

## **The resurrection of the 7 year concession?**

On the 9<sup>th</sup> December 2008, the Home Office announced the withdrawal of the 7 year concession with effect from that date. The 7 year concession had been an extremely useful policy which for several years allowed some families with dependent children (in particular children under 18 years who were not leading an independent life) to be granted indefinite leave to remain if the children had been living in the UK for at least 7 years.

In a statement to Parliament at the date of withdrawal, Phil Woolas MP, the then minister of immigration did confirm that *“The fact that a child has spent a significant period of their life in the United Kingdom will continue to be an important factor to be taken into account by case workers when evaluating whether removal of their parents is appropriate...”*.

This sounded promising at the time. It should have meant that families with minor children who had spent a relatively long period in the UK should have continued to benefit, even after the withdrawal of the 7 year concession because of this clear invitation to families with strong and documentable evidence to support their Article 8 applications. We should have seen a new dispensation which recognized that 7 was not a magical rubicon, but just a number and a confirmation that after a certain substantial period of time, it becomes unreasonable to evict families with children who have settled and integrated into UK life.

In practice however, the Home Office paid scant regard to this exhortation and numerous refusals would often state that children could re-adjust to their new lives in their countries of origin, even where the evidence might suggest that they had few ties with that country and did not even know the language or culture.

The recent case of [LD \(Article 8 best interests of child\) Zimbabwe](#) [2010] UKUT 278 seems to have opened a new window however and will hopefully correct a wrong approach by the Home Office in these matters.

The case involved LD, a Zimbabwean gentleman whose wife and 3 children had Indefinite Leave to Remain (ILR) in the UK. His own application for ILR was refused on the basis that he failed to disclose a number of drink driving convictions on his application. He promptly claimed asylum. In the asylum interview and at the appeal the appellant explained that his failure to disclose his convictions for drink driving was because he had thought the convictions were spent and was not a deliberate attempt to mislead. By the time the matter came before the Upper Tribunal, LD was arguing only Article 8.

The Upper Tribunal confirmed that the new position with respect to false representations is that refusal will now only be restricted to situations where there is deception and deliberate dishonesty. As LD had consistently stated that he thought his convictions were spent and that he did not have to declare them in the application form, he should therefore have not been refused on that basis as he had not meant to deceive.

More importantly and with respect to Article 8, the court confirmed that the 7 year policy may have been withdrawn but substantial residence of a child is a strong indication that there has to be an assessment of the best interests of the child. The Court made reference to the UN Convention on the Rights of the Child 1989 which makes it clear that the interests of the child should be a primary consideration in immigration cases.

The court confirmed that it would be unreasonable to expect LD's wife and three children to give up their careers and education in the UK and relocate to Zimbabwe where conditions are dire, even though there might not be direct physical threat to them. The family should therefore not be separated.

In a nutshell therefore, the court allowed the appeal on the basis that;

1. The interests of minor children and their welfare are a primary consideration in immigration cases.

2. Very good reasons would be required for separating a parent from a lawfully settled minor child or child from a community in which he or she had grown up and lived for most of his or her life.
3. The general situation in the relevant home country is also relevant, especially if it is known that the conditions there are dire (as they are, for example, in Zimbabwe at present).

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