UK Immigration /Refusals on technicalities (Spanners and Bolts in the engine)

By Vitalis Madanhi

A number of people are having their applications for further leave to remain in the UK rejected by the UK Border Agency mainly on the basis of some technical issues which may not be of their own making. The effect of the refusals becomes devastating and shattering irrespective of any such rejections being based on mere technicalities. In some instances the repercussions affect work, studies and the very family fabric upon which we all depend. It is important to know that there are always remedies to some of these technical rejections to immigration applications.

People have been penalised for minor slips in immigration applications which are then returned as invalid by the UK Border Agency. It becomes a source of concern for a migrant who might have all along complied with immigration rules suddenly finding themselves without leave to remain and unable to extend their stay under the immigration rules. In the majority of cases some refusals are simply unfair and at times people do not take appropriate steps at the right time. It is significant to know that unfairness could be dealt with by the use of discretion. The Tribunal noted in the case of MO (date of decision: applicable rules) Nigeria [2007] UKAIT 00057 that there is always a discretion to grant an application outside the immigration rules. Thus where a student fails to fulfil immigration rule 245ZX (1), i.e. because they made an application for extension of leave that was deemed invalid as a result of which they have a break in their leave to remain of more than 28 days prior to the date at which their next course would commence, the Home Office does not have to refuse them further leave to remain: they could as well be granted a short stay extension of leave sufficient to permit a fresh application to be made. Many entry clearance applications have also been refused on technicalities.

It becomes extremely disproportionate to suddenly declare a person to have overstayed their leave (and thus to have potentially committed a criminal offence and be liable to facing a mandatory ban on return to the UK). If the relevant studies were sufficiently integral to the applicant's private life then there might be an interference with their rights under article 8 of the European Convention on Human rights. It is important to bear in mind that proportionality is a principle of the English Legal system even outside the context of European Union law. This was made clear in the case of Alconbury by Lord Slynn. In the case of MD Jamaica and Another v the secretary of State, LJ Dyson opined that there was no need to stretch the interpretation of the immigration rules to achieve justice when there was a very minor oversight, such as submitting an application a day late, or failure to submit all documents in the first instance and by the time one wishes to resubmit the application it is considered out of time and as such denied a right of appeal. In various applications such as spousal and the points based applications there have been many minor slips such as failure by the UK Border Agency to assess the specified documents properly or even to observe that applicant's name on bank statements. All the issues could also be dealt with by way of judicial review having regard to relevant case law and rules. Discretion should be appropriately invoked as outlined above and be brought to the attention of the UK Border Agency as they have a discretion to deal with many such matters properly raised with them.

Recent significant changes to family reunion

Recently, the Supreme Court made significant decision regarding family reunion relating to people who have naturalised as British citizens. In the case of ZN Afghanistan and others v ECO Karachi the court ruled that a person recognised as a refugee who subsequently became a British citizen, benefited from the family reunion rights accorded to refugees. The UK Border Agency has quickly changed the Immigration rules by stating that a refugee or person who becomes a British citizen is, from the time of acquisition, no longer a refugee and provides that British citizens who were formerly refugees or persons with humanitarian protection will not benefit from the family reunion rules that apply to refugees and persons with humanitarian protection. They will have to satisfy the maintenance and accommodation provisions of the immigration rules. Their families abroad would also have to pay visa fees in local currency. This change and development was with effect from the 22nd October 2010. Human rights organisations are seeking to challenge this development. Meanwhile, that is the legal position.

New English Language requirement and spouses/partners

It becomes rather too harsh and unfair for anyone who wishes to bring one's husband or wife to the UK to ensure that that spouse has passed an English test. Some of our fellow countrymen are elderly and may not have had the privilege to attend school as many of us have done. They are the very same people who sent us to school anyway. Why then should they be subjected to the new English language requirement solely for them to come and live with their spouses, partners or fiancés? The Home Secretary made the announcements on the 9th June and 26th July that English language tests will be introduced for further categories of Migrants. Basically this is to be made with effect from the 29th November 2010 when formal English language tests will apply to non EEA spouses, partners and fiancés who wish to join, or remain in the UK with, their settled or British sponsor. In essence those seeking marriage visas would be required to pass the English language. In the case of FH (Post -Flight Spouses) Iran the Upper Tribunal held that appeals on the grounds of Article 8 of the ECHR by spouses and partners of refugees with settled or British citizenship should normally be allowed and the court suggested that consideration be given to amending the immigration rules governing such spouses and partners. These language tests hinder integration of families. It is unclear how the tests would be implemented and what measures are in place to avoid discriminatory tendencies. There are just too many spanners and bolts being thrown into the lives of migrants!