

**Extract from Immigration & Nationality Law and Practice, vol.11, p.94.**

**Practice Notes: Nationality criteria**

The Home Office has written (letter dated 13 June 1997) to solicitors Bindman & Partners commenting on Home Office practice in relation to several aspects of the exercise of discretion in relation to applications for British citizenship.

Registration of minors: The Home Office letter states that:

‘Our normal practice is ... not to register a child who is living abroad unless his or her future can be seen clearly to lie in the United Kingdom and at least one of his parents is a British citizen. For the registration of a child living in the United Kingdom, but born abroad, we would expect one parent to be a British citizen or applying for British citizenship, and for the child to have indefinite leave to remain here and the parent to be settled. There have been a couple of cases recently where the eldest child in the family, the one who has lived in the United Kingdom the longest, has been the only one not to be British, and we have registered two children (different families) where the parents were unable to unwilling to apply for British citizenship. We are still developing our policy in this area but the above represents the position as it is today.’

Excess absences: the letter comments on when an application for citizenship will be accepted where the applicant has been absent from the UK more than the statutory criteria permit in the 5-year (or 3-year) qualifying period.

‘We would normally disregard up to 30 days over the 270/450 limit without any difficulty provided the applicant meets the other requirements of the Act. Where the number of absences is greater than 300/480 then the test we use is whether we are satisfied that the applicant has thrown in his lot with the United Kingdom ... what we are looking for is that the applicant has established his or her home, family and a substantial part of their estate here, that there has been compensating prior residence – the greater the excess absences the longer the prior residence – and that the absences were due to the nature of the person’s career. We would expect a person to be resident in the United Kingdom for tax purposes – you cannot be resident here for naturalisation but not tax – and an applicant stands a far better chance of us waiving excess absences if he or she has been abroad on business than, say wintering in the Bahamas.’

The letter also states that days coming in and out of the country do not count as absences.

Good character: The letter states that where a criminal offence is one that can never be spent the matters taken into account are ‘the nature of the offence, the time actually spent in prison before release, conduct after release and “notoriety”’. The letter

advises potential applicants to contact the Home office in advance to ascertain if it is worth making an application.

Language: 'We assume the language requirement to be met where there is circumstantial evidence, such as education in British establishments or employment for a British firm, that that is the case. We only make enquiries about the language requirement if there is some indication that it might not be met and we take into account a person's age and circumstances when deciding the issue.'

Future intentions: 'The statutory requirement is to have one's home or principal home in the United Kingdom in the event of an application being successful. If an applicant intends living here until retirement in 10 years time, say, that would meet the requirement as far as I am concerned.'