follow that they should also be given the right to apply for bail while that appeal was pending. This would be in accordance with the existing provisions for other categories of appellant. If no new right of appeal were given to illegal entrants it is for consideration whether they should nevertheless be given a right to apply for bail. The Government's provisional conclusion is that illegal entrants should be given such a right, although it would be necessary to ensure that they were not put in a more favourable position in this respect than those here lawfully.

C. RULES OF PROCEDURE

Disposal of some appeals without oral hearing

24. As already stated, the main purpose of the Government's review of the rules of procedure has been to identify ways of speeding up the disposal of appeals. There are at present substantial delays (see paragraph 4 above). Given that there is little or no scope for increasing the resources available to the appellate authorities, it seems that the main way of reducing these delays and hearing cases more expeditiously is to consider whether some appeals could not be disposed of without an oral hearing. This would release scarce hearing room time for the cases where an oral hearing was indispensable.

25. The Government accept entirely that it would be possible for an appellant's case to be put orally to an adjudicator in all cases where there is significant room for argument on the law or facts of the case. The Government remain of the view that there are overwhelming practical difficulties over permitting appellants against the refusal of entry clearance to enter the country to put their cases in person. But it is right, for example, that where a woman and children are claiming a relationship to a man settled here, the case should be put orally, if that is desired, through the appellant's sponsor (i.e. the person claiming to be the head of the family), with specialist representation. Similarly, where deportation is in issue, the appellant should always have the opportunity to present orally any compassionate aspects of his case. And there are other areas where, under the Rules, there could be scope for argument about what view should be taken of the appellant's case.

26. There are, however, several areas where, given the requirements of

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the Immigration Rules, the issues in the case should normally be entirely straightforward. The provisions of the Immigration Rules which appear to meet this criterion are set out in Annex 1. In general these paragraphs lay down requirements which are so clear-cut that it should normally be readily apparent whether or not they are met. For example, there are requirements which cannot be met unless certain specific documents (e.g. work permits or entry clearances) are held, or permission to work is obtained from the Department of Employment, or the applicant comes from a particular part of the world, or falls within certain age or time limits. These are matters of fact which either apply or do not apply as the case may be. If they do apply, the applicant will readily be able to establish this without the necessity of putting his case orally. Indeed, in the nature of things it is the documentary evidence which will generally be crucial.

27. The paragraphs of the rules listed in Annex 1 all apply to situations of this sort and, where those paragraphs apply, it would normally be possible without any unfairness to determine any appeals on the basis of the case papers. It is therefore proposed that the procedure rules should provide for the respondent at first instance to suggest in his explanatory statement that the matter was one to which one or more of the provisions listed in Annex 1 related and so was capable of being determined without a hearing. Where the adjudicator agreed, he would be required by the rules to afford the appellant the opportunity to contest this proposition in writing within 14 days. After that time the adjudicator would consider whether there were any compelling reasons for hearing oral argument and, if there were none, would determine the appeal without more ado. He would have in the normal way to give a written determination with reasons and there would remain available to the unsuccessful appellant the existing remedy of application for leave to appeal to the Tribunal. In this way much hearing room time would be released for appeals where the need for oral argument of the issues was more pressing.

Provision for late appeals

28. The 1972 rules permit two procedures whereby an appeal may be brought after the time limits (prescribed in rule 4) have expired. Rule 5 enables a written petition to be served on the appropriate officer, who must refer it to the appellate authority. That authority may then grant a further opportunity to appeal if it is of the opinion that, by reason of special circumstances it is just and right so to do. Alternatively, notice of appeal may simply be lodged in the normal way and the respondent may then allege under rule 8(3)(b) that the notice was not given within the period permitted. Under rule 11 the appellate authority determines the validity

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of such an allegation as a preliminary issue but, under rule 11(4), it may allow the appeal to proceed, although out of time, if it is of the opinion that, by reason of special circumstances, it is just and right so to do.

29. In practice the existence of these two alternative avenues has caused confusion and the procedure for petitioning under rule 5 is now rarely if ever used. This is because, where an adjudicator dismisses an appeal on determination of a preliminary issue under rule 11, there is a right to apply for leave to appeal against his decision to the Tribunal. There is no such right where a petition is unsuccessful under rule 5. Given that the prcedure by way of late appeal has in practice proved to be one which is of most benefit to the appellant, there seems no reason for the retention of rule 5 and it might therefore be deleted from future procedure rules.

30. Circumstances sometimes arise where, although an appeal is received late, it seems to the respondent very likely that the appellate authorities will accept that the appeal should proceed on the grounds that, by reason of special circumstances, it is just and right so to do. It is already the practice in such cases for the respondent to forward the notice of appeal to the appellate authorities with a full explanatory statement. This avoids the need, should the adjudicator allow the appeal to proceed, for the case to go back to the respondent for the full explanatory statement to be written.

31. Further savings of time would be achieved in these cases if the respondent were empowered to take the decision that an out of time appeal should proceed. The entry clearance officer has such a power in the current rules as regards petitions brought under rule 5 and, with the proposal to delete rule 5, it seems appropriate in any case to introduce an equivalent provision into the procedure for dealing with late appeals. But there seems no good reason for confining the ability to permit appeals to proceed to entry clearance officers.

32. It is therefore proposed that in any case where an appeal is received late from someone who has a right of appeal and there appear to be special circumstances making it just and right for it to proceed, the respondent should be able, after preparing a full explanatory statement, to refer the appeal to the appellate authorities for determination. In any other case the respondent would be required to refer the matter to the appellate authorities with an allegation that the appeal had been received out of time. The appellate authorities would then, as under Rule 11 now, determine the

validity of the preliminary issue and decide whether or not it was nevertheless right to let the appeal proceed. They would therefore be the final arbiters on any case where the respondent did not agree that the appeal, although late, should proceed.

Time limit for provision of grounds of appeal

33. Rule 6 provides for notice of appeal to be given by completing a prescribed form which must contain, among other things, the grounds of the appeal. Frequently, however, notices of appeal are received without any grounds of appeal being given and it is necessary in such cases to request the appellant to furnish his grounds of appeal. This can be a time consuming process and it is thought that it could be much speeded up if the appellate authorities were enabled under the rules of procedure to set a date by which the grounds of appeal should be provided, with the sanction of moving straight to the determination of the appeal without a hearing in the event of failure to supply the grounds of appeal by the given date. There will, however, continue to be cases where the applicant is detained pending the outcome of his appeal and it is desirable to hold an oral hearing of the appeal even though no grounds of appeal have been received. This would remain permissible.

Leave to appeal

34. Rule 14 covers the circumstances in which appeal to the Tribunal lies only if leave is obtained either from the adjudicator or from the Tribunal. In other circumstances an appeal may be made to the Tribunal without leave. Paragraph (1) would appear to exempt appellants against the imposition of a leave to remain under section 14(2) of the Immigration Act 1971 from the need to obtain leave to appeal. These are people such as diplomats or members of visiting forces, who may cease to be exempt from immigration control on leaving their country's diplomatic service or armed forces and so have conditions imposed on any further stay. It is not clear why they should have more favourable treatment as regards the right to appeal to the Tribunal than categories of appellant in whose cases more might well be at stake.

35. Another curious effect of rule 14(1)(c) as at present drafted is that appeal to the Tribunal lies only with leave where an application for variation of leave is refused, but as of right if leave is curtailed or varied in a manner contrary to the wishes of the applicant but falling short

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of outright refusal. Both these anomalies could with advantage be removed from the Rules.

Provision of explanatory statement by specified date

36 Paragraph 11(2) requires the respondent, in any case where a preliminary issue has been decided in favour of the appellant, to submit a written statement by such time as the appellate authority directs. The provision sometimes has anomalous consequences: it may, for example, require the respondent to give priority to cases stemming from preliminary issues over more urgent cases (for example ones where people are detained) and occasionally it has not been possible for the respondent (because, for example, he was an entry clearance officer based overseas) to meet the appellate authority's deadlines. It would seem sufficient for the respondent to be obliged to forward the full statement as soon as practicable.

Appeals to the Tribunal by passengers holding entry clearance

37 As already mentioned in paragraph 12 above, the holder of an entry clearance or a person named in a current work permit must, if he seeks it, be granted leave to appeal to the Tribunal against any dismissal by an adjudicator of an appeal against refusal of leave to enter. It is quite clear that this avenue of further appeal is regularly being exploited simply for the purpose of achieving delay in removal. For example, in 1979, of 60 such appeals to the Tribunal from passengers refused leave to enter whose appeals were dismissed by adjudicators sitting at Harmondsworth, 40 were in the event withdrawn before the hearing by the Tribunal. In 1978, of 85 such appeals, 51 were withdrawn before hearing.

38 The substantive right of appeal cannot of course be amended without legislation but there are two ways in which the procedure rules might be changed with advantage. The first is to reduce the time limit for appealing in such cases from fourteen days to seven. This would have the advantage of reducing the time spent in detention by some appellants. It should cause no great difficulty since the case will have already been prepared for argument before the adjudicator. The second is to empower the Tribunal to determine such appeals, if they think fit, without an oral hearing, on the basis of the adjudicator's determination and of the grounds of appeal.

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Performance of functions of Tribunal by Chairman sitting alone

39. Section 22(2)(b) of the 1971 Act envisages that the rules of procedure should enable any functions of the Tribunal which relate to matters preliminary or incidental to an appeal to be performed by a single member of the Tribunal. Such matters which could with advantage be covered by amended rules of procedure are:

(a) the determination of a preliminary issue; and

(b) the issue of written determinations on behalf of the Tribunal.

Preliminary Issues

40. The existing rules of procedure enable the respondent to allege as a preliminary issue in any purported appeal either that the would-be appellant is not under the Act entitled to appeal or that a travel document, certificate of patriality, entry clearance or work permit on which he relies to give him a right of appeal exercisable in this country is a forgery; or that the appeal is out of time.

41. There has been some confusion between appeals proper and appeals which are misconceived and it is thought that this could be remedied. On the forgery provision, it sometimes happens that the documents relied upon are not forged but do not relate to the person holding them. The provision could therefore be extended to cover such circumstances. Finally, it sometimes happens that a notice of appeal has not been signed by the appellant or by a person authorised by him (as required by paragraph 6(4) of the Rules) and it seems appropriate that this too should be a matter which could be raised as a preliminary issue.

Miscellaneous

42. Certain other matters of a minor drafting or technical nature have been noted since the present rules came into operation in 1973. They are not mentioned here but would be dealt with in any amending rules which the Government introduced after considering the comments on this paper.

D. THE IMMIGRATION APPEALS (NOTICES) REGULATIONS 1972

43. Certain minor drafting and technical amendments have been identified as desirable since the Regulations came into operation in 1973. One change

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relates to the notification of rights of appeal in cases where the applicant has been granted what he has applied for (this may happen when a person who has been exempt from control applies to remain for a limited period on ceasing to be exempt). This and other minor drafting changes would be made at the same time as any amendments to the procedure rules.

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PROVISIONS OF THE IMMIGRATION RULES

REFERRED TO IN PARAGRAPH 26

ANNEX 1

Paragraph 10	(refusal of leave to enter of passenger who is a visa national but has not obtained a visa);
" 26	(refusal of leave to enter of passenger seeking entry as an au pair but is the national of a country outside Western Europe, or is aged under 17 or over 27):
" 27	(refusal of leave to enter of passenger who is seeking work without work permit);
" 30	(refusal of leave to enter of passenger who is seeking entry as a working holidaymaker but is not a Commonwealth citizen or is under 17 or over 27);
Paragraphs 31 & 32	(refusal of leave to enter of passenger seeking entry for permit free employment where prior entry clearance required but has not obtained that clearance);
Paragraph 35	(refusal of leave to enter of passenger arriving to join or set up in business without holding a prior entry clearance);
" 38	(refusal of leave to enter of passenger seeking entry as a person of independent means without holding a prior entry clearance);
" 39	(refusal of leave to enter of a passenger seeking entry as a writer or artist without holding an entry clearance);
" 41	(refusal of leave to enter of a United Kingdom passport holder without a special voucher or entry clearance);
" 43	(refusal of leave to enter of passenger seeking entry as a dependant without entry clearance);
" 50	(refusal of leave to enter of a passenger seeking entry as a husband without entry clearance);
" 52	(refusal of leave to enter of a passenger seeking entry as a fiance without entry clearance);
" 75	(refusal of leave to enter of a passenger who is the subject of a deportation order);
" 90	(refusal of leave to remain because the application is to remain for a purpose for which entry clearance is required;

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Paragraph 91 (refusal of leave to remain for employment where person is subject to an employment restriction or from persons not so subject where the Department of Employment does not approve the proposed employment);

" 94 (refusal of leave to remain as a visitor where the passenger's visit exceeds or (if the application were granted) would exceed 12 months);

" 96 (refusal of leave to remain as a working holidaymaker whose stay as such exceeds or (if the application were granted) would exceed 2 years);

" 103 (refusal of leave to remain for training or work experience where Department of Employment do not approve proposed extensions);

" 106 (refusal of leave to remain as an au pair where applicant is from outside Western Europe or where period in au pair capacity exceeds or would exceed 2 years if the application were granted or if the applicant is under 17 or over 26 years of age);

" 107 (refusal of leave to remain in employment where the work permit is of less than 12 months validity and where the Department of Employment refuse to approve continued employment);

" 108 (refusal of leave to remain in permit free employment where person is here in some other capacity - because prior entry clearance required);

" 109 (refusal of leave to remain in business where person is here in some other capacity - because prior entry clearance required);

" 112 (refusal of leave to remain as a writer or artist where person is here in some other capacity - because prior entry clearance required);

" 113 (refusal of leave to remain as a person of independent means where person is here in some other capacity - because prior entry clearance required);

" 118 (refusal of leave to remain where people applying to stay beyond authorised absence from own countries).

spoke Home Office. Immigration
PM agrees that Mr Raison may write, but would like a cosy letter. MAP 25/VII

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

24.7.80

Dear Mike

We spoke about Hugo Young's article in last week's Sunday Times about Mr. Raison's handling of certain immigration cases.

I attach, for ease of reference a copy of the article. Mr. Raison wrote to Hugo Young and Harold Evans to complain about certain parts of the article and in response to these the Sunday Times have said that they will print a letter from Mr. Raison in answer. Mr. Raison has therefore prepared the enclosed draft which the Home Secretary has approved.*

In accordance with the normal practice I am writing to seek the Prime Minister's authority for Mr. Raison to write as proposed. Since I am afraid the letter has to be with the Sunday Times by 10.00 a.m. tomorrow morning if it is to appear this week, I should be grateful if you could let me know the answer over the phone.

Yours sincerely
William Fittall

W. R. FITTALL
Private Secretary

* Because of other urgent business the Home Secretary is in fact seeing the draft in tonight's box.

M. A. Pattison, Esq.

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

MINISTER OF STATE

I was surprised that Hugo Young in his personalised attack on me last Sunday under the heading "The Perversity of Commissar Raison's Law" should have got things so wrong.

Mr. Young was writing about the Filipino women who were determined by the High Court decision in the Claveria case to be illegal entrants on the grounds that they obtained entry by deception. (The case, incidentally, was about a decision to declare an entrant illegal taken under the previous Government.) The principle that those who obtained entry by deception are illegals has been strongly endorsed by the House of Lords in the recent Zamir case - again based on a decision taken under the last Government.

Mr. Young's article made no effort to explain that each Filipino woman had to get both a work permit as a resident domestic and a visa. To qualify they had to be single and childless. The work permit application form, which the agents usually completed, required declarations to that effect; and the visa application form which the woman signed, asked about marital status, although between 1973-76 it did not ask about children unless they were to accompany the applicant. Visa officers who interviewed applicants were under instructions to ascertain whether any children existed.

So while it is true that the agencies played a large part in providing false information, the only women who might in theory not have been party to the deception are the unmarried ones with children who applied between 1973 and 1976 and who were not interviewed thoroughly at our Embassy in Manila.

In the article Mr. Young totally failed to refer to the fact that the Home Secretary and I have made it clear that we will look with the greatest care at the circumstances of all the cases that come before us; and in particular that I have indicated that the cases of single women in this 1973-1976 category will be considered particularly sympathetically to see whether they were ignorant of the deception which was practised. Indeed I said this in the television programme to which Mr. Young referred. I am also looking carefully at other factors, for example whether, where women were given settlement, it was done in the knowledge by our officials that they had children. Where this was the case, I regard that as grounds for allowing them to remain.

It is quite clear, then, that we are exercising the ministerial discretion to which Mr. Young refers - though I accept that I have said that I do not think it right, in the light of the judicial

/decisions

The Editor,
Sunday Times.

decisions, to grant a blanket amnesty to all the Filipinos.

Mr. Young himself accepts that deception can properly be regarded as grounds for illegality when it applies to racketeers, "especially from Pakistan." What he does not face is the question why an amnesty should be given to this particular group in toto - the majority of whom do not claim to us that they did not know of their deception - while being withheld from all the other people whom the courts have found illegal on grounds of deception. /Moreover, Mr. Young's statement that "least of all did any of the women imagine that the existence of children had any bearing on their right to be in Britain" is quite unsubstantiated./

/Perhaps for the record the following point should also be made. The figure of 141 cases is not unfortunately finite, and of course if all those concerned were given settlement their children would naturally be entitled to come as well./

Obviously the problems thrown up by these cases are very difficult, as are many others in the exercise of ministerial discretion in the field of immigration. In these particular cases, the women who are told they have to leave are being sent back to their own country and their own children, having had the advantage of several years' earnings which would not have been possible if deception had not taken place. Against this, they have generally worked hard, often in unpopular jobs, over the years, and their own country is very poor (although this is also true of Bangladeshis and Pakistanis) and I cannot see that it is wrong to say that the decisions about these cases should be made in the light of the specific circumstances of each case, rather than on a blanket basis. And I cannot see that Mr. Young set out the position fairly.

(TIMOTHY RAISON)

Inside politics

The perversity of Commissar Raison's law

by HUGO YOUNG, Political Editor

MR WILLIAM WHITELAW made an admirable speech last weekend urging fair treatment for black, brown and immigrant people in Britain. It was all the more noteworthy for being so unusual, and also because it drew the sting from another poisonous piece of fantasy-building by Mr Enoch Powell: a man, incidentally, who having removed himself to Ireland should surely stop posing as an authority on communal tranquillity.

Mr Whitelaw, however, is the ample embodiment of a political truism: that while it is quite easy to be liberal, humane and statesmanlike in general (even as a Conservative Home Secretary), these virtues are harder to display in particular.

Behind the well-meant rhetoric stand the unpleasant facts of one particular set of cases, which invite from the Home Secretary roughly the same measure of fairness as he urges upon the world at large towards immigrants in general — and which have signally failed to receive it.

THE CASES are small in number, which means that they rarely appear in the headlines, but which also makes them a test of Tory decency rather than Tory pragmatism. They are not a swamp: they threaten no one: they add up to about 150 women, many of whom have been here seven years and more, and most of whom, from tomorrow, face the threat of accelerated "removal" from this country.

The women are mostly from the Philippines. They came here to work as domestic servants in hotels and private houses, often for low wages, most of which they remitted home.

This may seem a strange way of life for these Filipino women to adopt. But it was a measure of conditions at home that they should have done so: also of the state of the British labour market, in which vacancies for domestic work far outnumbered domestic domestics willing to fill them. Accordingly this remained for many years one of the few categories of unskilled job obtainable by a quota of foreign workers.

As early as 1972, women began coming to fill the quota, quite legally. After four years here, they could acquire "resident" status, and thenceforth work without a permit and bring their children over here. This, however, is where their troubles began.

A good many of the women had not stated when applying to come that they had children. They were often quite unaware that they were meant to do so, nor was this made clear on the forms they had to sign. In many cases, moreover, they were recruited by employment agencies with British links, who took responsibility for form-filling. Least of all did any of the women imagine that the existence of children had any bearing on their right to be in Britain, as distinct from their attraction to employers.

For several years, they were fortified in this by the British authorities. "Illegal" immigration, which is what they are now accused of, was for the first five years' operation of the 1971 Immigration Act a term confined to those who turned up on remote beaches at dead of night, and the like. Only from about 1976 has a line of court cases been developed which says that "deception" may also render an immigrant "illegal."

While sensible enough as a precaution against increasingly sophisticated immigration rackets, especially from Pakistan, this is the weapon which has now been wheeled out with retrospective effect against the Filipino women, most of whom committed no conscious deception and many of whom have worked hard here for seven years.

A judgment on Thursday by the Law Lords has finally sealed their fate. Put very simply, it ruled that even the accidental omission of information can amount to illegal deception, and invalidate an entry certificate. According to the Home Office there are now 141 women awaiting consideration of their cases. After the Lords judgment, they are thrown entirely on the compassion and good sense of the junior Home Office minister, Mr Timothy Raison—who has so far behaved rather more like a bureaucratic commissar than the founding editor of New Society.

About the politics of this affair, three things seem worth saying. The first is that it is not a traditional immigration issue. Behind the remaining 141 women there is no tide to be staunched; the quota for domestics was ended altogether three years ago. Yet the response of the Home Office is as unimaginative as that of a soviet politburo.

Secondly, the justification for refusing in almost all cases to exercise the minister's discretion and let these women stay plumbs some pretty advanced depths of intellectual dishonesty. Asked on LWT's London Programme why he could not be more compassionate, Mr Raison contended that it would be "totally wrong" for the Home Office to "overturn" what the courts had decided. This remained the official Home Office line last week.

THIS REASONING presents a picture of a minister struggling against his humane instincts, virtuously to obey a law set down by higher men than he. Yet the truth is rather different. Far from being a passive servant of the law, it is the Home Office which has mobilised the courts against these women and argued in case after case for the strictest interpretation of "deception." They did not need to bring these cases. They chose to do so, in an attempt to get the law they want.

But thirdly, having got this law, Home Office ministers have not lost their discretion. It is still their decision to take in spite of the court cases, and it cannot be shuffled off on to the judges, perhaps as if to prove that the Tories, unlike the Labour Party, "respect the law."

There is no social, legal or economic reason why Mr Raison should not let all the remaining 141 stay. Such a decision would restore his fading reputation for social concern—and Mr Whitelaw's claim to be acting as well as speaking the language of social justice.