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BACKGROUND NOTE ON THE LEGAL CONSIDERATIONS ARISING FROM

Registration on entitlement

Under the British Nationality Act 1981 an adult national of another country may acquire British citizenship either by naturalisation at discretion or by proving an entitlement to registration. Section 7(1)(a) entitles a Commonwealth citizen to register if he meets two conditions:

(a) that he or she has been ordinarily resident in the United Kingdom from 1 January 1973; and

(b) has throughout that period been free of any restrictions under the immigration laws.

This provision preserves earlier law, is transitional and expires on 31 December 1987. It confers no discretion and as statute law is not subject to the exercise of the prerogative. About 175,000 adult registration cases have been considered in the last five years.

Evidence of entitlement

Applicants are asked to provide documentary evidence to support their statements as to ordinary residence and immigration status during the qualifying period. These are checked where possible against existing Home Office and other records including arrival in this country before 1973 and subsequent absences from it. No discretion is involved and therefore such matters as future intention to live in this country, or good character while here are not relevant to the entitlement. On the successful completion of this consideration nationals of countries not acknowledging the Queen as Head of State are asked to take the Oath of Allegiance. That done and authenticated, the way to registration is clear.

The consequences of not proceeding to registration

It is open to the Secretary of State to consider evidence bearing on an entitlement at any point before entering an applicant on the register of citizenship. Where genuine doubt exists as to an applicant's ability to satisfy the two statutory

requirements it is possible to demand a higher standard of proof than is normally called for. To demand such proof for reasons unconnected with the validity of the claim would almost certainly be regarded by the courts as unreasonable.

British law makes no objection to dual nationality. Thus a declaration of loyalty to another state (whether real or imaginary) does not in itself cast doubt on the sincerity with which the Oath of Allegiance to Her Majesty has been sworn.

To refuse an application when the applicant is aware that nothing germane stands in the way of acceptance, or to decline to proceed with such a case indefinitely invites challenge in the courts. There is no analogy here with the case of Astrid Proll, a member of the Baader-Meinhoff group who applied for citizenship of the United Kingdom and Colonies on the ground of marriage to a citizen and was refused registration. The refusal to register here as a citizen was upheld because of a previous refusal by the courts to grant her a declaration that she was lawfully married, on the grounds of the criminal acts committed in connection with the marriage.

In the absence of any reason to query the entitlement of the applicant to registration the Secretary of State would run the risk of severe censure by the court either for refusing to implement an obligation laid on him by law or for delaying matters without reasonable and evident grounds. In these circumstances attention could well be focussed on the motives that had impelled such action; and where those motives were not avowable the embarrassment would be the greater.

The next step

He has sought the Foreign and Commonwealth Secretary's views as to how registration should be presented.