Immigration Team
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10th January 2020

Presenting Officers Inspection
Independent Chief Inspector of Borders and Immigration
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Sent via email to chiefinspector@icibi.gov.uk

Dear Sirs

Response to the Call for Evidence – Inspection of the work of Home Office Presenting Officers

We write in response to the Call for Evidence in pursuance of the inspection of the work of Home Office Presenting Officers. This document represents the collective and collaborated views of members of our specialist team of immigration barristers. We are a 40-strong team with extensive experience before the Immigration Tribunals and higher courts, with several senior members of our team having been practicing in the field of immigration law for in excess of 20 years. We are ranked as a leading Band 3 set by the Legal 500 and several of our members are singled out for their expertise.

We would like to highlight the following key issues from our engagement with Home Office Presenting Officers which, in our experience, require improvement.

Procedural Issues and Case Management

- *Lack of accountability:* When appeals are adjourned and directions issued against the Respondent, more often than not those directions are not complied with and the HOPO on the next occasion is often unaware of what has happened previously. When HOPOs have cause to consider or tender an attendance note in the UT, the notes are often very vague or brief and consequently of little assistance. Basic administration / conduct of files therefore seems to be lacking.

- *Lack of ownership/discretion:* HOPOs have very little discretion or authority when it comes to case management and the running of cases, and in particular with regard to concessions. A restriction on their ability to concede points means that unarguable points are still run and argued, which by contrast is prohibited by the Bar Code of Conduct.

Equally, issues often arise when HOPOs are unable to get hold of senior caseworkers to take instructions, which can lead to lengthy and unnecessary adjournments.

- *Handling of new matters:* Our experience is that HOPOs are often not aware of the correct procedure for the handling of new matters, and are also ill-equipped to identify what constitutes a new matter. As a result, HOPOs frequently object to the raising of matters which are not 'new'. In cases where new matters are raised, it is not uncommon for HOPOs to refuse to give consent notwithstanding the provision that they are entitled to adjournments to consider those matters. This can result in the Tribunal being unable to consider matters which sensibly ought to be dealt with within the context of the wider appeal.

- *Inadequate case review prior to hearing*: This can often result either in HOPOs attempting to withdraw decisions at a late stage (in court) or in clear-cut cases proceeding to hearing when they could have been conceded had any review of the evidence taken place on receipt of the grounds of appeal or service of appeal bundles. One example is a case heard on 09.01.2020 in which an Appellant with 6 months leave to remain as a fiancée appealed the refusal of her application for further leave as a spouse. Her application had been refused on the basis that she didn't meet E-LTRP2.1 because her existing leave was only for six months. It was clearly set out in the grounds of appeal however that the caseworker's reading of the rules was incorrect/incomplete, as the Rule specifies an exception to that being those whose leave of 6 months or less is as a fiancée, as was the case. The Respondent did not attend the hearing and the appeal was allowed on the spot. Had the file been reviewed the matter need not have proceeded to court at all.

- *Last minute case allocation* – Seemingly due to the late allocation of cases, and perhaps overly onerous caseloads, HOPOs often only take charge of a case the day or two before the hearing. This has two key consequences of note:

    i. HOPOs being unprepared and requiring further time to prepare appeals;

    ii. difficulties for Appellant representatives in communicating effectively or at all with opponents in the run-up to hearings, regarding all manner of issues.

  When cases have been adjourned previously, it is likewise very difficult to correspond with HOPOs as they often do not retain ownership from one hearing to the next unless a case goes part-heard. Currently, the way the Respondent conducts appeals is through the HOPO Unit and there is no one else to contact if correspondence or other communication is required between the parties.

Advocacy Issues

- *Lack of knowledge of up to date caselaw and Home Office policy, and/or failure to alert the Tribunal to the same:* HOPOs often fail to notify the Tribunal of relevant caselaw or policy as is incumbent on them to do.

- *Culture of disbelief*: HOPOs routinely approach witness evidence with suspicion and disbelief. They often require every issue raised to be corroborated by documentary evidence. This not only is against the general principles of asylum law (in asylum cases) but is in stark contrast to how criminal trials are conducted when a large part of the evidence will consist of testimonials only. This also means that HOPOs rely on plausibility arguments far too often when they have no expertise on what might be plausible, reasonable to expect or credible in a given situation.

- *Focus on winning at all cost:* It often appears that HOPOs, on top of not having the discretion to concede points, are intent on pushing points with a narrow focus on winning the case even if it results in the wrong decisions being made. Of course this is not universally so but it nonetheless remains a common feature we have encountered.

- *Lack of advocacy training:* A few concerns arise out of this-

    i. It is our view that HOPOs would benefit from further training when it comes to effective cross-examination. It is often the case that witnesses are asked to repeat, at length, accounts which are already clearly set out in their witness statements and interview records. Similarly, HOPOs frequently approach cross-examination as 'fishing expeditions' in which questions are asked without apparent focus, seemingly in the hope that the witness will say something to undermine their own account. This has the effect of being unnecessarily time-consuming and is usually ineffective. With vulnerable witnesses, it can also be traumatic;

    ii. HOPO cross-examination of vulnerable witnesses is often carried out without sensitivity or adherence to vulnerable witness guidelines and protocol;

    iii. Understanding of how to deal with expert evidence and witnesses, both medical and otherwise, could likewise be improved;

    iv. Submissions are often made without proper foundation, unsupported by evidence. On occasion this can lead to adjournments being granted without merit on the suggestion by a HOPO that evidence may be available which in the end is not. One example is where there is a suggestion made of evidence being procured from HMRC which may cast doubt on an Appellant's claim, which in the end is unforthcoming;

    v. HOPOs are sometimes unwilling to discuss cases with Appellant representatives outside court in order to negotiate or narrow the issues, instead maintaining an overly adversarial or combative approach. This has the effect of delaying matters and prolonging use of court time.

It is our view that in addition to implementing further trainings for HOPOs, the establishment of a clear Code of Conduct for HOPOs would significantly assist the smooth running of Tribunal hearings. A shift in the way cases are allocated to HOPOs to ensure greater ownership and clearer pathways of communication would also be of substantial benefit.

We hope that this feedback is of assistance and are available to discuss matters further if any further input is desired.

Yours faithfully

Goldsmith Chambers Immigration Team