



Amnesty International UK

Children's rights to British citizenship blocked by good character requirement

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What is the issue?

Children as young as 10, born in the UK and brought to the UK at a young age, are blocked from affirming their rights to British citizenship because the Home Office considers them not to be of good character.

Who are the children affected?

The children affected are:

- born and grown up in the UK, but not born with British citizenship because at the time of their birth neither of their parents was British or settled in the UK (i.e. had indefinite leave to remain or permanent residence); or
- brought to the UK at a young age and grown up here.

Anecdotal evidence from lawyers dealing with the registration of British children together with the experience of the Project for the Registration of Children as British Citizens (PRCBC) suggests that black and minority ethnic children, and children in care, are significantly more likely to be affected by the good character requirement.

What is the good character requirement?

There is no statutory definition of good character, which is left to the Home Secretary to assess. The requirement is applied to children born and growing up in the UK in the same way as it is applied to adults seeking to naturalise after migrating to the UK. It is used to prevent children registering rights to British citizenship even where they have had only minimal contact with the criminal justice system, such as receiving a caution.

What are the consequences to these children of their citizenship being blocked?

The consequences are potentially dramatic and severe. Being barred from citizenship leaves these children subject to Home Office immigration powers. They are put at risk of all the things that have happened to the Windrush generation, including being expelled from their home country to places they do not know. This could happen to them at any time of their lives. They may also be excluded from various services and opportunities such as to work, rent accommodation, receive healthcare or social welfare, or access higher education.

When and why was the good character requirement introduced?

When the British Nationality Act 1981 first took effect it only applied a good character requirement for the naturalisation of adult migrants to the UK. The Act did not make the rights of children to register as British citizens subject to any good character requirement.

The requirement was extended to registration of British citizenship, by children and adults, in December 2006 by section 58 of the Immigration, Asylum and Nationality Act 2006. The primary reason given was to bring registration into line with naturalisation. In doing this, Ministers and Parliament neglected the original intention behind the 1981 Act and the important distinction between registration and naturalisation, which Parliament recognised when passing that Act.

What was Parliament's intention in passing the British Nationality Act 1981?

The British Nationality Act 1981 was made to remove, among other things, from UK law the principle whereby nationality was acquired automatically by being born on the territory. Parliament intended to replace this with a principle whereby citizenship would be acquired on the basis of close connection to the UK. From the commencement of the Act on 1 January 1983, a child born in the UK is only born a British citizen if one of her or his parents is a British citizen or settled in the UK (i.e. has indefinite leave to remain or permanent residence).

Parliament's key concern was that a child born in the UK, with no other connection to the UK and who left at a very young age and never returned, should not be a British citizen and then be able to pass on British citizenship to their children. Parliament expressly intended, however, to ensure that children born and growing up in the UK should be recognised as British citizens along with their peers. Parliament, therefore, enacted provisions for these children to register as British citizens by entitlement. Parliament also retained the general discretion for the Home Secretary to register a child as British so that children living in the UK from a young age would not be excluded from the country of their home.

What of the best interests of children?

Excluding children from the citizenship of the country of their home, and the only country they know, is not in the best interests of any child. It impedes the rehabilitation and reintegration of children, who become caught up in the criminal justice system. That is to undermine a primary aim of the criminal justice system. Depriving them of their citizenship rights also imposes an additional punishment upon them, one not imposed on their peers.

It is significant that at the time the good character requirement was extended to children's registration, the UK still maintained a nationality reservation to the 1989 UN Convention on the Rights of the Child. That reservation was not withdrawn until November 2008; and the following year Parliament legislated by the Borders, Citizenship and Immigration Act 2009 to impose a duty on the Home Secretary to ensure children's welfare.

What should be done?

The application of the good character requirement to rights to register British citizenship should be removed from the legislation. The position that no such requirement be applied to registration, established when the British Nationality Act 1981 was passed, was a just one. It enabled all children closely connected to the UK to share the security and sense of belonging provided by British citizenship. It should be restored in the interests of the fair and equal treatment of these children and to uphold adult society's duties to children in domestic and international law.