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Migration Opportunity Map Project (MOMP)



(28 page .pdf)

Migrants Rights News ~ No: 6

Welcome to the May 2008 edition of Migrants Rights News

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Dear Colleague,

The Migrants Rights Network is working for a rights-based approach to migration, with migrants as full partners in developing the policies and procedures which affect life in the UK. Migrants Rights News aims to inform our members and other groups working on migration issues about regional and national policy developments, campaign news, recent research and upcoming events.

We would be happy to circulate information and bulletins sent by members in the following month's newsletter, subject to editorial/space limitations! Please send any contributions to: info@migrantsrights.org.uk.

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In this month's newsletter, find details of:

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(1) 'Papers Please': new MRN research into workplace ID checks

Thousands of people are now being required to produce evidence of their immigration status by employers, since the 'civil penalty' regime - and maximum employer fines of £10,000 for employment of undocumented migrants - came into operation at the end of February 2008. This has been combined with a significant increase in workplace raids organised by UK Border Agency (UKBA) enforcement officers.

Attendees at a conference organised by the [Finsbury Park branch of the National Union of Rail, Maritime and Transport Workers \(RMT\)](#) at the end of March, heard reports that scores of transport employers have been announcing checks on the National Insurance numbers of their workforces. Particular workers - especially those judged from appearance to be of foreign origin - are reportedly being identified for special interviews and further investigation. Branch officials reported that the new measures have caused dismay and confusion amongst workers, many of whom have been targeted unfairly or aggressively by employers. It appears that employers' concern about possible £10,000 fines may be leading to a disregard for [UKBA guidelines](#) on the avoidance of racial discrimination among the workforce.

Workplace raids by UKBA enforcement officers have also been stepped up. Speaking at an MRN roundtable organised in Wales on 9th April, a UKBA official explained that raids are currently being targeted at sectors suspected to have high levels of irregular employment, in order to drive up prosecution rates. [UKBA figures](#) from May support this - 130 British businesses have already been subjected to civil penalty fines since the end of February 2008.

To better map developments related to workplace checks, the MRN has initiated the new 'Papers Please' research project. Throughout May and June we want to hear from people who have experienced the new checks, as workers, trade union officials, or as employers. 'Papers Please' will use the information about who is being targeted and how, in order to highlight the potentially negative impact on migrant and BME workers.

The project will also examine the information base that UKBA officials operate with when determining whether a worker has no status. The Afro-Asian Advice Centre has entered correspondence with the agency over its failure to incorporate information about people granted permission to take employment by visa officials overseas into their information system. They report of experience dealing with the security industry regulator, the Security Industry Association (SIA), which, when acting on UKBA advice, had ruled that numbers of people who had been granted permission to work under overseas visa procedures were not legally entitled to work. If left unchallenged decisions of this sort could lead not only to loss of employment, but also removal as an 'illegal worker'.

The research is being conducted by Dr Yara Evans of Queen Mary's College, London, and all information offered will be received in confidence. For more information about the 'Papers Please' project, please contact the MRN's

Policy Officer, Ruth Grove-White, on 020 7288 1267 or r.grove-white@migrantsrights.org.uk.

(2) Government continues to roll-out Points-Based System

Governmental roll-out of the new Points-Based System for UK migration has been in progress during Spring 2008, with the impact on potential and existing migrants becoming increasingly apparent.

a) Release of Statements of Intent for Tiers 1, 2 and 5

Tier 1

The [Statement of Intent for Tier 1](#), the Highly Skilled Migrants category, was released by UKBA in February 2008. Tier 1 subsumes the previous Highly Skilled Migrant Programme (HSMP) and a number of other entry routes, such as writers and artists, and the investors scheme. It aims "to attract the most talented migrants who have the most to contribute economically" to the UK. Under its four categories (General - already partly in force; Entrepreneurs; Investors and Post study work), Tier 1 allows Skilled Migrants to enter the UK for an initial 3 years entrance, followed by a possible 2 year extension period. It is already in operation for applicants from within the UK and for out of country applicants in India.

In order to qualify, migrants must attain points based upon their age, earnings, qualifications, English language ability, funds and experience of work/study in the UK. Tier 1 assessment criteria have attracted [criticism](#) for their potential for direct and indirect discrimination, in particular on the basis of age (particularly if the potential migrant is over 32 years old) and country of origin.

Tier 2

The [Statement of Intent for Tier 2](#) was released in May 2008, outlining this tier as an 'employer-led system for skilled migrants with a job offer'. When Tier 2 is introduced in Autumn 2008, it will allow skilled migrants from outside the European Economic Area (EEA) up to 3 years to work in the UK, provided they have secured a job offer in advance from an approved employer holding a 'sponsorship license' from UKBA. Applicable jobs under Tier 2 will be both skilled (NVQ Level 3) and proven to lack suitable workers already based in the UK - established through application of a 'resident labour market test'.

MRN notes that Tier 2 will reduce the number of potential employers through the stringent requirements of employer licensing. We are also concerned at the likelihood that smaller UK employers, including many from ethnic minority communities, will find it increasingly difficult to employ skilled labour from outside the EEA.

Tier 5

The [Statement of Intent for Tier 5](#) - 'Temporary Workers and Youth Mobility' - was also released in May 2008 for roll-out in the Autumn. It outlines the combination of numerous individual programmes for temporary work and youth travel, into one tier under the Points Based System.

Temporary Workers to the UK will be required to have a non-economic incentive, and will need a licensed 'sponsor' (company, charitable organisation or diplomatic body) in all cases. Temporary Workers' travel to the UK must fall

under one of the following sub-categories: Creative and sporting (up to 12 months); voluntary charity workers (up to 12 months stay); Religious (up to 24 months stay); Government Authorised Exchange (up to 24 months stay); and International Agreement (up to 24 months stay).

Under Tier 5, existing work and exchange programmes for young people (18-30 years old) to travel to the UK will be subsumed under a new scheme: the 'Youth Mobility Scheme' (YMS). YMS will be open only to migrants from 'low risk' countries not subject to a visa regime with the UK. Countries included in the scheme must also guarantee reciprocity by receiving at least 1000 British youths per year. No dependent children will be permitted entry under the scheme.

Concern has been expressed that the YMS will continue an elitist selection of countries for youth exchanges with the UK, compounded by the fact that selection criteria for country risk assessment will not be made public in the UK.

b) Home Office retrospective application of migration policies successfully challenged by community groups!

Government attempts to apply substantial discretion by applying migration rules retrospectively have been set-back, as a result of two significant court cases brought by migrant community groups.

HSMP

On 8th April 2008, the High Court of Justice delivered a [landmark verdict](#) on the judicial review of the Highly Skilled Migrant Programme (HSMP). The case was brought by the migrant-led [HSMP Forum](#) against the Secretary of State for the Home Department; The HSMP Forum challenged the retrospective application of alterations made to HSMP rules in November 2006, to the 49,188 migrants who had entered the UK under the original rules established in 2002. The Forum successfully argued that this would unfairly cause some Highly Skilled Migrants to become ineligible for extension of their stay under the programme.

In his judgement, Sir George Newman referred to the findings of the Joint Committee on Human Rights in August 2007 - the Committee reported that the application of HSMP changes to Highly Skilled Migrants who had entered the UK under the original rules was in breach of the European Convention on Human Rights, Article 8 (the Right to Privacy and a Family Life).

Sir George Newman also expressed his concern at the Home Office's "repeated refusal to consider the undeniable evidence of hardship" experienced by the affected migrants, concluding that the retrospective application of HSMP rule changes by the Home Office "would, in my judgment, give rise to ... an abuse of power."

This controversial case has rightly attracted a great deal of media attention and publicity, including the production by Al Jazeera of a short film focusing on two individuals involved in the fight for justice under HSMP: '[Broken Promise](#)'.

BAPIO

Another victory for community groups challenging

Governmental misapplication of rule changes came with the recent [success of migrant group BAPIO in the House of Lords](#) against the Secretary of State for the Home Department.

The House of Lords found in favour of the British Association of Physicians of Indian Origin (BAPIO), in the appeal brought by the Home Office on 30th April 2008. BAPIO fought against the alterations of Department of Health guidance in April 2006, which aimed to restrict the access of International Medical Graduates (IMGs) to British medical training positions through the HSMP scheme.

The new guidance barred IMGs who lacked sufficient leave to remain in the UK for the duration of a potential training position from applying for such positions, unless a market labour test had been carried out first. This could have a potentially devastating impact on IMGs already living in the UK on the basis of their original understanding of the rules. Worse still, the revised guidance was not laid before Parliament before its introduction by the Secretary of State for Health, giving the appearance of a 'back-door' rule-change which would disadvantage migrant workers.

The Lords' judgements addressed the issue of 'legitimate expectation' of migrants, particularly under the HSMP; the findings demonstrate that there are limitations to the extent to which the Secretary of State can change migration policies mid-stream, and whether these changes can be applied to migrants already in the UK.

Senior Care Workers

Around 19,000 migrant senior care workers (SCWs) faced the prospect of losing the right to reside in the UK, after the Home Office declared in August 2007 that jobs under this profession rarely meet the skills requirements for UK work permits.

The Home Office stated that new work permits for non-EEA senior care worker applicants would now only be issued if they could demonstrate that employment positions required a high enough skill level (NVQ level 4). The bar was also raised for employers of migrant senior care workers - they would be required to pay workers a higher wage at a minimum rate of £7.02 an hour. These new conditions would also apply to senior care workers already working in the UK, when applying for future extension of their work permits.

A group of 60 care homes in Devon disputed the Home Office's imposition of the higher pay rate, on the grounds that it would adversely affect senior care workers in post in the UK whose employers would or could not pay the higher rate. The new figure had also been set without proper consultation with the industry.

The Home Office agreed to back down from its position as a result of this challenge and is now committed to consultation with the industry in setting wage rates. Although the higher skills criteria for work permits and minimum wage for care workers applies to all new applicants, the [government conceded](#) during March 2008 that those with work permits approved prior to December 2003 can be granted 12 months exceptional extension, according to the original skills requirements and pay rate under their original permit.

These skirmishes represent a set-back for the government's insistence on its right to change immigration rules with retrospective effect against those already admitted to the country. Migrant workers should draw strength from these successful cases against the misapplication of new migration policies!

c) Grounds for Refusal tightened for migrants entering the UK

The Government's tightening of immigration laws has moved another step forward with the new '[Statement of Changes to Immigration Rules HC 321](#)', brought before Parliament on 6th February 2008.

HC 321 introduces an unexpected tightening of the "[General grounds for refusal](#)" under immigration rules. From 29th February 2008, under Rule 320 (7A), any applicant found to have used 'deception' (false documents or representation) in their application will normally be refused entry.

In addition, from 1st April 2008 under Rule 320 (7B), entry will also normally be denied to applicants found to have previously:

- " overstayed their leave to remain in the UK by more than 28 days;
- " breached the conditions of his or her leave to remain in the UK;
- " knowingly used deception in a previous immigration application to the UK within the last 10 years;
- " illegally entered the UK;

Denial will remain in force for fixed periods: 1 year from when the person made a voluntary departure at their own expense, 5 years from when the person made a voluntary departure at the expense of the UK government and 10 years from when the person was removed or deported.

The changes to the UKBA Grounds for Refusal have been the target of heated criticism since their introduction, leading to a number of significant concessions from the Home Office. Liam Byrne, the Immigration Minister, confirmed on 17th March that irregular migrants present in the UK on that date would be exempt from Rule 320 (7B) if they voluntarily left the country before 1st October 2008, at their own expense. He further conceded on 13th May that settled family members, children and victims of trafficking would be exempt from automatic re-entry bans.

However, fears remain regarding the impact of HC 321 on other potential migrants. The Immigration Law Practitioners' Association (ILPA) has pointed out in a [Briefing on the Grounds for Refusal within HC 321](#), that the changes could be considered to have a retroactive effect on migrants who wish to apply to enter the UK but who will now find that they have already fallen foul of the rules. This will be compounded by the reduced discretionary powers of entry clearance officers in assessing applications. It is feared that migrants with no prospect of regular migration may be driven further underground in their efforts to enter the UK.

(3) MRN urges Foreign Secretary to investigate suspicious drowning of migrants off Moroccan coast

MRN has written to the Foreign Secretary advocating a UK response to the alleged deliberate drowning of at least 29 West African migrants in the open seas near to the Algerian coast, on 28th April 2008 (a copy of the letter is available on MRN website at <http://www.migrantsrights.org.uk/new.htm>).

The individuals were reportedly on board a dinghy overloaded with 70 people, en route to Spain from Morocco. Reports on 8th May on the [Guardian](#) and [BBC](#) websites outlined survivors' allegations that a soldier passing on a Moroccan naval patrol vessel had deliberately and repeatedly punctured a dinghy using a knife, causing multiple deaths.

In the light of British participation in the European Border Agency's 'FRONTEX' agreement which polices these sea lanes, the MRN has urged David Miliband to demand a full enquiry into the incident by the Moroccan authorities, and to pursue prosecution if culpability can be established.

(4) Joint MRN/Oxfam event to support employment rights of migrant workers

The joint MRN/Oxfam workshop - '*Supporting the employment rights of migrant workers: Policy issues and community activity*' - held on 30th April 2008, aimed to open up a common understanding of the issues affecting by migrant workers in the UK among community groups, government agencies and trade unions. The workshop brought together representatives of migrant support organisations, trade unions and government protection agencies for the discussion. It addressed the fact that many migrants are placed at a disadvantage in the workplace and are over-represented in categories of vulnerable workers. During three sessions of discussion participants looked into the reasons why migrants are disadvantaged in many employment sectors, and the specific contribution which their organisations could make to addressing these issues.

During a concluding discussion, in which future course of action were discussed, participants agreed on the need for more collaboration between different types of organisation to maximise their coverage of migrant issues. Participants also settled on the need for a sharper sense of the strategically important issues around which to focus activities, in order to increase the chances of bringing about favourable change.

A full report of the workshops deliberations will be available soon. Check the [MRN website](#) for details.

(5) TUC/Refugee Council 'Let Them Work' campaign

The TUC and the Refugee Council have launched a campaign to restore the right to work for people seeking asylum in the UK.

The '*Let Them Work*' campaign argues that it makes no sense to prevent asylum seekers from working during the often protracted period whilst their asylum applications are considered by UKBA and the appeal courts. Giving asylum seekers the opportunity to work would mean that pressing social issues can be addressed, such as the need for decent housing, the prevention of destitution, as well the

loss of self-esteem and confidence that is common amongst people who have suffered traumatic experiences.

The campaign has a panel of speakers available to address trade union and other meetings around the country where audiences are likely to be interested in the issue. For further information visit the ['Let Them Work'](#) website.

(6) Recent Publications and Research

' ['HIV and the UK Asylum Pathway'](#) (National AIDS Trust, April 2008) - An overview of the asylum system in the UK, identifying concrete opportunities for increasing the support provided to asylum seekers living with HIV.

' ['Floodgates or turnstiles? Post-EU enlargement migration flows to \(and from\) the UK'](#) (Institute for Public Policy Research, April 2008) - An analysis of the scale and nature of A8 and A2 migration flows to the UK since 2004, predicting that, contrary to alarmist predictions, migration from recent EU member states looks set to fall in the coming years.

" ['Fit for purpose yet? The Independent Asylum Commission's Interim Findings'](#) (Independent Asylum Commission, April 2008) - An independent review of the UK asylum system drawn from perspectives expressed by the public, NGO sector, government, and individual asylum seekers and refugees, which concludes that the British asylum system "falls seriously below the standards to be expected of a humane and civilised society". The full findings will be published in May, June and July 2008.

' ['Migration Myths: Employment, Wages and Labour Market Performance'](#), David Coates (the work foundation, April 2008). An appraisal of the impact of recent migration on the labour market, which argues that there is no evidence that migration has increased labour market turbulence over this period, but that it has been a source of economic stability.

' ['Housing, New Migration and Community Relations: A review of the evidence base'](#), Neil Amas (ICAR, April 2008) - This report seeks to bring together and reflect upon existing literature that makes links between housing and community relations between host and new migrant populations. It additionally considers gaps in the evidence base where further research is needed.

(7) News of meetings and events across the UK

- **'Migration and Population in the 21st Century'**, 21st Century Network Meeting: House of Commons, **21st May 2008**

Climate change and increased scarcity of resources are predicted to cause vast population movements during the coming century. The meeting of the 21st Century Network at Portcullis House in the House of Commons will discuss global responses to these dramatic trends.

Speakers include: Andrew Dismore MP (Chair of HoC Select Committee on Human Rights), Don Flynn (MRN Director) and Sylvie Oboa-Bradwell (Centre for Democracy and Development). For more information visit the [21st Century Network website](#).

- '2nd Class Migrants: Are Progressives failing Migrants?', Compass Annual Conference Seminar, 14th June 2008

To what extent can the Labour Government's policy on migration be called 'progressive'? How can a truly progressive migration policy pursue social justice, as well as economic opportunities, for migrant populations in the UK?

Liam Byrne, (Immigration Minister), and Don Flynn (MRN Director) will be leading the debate at a joint MRN/Barrow Cadbury seminar entitled '2nd Class Migrants: Are Progressives failing Migrants?', at the upcoming [Compass Conference 2008](#). The seminar will take place from 1:30pm until 2:45pm and will take place at the Institute of Education, London WC1H. Bookings for the seminar should be made online on the Compass website (www.compassonline.org.uk).

- " MRN Sponsored Walk for PICUM, London, 5th July 2008

MRN is organising a fun sponsored walk along the River Thames in London, in order to raise money for the Platform for International Cooperation on Undocumented Migrants (PICUM). PICUM works to promote respect for, and raise awareness of the issues faced by, undocumented migrants across Europe.

The walk will take place on Saturday 5th July 2008 and will take us from Greenwich to the London Eye, along the River Thames. It promises to be an enjoyable and worthwhile event, so please come and join us, and bring friends and family!

More details can be found on the [MRN website](#), including a downloadable registration form. If you'd like to come along, please contact Cristina (c.andreatta@migrantsrights.org.uk) by the **20th June**.

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TOWARDS A PROGRESSIVE IMMIGRATION POLICY - a new collection of essays on the principles which should underpin progressive immigration policies. Edited by Don Flynn and Zoe Williams and published by Compass, the Barrow Cadbury Trust and the Migrants' Rights Network. Copies available, price £5.00, from the MRN, address above (cheques payable to 'MRN'). Or download a free copy from the MRN website - <http://www.migrantsrights.org.uk/files/progressivepolicy.pdf>

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