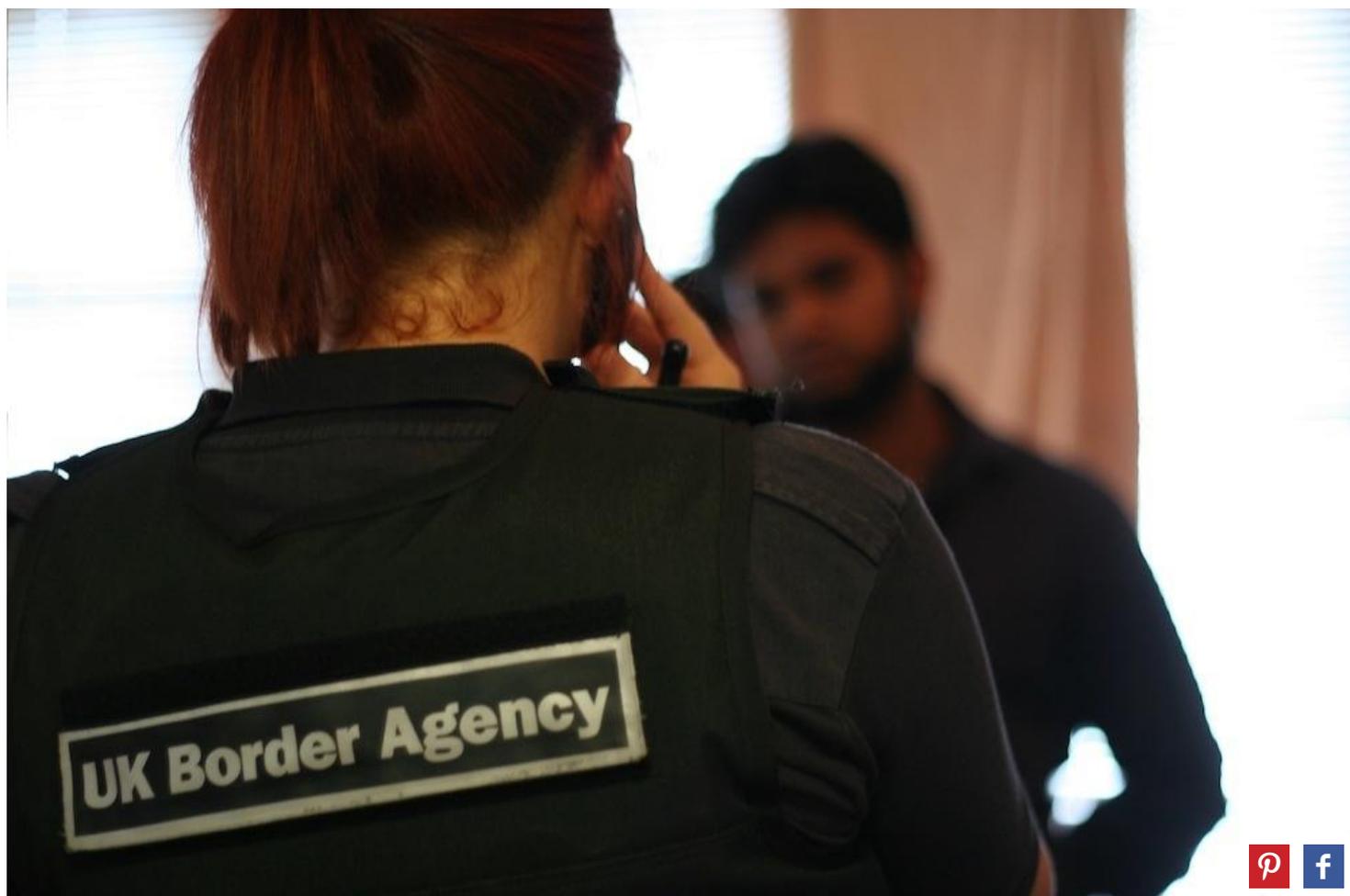


The Plight of Immigrant Offenders Kicked Out of the UK Before They Can Appeal

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by Philip Kleinfeld
Writer



(Photo by Natalie Olah)

For as long as Victor* has lived in Britain all he has wanted to do is provide for his family. Starting with casual work when he first moved over to London in 2007 he quickly found himself a permanent position, working night shifts stacking shelves in a chain supermarket. With a degree in science from his hometown in Nigeria it was far from his dream job – but it was enough to support his wife and three young children.

When I spoke to him last month, almost eight years after arriving in the UK, Victor was sitting in a detention centre he described to me as a "prison" just a few miles down the road from a London Airport. As a foreign national offender (FNO) he is caught in the middle of Theresa May's new "hostile environment", facing deportation for using false documents to find employment, a crime he struggles to really accept.

"I am trying to work hard because that's what my parents told me," he said. "I won't rob a bank and I won't take drugs. I have two hands to

work and that is what I want to do."

Last year, as part of the **2014 Immigration Act**, the coalition government passed a little-known policy called "deport first, appeal later". Under Articles eight and three of the European Convention on Human Rights FNOs are able to appeal their deportation on the basis of rights to family life or the risk of "serious irreversible harm" being caused. In the past they were able to do this from within the UK – close to the legal teams they are trying to contact and the authorities they are trying to contest.

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But under the new policy this all changed. Today offenders that are not facing what the Home Office perceives to be the threat of "serious irreversible harm" can be kicked out of the UK and removed to their country of origin before they get a chance to appeal. According to data I obtained from the Home Office under the Freedom of Information Act, the policy resulted in the removal of 614 people between July and December last year, with 127 appeals made in response.

According to the Home Office, having in-country appeals allow foreign criminals to clog up the British justice system with what it calls "spurious claims to human rights". "At the moment," British Home Secretary, Theresa May said last year, "the system is like a never-ending game of snakes and ladders with almost 70,000 appeals heard every year. The winners – foreign criminals and immigration lawyers... the losers – the victims of these crimes and the public".

But what the Home Office describes as "spurious" others see as entirely genuine. **From 2012 to 2013, 32 percent of all deportation appeals made by FNOs** were successful. As Sarah Campbell, a research and policy manager at **Bail for Immigration Detainees** explained to me, many FNOs are residents "that have been in the UK for years, in some cases decades" often with "children born and brought up here". With these kind of offenders now being deported without an opportunity for their cases to be heard, Campbell says many with a legitimate claim to remain could be permanently, unjustly expelled.

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For Victor – who was contesting the decision to deny him in-country appeal through judicial review when we spoke – these fears are very real. As he struggles to navigate the complex and hostile environment of immigration law from within the UK, he dreads to think what will happen if he is forced to a country nearly 4,000 miles away.

"If I am left alone in Nigeria I won't know the situation," he told me. "I need to chase people up that are directly involved and meet solicitors. I have a family here too – a wife and three children. They should look at the impact my deportation will have on them. They should let people do their appeals here in the UK, not just abandon them."

Another offender facing a similar fate to Victor is Joseph*. Still young in his mid-20s and with his entire family based in the UK, he too is subject to a deportation order after completing a prison sentence for a "property offence". According to Lewis Kett, an immigration caseworker who has launched a judicial review challenge on his behalf, Joseph will face destitution if he is forced to appeal from Nigeria – his country of origin – and his chances of returning will be severely weakened.

"We're challenging the decision to personally apply the law to him," Kett told me. "Our client used to have indefinite leave to remain and his entire family are now all in the UK. If he goes back to Nigeria he's not going to have any family support there. He's likely to face destitution. How can he start and run an appeal from that country when he's got no assistance to do so?"

Public support for strict policies on FNOs has grown consistently since 2006, when it was revealed that over 1,000 offenders had been released into society over a **seven year period**. The news sparked a moral panic that ended in the dismissal of then Home Secretary Charles Clark and turned foreign offenders into national pariahs. As recently as this May, ***The Sun's front page featured a story*** about four male foreign criminals, their crimes – terrorism, rape, murder and paedophilia – splashed across the cover. "Their rights... or yours?" the headline screamed.

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These kind of stories have a clear impact on immigration policy, but they're far from representative. Data from another FOI request I made reveals that 58 percent of the foreign nationals removed since "deport first, appeal later" measures were introduced were actually non-violent offenders. And despite being the emphasis of so much media coverage over the years, less than five individuals had committed murder (the Home Office was unable to provide an exact figure due to ensuring the "identities of individuals can be protected") and 20 rape (just over 3 percent of the total affected).

Stories like Victor's are much less likely to be heard. For years he worked in the same supermarket, pulling long hours, night after night. Then the company discovered he'd been working with a fake passport and he was sentenced to several months in prison. When he was finally released back into society things only got harder. Allowed to remain in the UK but barred from work, he quickly lost the ability to support his wife and children. As rent became unaffordable, and the family slipped into council tax arrears, he was forced to reoffend: buying another fake passport and applying for work once again.

This time round, things ended even sooner. His new employer quickly discovered he was working using false documents and they too called the police. After a short case at the Crown Court he pleaded guilty and was sent back to prison for 12 months behind bars. Despite having a family dependent on his support, and despite saying he had no option but to offend, Victor's crime is seen as no different to someone that has committed a murder as far as deportation is concerned.

"I would appreciate it if people could see there are offenders in my situation," he said. "It's not entirely true that all FNOs are murderers and rapists."



Home Secretary Theresa May (Photo [via](#) the Home Office)

Campbell, whose charity deals with many deportation cases like Victor's also objects to the skewed media coverage foreign offenders tend to receive.

"We deal with people that have committed a variety of offenses but in many cases the reality is very different from what people would think when they hear the label FNO," she told me. "We dealt with one case with a father from Zimbabwe who was convicted of theft after stealing some nappies for his baby because his family couldn't afford to buy them."

With a majority in the House of Commons the Conservatives now plan on taking what they have already achieved during the Coalition with the Immigration Act even further. Under plans put forward in their manifesto, deportation without appeal could be **extended** from FNOs to all immigration appeals and judicial reviews with the exception of asylum cases. And despite the harshness of "deport first, appeal later" and the Legal Aid, Sentencing and Punishing of Offenders Act 2012 **stripping many FNOs of the right to legal representation**, a new removals policy is being planned with satellite tracking devices introduced for every offender subject to deportation. For those like Victor, trapped in the middle of a system that doesn't want them, Theresa's May's "hostile environment" could well get even tougher.

**Names have been changed*

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