

Topic: Immigration Law

Paper Type: Essay

Word Count: 2200 words

Pages: 9 pages

Referencing Style: Harvard Style

Education Level: Graduate

Description:

Immigration Law

[Writer's Name]

[Institute's Name]

Introduction

The New Citizenship provisions mentioned in the Immigration and Citizenship Act, which was implemented in July 2011, makes harder for public to settle in UK. The British Government has changed the path to British Nationality in a new structure of 'Earned Citizenship'. In the past, migrants were granted permanent resident or British passport according to the time they have spent in UK. The previous policies were changed when UK Border Agency imposed a new radical concept of earned citizenship for sixty years.

The new concept consists of three stages for migrant's citizenship to get British nationality. First time the stage of 'Probationary citizenship' was introduced. The Government said the new procedures will ensure that benefits and rights of British residents will match the contributions and responsibilities made by the society. According to British Government, the people willing to permanently settle in UK will have to pay taxes, obey the laws and learn the local language. The Government stated that it will support foreigners who abide by the rules and will take step to punish those people who do not adhere with law. Those migrants which shows good attitude towards 'active citizenship' can get British nationality within less time as comparative to others. According to Border minister Woolas every migrant will become British citizens as they demonstrate their full commitment to the country. The migrants will have to work in order to provide a useful contribution to the local community.

Previously, migrants were allowed to live for indefinite period of time and then applying for citizenship to UK border Agency after specific period of time and meeting certain criteria. Under the regulations of earned citizenship, migrants will have to pass from 3 stages to grant a permanent stay or British Nationality. The new measures incorporated in the route to citizenship

includes introduction of new naturalisation process, probationary citizenship, extension of citizenship process from five to eight years and restricting Citizenship rights for labour category.

British Nationality Laws Mentioned

The sections 39 till 41 of Borders, Citizenship and Immigration Act deals with the naturalisation process to demonstrate the earned citizenship proposal. The section 39 includes the changes that would affect the applicants followed from protection routes to permanent residence (Great Britain, 2009). The language knowledge, character and life in UK will remain same as previous provisions but the residential requirement was changed. The applicant will have to be present for more than 90 days in each year during the qualifying period and must contains a qualifying status throughout the qualifying period. The applicant must have probationary citizenship leave, qualified the CTA entitlement and EEA entitlement at the date of naturalisation process (Melanie, 2011). The applicant must have taken probationary citizenship leave from the employment. It should also be in continuous employment and should not have breach any of the immigration laws during the qualifying period.

Apart from the criteria to stay in UK at beginning of qualifying period, the state secretary would have the freedom to forfeit the requirements in any particular situation. The provision providing alternative for the persons in Crown Service was also amended. According to amended provisions, the state secretary would have the authority to waive the provisions set out in section 1 (2) for special crown service cases (Sarah, 2011).

The section 40, lay outs amendments to the naturalisation provisions that applies to civil partners and spouses of British citizens. The changes incorporated in the 2009 Act eliminate the reference to civil partners and spouses and instead declare that a person belonging to a relevant

family association is eligible to naturalise as a British citizen under section 6(2). The description of relevant family association was provided by regulations. The government pointed that the provisions probably includes unmarried, spouses or similar sex partners of permanent residents or British citizens (UKBA, 2009).

The Three Stages Of Road To Citizenship Include:

Temporary Residence:

All migrants coming to UK will have to pass this stage. The criterion at this stage includes spending specific time, obeying the laws, passing English Language test and meeting other statutory requirements. Any migrant coming from the route of work permit will have to be employed and paying taxes. The migrants from family route will have to show their relationship with UK citizen and the migrants from Protection route will have to perform their duty of international protection (Routh, 2010).

Probationary Citizenship:

At this stage the migrants will have to prove that they have made the right to consider UK as their home country. Before reaching to the final stage, the migrants will have to live for a specific period of time as a probationary citizen. This time will depend on the migrant's route such as Family, work or protection. Those migrants who can show that they are supporting the society through 'active citizenship' can enter next stage in less time. In order to reflect active citizenship, a migrant can work as a volunteer at a charity organisation or participate in activities that promote education, culture, sport and Health. It can also include organisations that work for the benefits of children, disabled people and provide mentoring services. The government views

that these kinds of activities will promote integration by engaging migrants to closer contact with local community in order to share English language skills and shared values. In order to enter the next stage migrants will have to adhere with laws during probationary citizenship and will have no right to access benefits except for migrants with protection route. Migrants which were involved in any criminal offence or receive custodial sentences will be disallowed from advancing to the path of citizenship. Those involved in any minor offence will have to resolve their conviction matter before progressing to the final stage. Any migrant spending five years as probationary citizenship will enter the final stage or will leave UK.

Permanent stage or British Citizenship:

Migrants qualifying for British citizens will have the right to access the benefits that it provides. The Permanent residence status will be given to those migrants those who cannot become British citizens due to issues of dual nationality or other related issues.

Transitional Arrangements:

The UK border agency has declared transitional arrangements after the introduction of earned citizenship for those migrants who are on the path to acquire British Citizenship. After incorporating the views of House of Commons and House of Lords, the Government presented the following transitional agreements:

If during the introduction of earned citizenship, any migrant was previously allowed for indefinite leave, than they will be considered as permanent resident. They are entitled to apply for British Citizenship under the rules of first 2 years after introduction of earned citizenship. The government will stay on meeting the rights of migrants who entered UK on HSMP (Highly

Skilled Migrant Programme) and had legal expectation that they will be allowed indefinite leave according to immigration rules when they had apply for HSMP. The Earned Citizenship was previously postponed in order to allow people already in UK to apply under the current system. The revised date was set at July 2011. All the applicants qualified for indefinite leave before earned citizenship was dealt under the current systems.

The impact of Earned Citizenship on Migrant workers

According to direct government website, only British citizens and permanent residents were entitled for claiming benefits. It was observed that some people with visa of 2 years were claiming council tax benefits, housing benefits and pension credits.

In this period, they might shift towards British citizenship rapidly or slowly devolving upon the points they have made. As alternate approach to citizenship they might also move towards permanent residence after passing minimum of three years in the category of probationary citizenship.

Some migrants might choose to apply for indefinite period as compared with British citizenship due to restraining factors over holding two nationalities as mentioned in the law of their origin country. It is also possible to transfer from permanent residence to British citizenship in future date. Hence, if a person opts to go with route of permanent residence than it will took eight years rather than five years as per the recent regulations.

The government wants to motivate all migrants that have qualified to live in UK permanently should also take up British citizenship. That is the reason government has planned

the new systems so that time period will be raised to become eligible for permanent residence which is minimum eight years in comparison with British citizenship of minimum six years.

Currently, the foreign nationals which have worked previously in employment category of UK can usually naturalise as British citizens after living for 6 years in UK. They can also gain permanent residence after five years and British citizenship after one more year without any restrictions over their stay (Migration Advisory Committee, 2009). other requirements includes not being absent for 450 days in UK in the past five years and ninety days for the year before giving the test such as ESOL (English for Speakers of Other Languages). Other path to citizenship is becoming the civil partner or spouse of a British citizen. This category of people can earn permanent residence after living two years in UK and citizenship after three years provided that there is no restriction over their stay.

Points System

In the starting, twenty points will be needed to transfer from Temporary residence towards Probationary citizenship. The UK Border Agency (2011) has pointed that these points' requirements might be raised in the future. The government is confident that the point's structure will offer increased flexibility to prompt decision to lower or increase the threshold for agreement, varying on the needs of economy and country at particular time.

Those coming through the employment course, initially these points will be achieved by passing the Immigration Rules which is based on ten points and than passing the ESOL or Life in UK test which will also achieve 10 points. In a migrant workers case, meeting the Immigration requirements would mean still in work and self-sufficient.

If it was determined to increase the point's threshold for people choosing the employment course to enter probationary citizenship, there are multiple methods of gaining additional requirements of points based on the level of earnings (35,000£ - 49,000£ = Ten points, 24,000£ - 34,999£ = five points, etc). Academic qualifications achieved in UK will also earn points such as (Masters Degree = Ten points and Bachelor degree = five points etc.). Other criteria include working in locations near to British in requirement of rising migration such as Ireland (5 points). Currently UKBA is searching feedback over these proposals.

Those people living in UK in terms of family connection, such as civil partner or spouse of established person, the relationship can score 20 points. According to this proposal it seems that unmarried couples who are not entitled to become permanent as British citizens as per the existing arrangements, will be able to pass through the family path but still further clarification is required over this issue. It is also mandatory for those qualifying through the family route to achieve ten points by achieving the ESOL or Life test in UK.

In order to achieve probationary citizenship, a person will have to pass whichever ESOL test or Life test in the UK. Those who were failed to pass the test were asked to give it again.

Attaining Full Citizenship

The path to achieve whole citizenship was expanded for 'Active Citizens' who can attain full citizenship after 1 year at the stage of probationary citizenship by engaging in activities such as Trade union, becoming a school governor, formal volunteering or indulging in political activities. It was aimed that local communities will monitor the progress of activities conducted by active citizens and will then report the performance to the UKBA. (Department for Communities & Local Government, 2008)

Conclusion

The whole system seems to be unfair for all. The main focus is towards making money rather than concerning with Human rights. The new policies are not easy to implement and does not consider all the factors. This concept seems to be suitable for high skilled people, refugees but is not appropriate for those people who came UK because their partner is a British born citizen.

The system currently existing is flawed. The government should take measures to develop an efficient and fair system of managing rising processes rather than wasting tax payer's money by drafting more complex systems to deal with immigration process.

The earned system will enhance the image of British government among English people for specific period of time. In the longer term, situation will become difficult for foreign nationals who are migrating through legal routes. Previously the awaiting process of five years was considered as long and now eight years. The points based system seems to be a tricky way of manipulating migrant's weakness and needs as they are dependent on UK to fulfil their requirements.

References

Department for Communities & Local Government, (2008), *Review of Migrant Integration Policy in the UK*, Crown Publishing

Great Britain, (2009), *Borders, Citizenship and Immigration Act 2009*, Published by the Stationery Office

Melanie Gower, (2011), *Naturalisation as British Citizen*, Home Affairs Section, UK: Published by House of Commons Library

Migration Advisory Committee, (2009), *Skilled, Shortage, Sensible: The Recommended Shortage Occupation Lists for the UK and Scotland*.

Ruth Grove, (2010), *Earned Citizenship hits the deck- but what comes in its place*, Migrants right networks

Sarah Spencer, (2011), *The Migration Debate Policy and politics in the twenty-first century*, published by The Policy Press

UK Border Agency, (2011), *Nationality Instructions 'The Residence Requirements'*, Volume 1, chapter 18H

United Kingdom Border Agency (UKBA) (2009) *Borders, Citizenship and Immigration Bill*