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Around the World: Illegal Immigrants and the Cost of Higher Education in the U.K.

By Amanda M. Walsh

In the most recent decades, the United States has witnessed an increased dialogue around the right to higher education for undocumented youth. At the center of this debate has been an understanding that children brought illegally to the U.S. before the age of sixteen were unable to make the decision to enter the country illegally, and thus cannot be held accountable for their undocumented status. Through this reasoning, the U.S. Supreme Court has held that undocumented children should have equal access to primary education. This decision has influenced recent legislation that provides a pathway to citizenship, which can allow undocumented youth to pursue higher education and qualify for financial aid and in-state tuition costs that are available to U.S. citizens.

Alongside the U.S., other countries face policy challenges due to illegal immigration. In 2009, there were an estimated 725,000 illegal immigrants present in the United Kingdom. Today, the number of illegal immigrants has increased to approximately 863,000, with an estimated 120,000 children who are illegal immigrants. These numbers have led to new government efforts to deport illegal immigrants as well concerns about the children's welfare, children's educational needs, and the economic cost of immigrant families present in the U.K.

The debate in the U.K. around illegal immigration swings between assisting undocumented children and their families to gain citizenship and removing them from the country through deportation proceedings. Recently, the U.K. Border Agency ("UKBA") increased pressure on finding ways to remove illegal immigrants from the country and created tougher controls to protect the border.

In fact, undocumented youth and their families have little support from both the general public and the U.K. government. The U.K. defines an illegal entrant as an individual present in the U.K. who has either unlawfully entered or sought to enter in breach of a deportation order. An illegal entrant is also defined as a person who

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entered or sought to enter by means, such as deception by a third person. Unlike the U.S., however, children who are brought into the U.K. illegally by their parents' deception may be viewed under the law as equal to adults who enter by deception of a third party. These children can then be treated as if they were active participants in their parents' deception, which can lead to deportation. For those youth who manage to avoid deportation, they may face other challenges, such as obstacles that prevent access to education.

Similar to U.S. laws that state all youth, including undocumented youth, have a right to free, public education, each Local Education Authority ("LEA") in the U.K. must provide an education to each child between the ages of four and sixteen. However, despite the LEA's duty to provide this compulsory education to all children, many undocumented youth are still denied access. Many youth face barriers including difficulty obtaining forms of identification, a parent's fear of being detected, and local school discretion. Further, the LEA's do not have a duty to provide education before the age of four or after the age of sixteen. College and other forms of higher education can remain outside the reach of undocumented children raised in the U.K., as a result of the legal and financial barriers. In fact, if an undocumented child with limited funds pursues higher education, they will not qualify for financial aid, called Learner Eligibility funds, because they are not a legal resident of the U.K.

Similar to the U.S., universities within the U.K. differentiate tuition costs based on residency. These costs are called "home fees," which are lower tuition rates for those students who have lived in the U.K., and "overseas fees" are higher tuition rates for students who are not from the U.K. In England, to qualify for the lower home fees, a student must fall into one of ten categories, all of which require that the student be "ordinarily resident" in the U.K. on the first day of classes. Ordinarily resident is defined as an individual who has habitually, normally, and *lawfully* resided in the U.K. Therefore, every category excludes undocumented children from qualifying for home fees.

While some politicians support relief for undocumented youth and their families, such as qualifying for home fees, the strong push

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against illegal immigration has prevented any immigration reform legislation from passing in the U.K. Without legislation to allow undocumented youth, who have resided in the U.K. for a long period of time, to qualify for home fees or to secure a path to citizenship, which would allow automatic qualification for home fees, many youth will be unable to afford higher education. The only current option for undocumented youth is to apply for asylum as a refugee, which would put them in a category that qualifies them for home fees and Learner Eligibility funds.

However, undocumented youth can only seek asylum if they are fleeing persecution in their home country. Unfortunately, this is not a viable option for all undocumented youth and can put them at risk for deportation. Only one-third of asylum applications are granted yearly and once an application is rejected, the undocumented youth can face immediate removal from the U.K. Because the chances of being granted asylum are slim, these youth have no remedy either to a pathway to citizenship or to meet qualifications for lower education costs.

Researchers and some politicians support the need for new governmental policy to protect the interests of all children within the borders of the U.K., whether by guaranteeing education opportunities or providing pathways to citizenship. One possibility to protecting these interests would be to apply the reasoning of a recent U.K. Supreme Court judgment, *ZH (Tanzania) v. Secretary of State for the Home Department*. *ZH (Tanzania)* involved the deportation of undocumented immigrant parents who had children who were born in Britain and were, therefore, legal citizens. The immigrant parents fought their deportation, arguing that it would either separate them from their children or force the removal of their children who are allowed to remain in Britain. The Court ultimately decided that the best interests of the child, as mandated by the United Nations Convention on the Rights of the Child, was a greater priority than a parent's immigration status. Therefore, the Court affirmed that decisions regarding a parent's or a child's immigration status must not go against the best interests of a child.

This holding can be expanded to allow pathways to citizenship and access to higher education and lower tuition fees for

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undocumented youth by arguing that it is in the child's best interest to have access to these options, regardless of their immigration status. This is especially true if they have resided in the U.K. for the same period of time as legal citizens. The best interest standard, despite legal immigration status, can be used to ignite legislation that provides pathways to citizenship by removing the blame for a child's illegal immigration, which could stop automatic deportation of children brought to the U.K. below a certain age, or by allowing access to reduced costs for higher education.

Additionally, removing the requirement of legal residence from the qualifying categories for home fees is an alternative method to protect the best interests of undocumented youth who are pursuing higher education. In lieu of the legal residence qualification, universities can institute other requirements for undocumented youth, such as stating that the youth must have resided in the U.K. since before a certain age.

By using the best interest standard or flexibility around the concept of legal residence when determining the cost of higher education, the U.K. would follow the U.S.'s current legislative attempts to protect the overall welfare of undocumented youth. Although the U.K. has yet to propose such legislation, the recent court decision provides an opportunity for the government to do so.

Sources:

AMNESTY INT'L, DOWN AND OUT IN LONDON: THE ROAD TO DESTITUTION FOR REJECTED ASYLUM SEEKERS 5, 7-13 (2006),
http://www.amnesty.org.uk/uploads/documents/doc_17382.pdf.

Anil Dawar, *Scandal of U.K.'s 863,000 Illegal Immigrants . . . One in Four of the EU's Total*, EXPRESS, Dec. 18, 2012,
<http://www.express.co.uk/news/uk/365637/Scandal-of-UK-s-863-000-illegal-immigrants-one-in-four-of-the-EU-s-total>.

'Big Rise' in Illegal Immigrants, BBC NEWS, Mar. 9, 2009,
http://news.bbc.co.uk/2/hi/uk_politics/7928880.stm.

Immigration Offences and Breaches, HOME OFF., U.K. BORDER AGENCY, Chs. 1, 3, 4,
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectiona/> (last updated Feb. 6, 2013).

In-State Tuition and State Residency Requirements, FINAID.ORG,
<http://www.finaid.org/otheraid/stateresidency.phtml> (last visited Feb. 12, 2013).

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Julia Preston & John H. Cushman, Jr., *Obama to Permit Young Migrants to Remain in U.S.*, N.Y. TIMES, June 15, 2012, http://www.nytimes.com/2012/06/16/us/us-to-stop-deporting-some-illegal-immigrants.html?pagewanted=all&_r=0.

LIBERAL DEMOCRATS, LIBERAL DEMOCRAT MANIFESTO 2010, at 76 (2010), http://network.libdems.org.uk/manifesto2010/libdem_manifesto_2010.pdf.

Mehdi Hasan, *In UK's Heated Debate Over Immigration, Ministers Avoid Using the A-Word*, HUFFINGTON POST (U.K.), Feb. 2, 2013, http://www.huffingtonpost.co.uk/2013/02/01/uk-immigration-debate_n_2598786.html.

NANDO SIGONA & VANESSA HUGHES, UNIV. OXFORD, COMPAS, NO WAY OUT, NO WAY IN: IRREGULAR MIGRANT CHILDREN AND FAMILIES IN THE UK vii-ix, 30-33 (2012), http://irregularvoices.files.wordpress.com/2012/05/compas_report_web.pdf.

Plyler v. Doe, 457 U.S. 202, 219 (1982).

U.K. COUNCIL FOR INT'L STUDENT AFFAIRS, TUITION FEES FOR HIGHER EDUCATION COURSES IN ENGLAND (2013), http://www.ukcisa.org.uk/files/pdf/info_sheets/tuition_fees_e_he_print.pdf.

ZH (Tanzania) v. Sec'y of State for the Home Dep't, [2011] UKSC 4 (appeal taken from Eng.).