



VISA BYTES

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Appeals and the abuse of process

There is already evidence that the severe reduction in rights of appeal over the years and in particular with the introduction of the Points Based System has resulted in sloppy decision being made. With no judicial scrutiny of decisions there are a vast number of cases which are simply refused and where allegations are made which remain on record dot years to come. The only remaining challenge in these cases, judicial review, is not only an expensive process but does not consider the merits of the application but its lawfulness.

In the meantime those whose appeals are successful often having waited for 6- 8 months for a decision can expect to wait for several weeks and months for the decision to be implemented and for passports to be stamped. Why there should be a delay of several is completely surprising particularly in the current climate when decisions can be sent electronically the same day!! There was no previously published standard for processing of these decisions However these standards have recently been published and provide for processing within 8

weeks of the receipt of the decision. This means that if the UKBA take 6 months to communicate it no one breaks any standards or targets. The legal process having determined that the decision was wrong should ensure at the very least that the decision can be implemented within a reasonable period. To allow this delay to persist makes a mockery of the appeals system.

21 year immigration rule for spouses A Court of Appeal case

There have been a number of unsuccessful challenges to the Immigration rule which prevents spouses who are over 21 from qualifying for entry. However now the Court of Appeal have granted permission for a full hearing to take place in July 2010. The issues which will be considered will be the fact that the rule is racially discriminatory and that it affects family life and the right to marry.

Maria Fernandes is a principal of Fernandes Vaz solicitors who specialise in immigration and nationality law. She has substantial experience of immigration and is an accredited member of the Immigration Law Panel.