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Preface

January 1983 was the tenth anniversary of the coming into force of the Immigration Act 1971. It remains the pillar of UK immigration law, but during that time new developments have come thick and fast. First the divides in British citizenship used by the 1971 Act to determine who was free to come and go and who was subject to immigration control have now been incorporated into the British Nationality Act 1981.

Then there are the Immigration Rules, which lay down the guidelines for the admission and stay in the UK of visitors, students, workers, business people, family members and so forth. There have now been three major editions of the Rules—1973, 1980 and 1983. But specific Rules dealing with the admission of overseas husbands have seen six different versions, the 1973 Rule being amended in 1974, 1977, 1980, 1982 and 1983. These were not just changes of text. They were also controversial. The husband Rule seems to generate more heat than all the other Rules put together. In December 1982 the Government was defeated by a combination of its own right wing who thought the new Rules too soft and the Labour and SDP opposition who thought them too illiberal. New Rules therefore had to be devised. By this time the book was in proof stage. We decided to delay publication so as to incorporate the current Rules. We have done so. It has meant changing the Rule references on nearly every page and hopefully we have got it right.

The third area of change is the case law. Ten years ago there were a mere two cases touching on illegal immigration, both in favour of the immigrant, a few High Court cases on fair treatment of immigrants who were refused entry, some criminal cases dealing with recommendations for deportation, and a few unreported cases of the recently created Immigration Appeal Tribunal. That was all. Now there are precedents for most situations. New case law is created every week. And it is extremely difficult to keep up with it all. Nearly every time I appear in a case in the High Court or at Thanet House I am given the transcript copy of some new case I have never heard of but which the other side wish to rely on. Much of it is unnecessary. But it does highlight a glaring gap in this whole area. Whatever the Judicial Committee of the House of Lords may think about unreported transcripts of Court of Appeal decisions, their thoughts are clearly not shared by the different echelons inside the Home Office. Precedent plays an important part in their decision-making process. It plays an important part in adjudication before the appellate authorities. And they have access to all the precedents. We do not, although clearly the news of a new trend-setting case travels round the unofficial grapevine pretty quickly. That does not help the public. There is one set of Immigration Appeal Reports published by HMSO. They are very fine reports. But they only deal with cases that have been through the immigration appellate system. They do not cover

habeas corpus and many judicial review applications in the High Court, criminal cases, EEC cases affecting free movement rights, or relevant decisions on the European Convention of Human Rights. Also this is 1983 and the last issue of the Immigration Appeal Reports was that for 1979–80. Many of the cases referred to in the text of this book are unreported. They are ones to which I have had access. But even now I cannot be sure that I have not missed something important either at Tribunal or High Court level. Something clearly has to be done. It is with some hesitancy that I declare that the law stated in the book is as at 12 February 1983.

In 1972 I wrote a brief commentary on the new Immigration Act 1971, *The New Immigration Law*. This is not a second edition. It is almost entirely a new book. But I have retained the spirit and flavour of the old. Though the book is an attempt to give a working description of immigration law and practice in the UK—an attempt to inform and describe—it is also a very personal book. I say this in two senses. First I have an interest and concern for the quality of law. I am a committed civil libertarian. Secondly I have tried to include my own insight and understanding of the power play between the different participants involved in this particular legal arena. It is out of that interaction that what we call immigration law emerges. The events of the last few days are a good illustration. In *Zamir* in 1980 the House of Lords gave the green light to the discretionary removal of immigrants as illegal entrants if the Home Secretary merely had reasonable grounds for believing they had obtained their leave by some sort of deception. The immigrant had the virtually impossible task of proving that the Home Secretary's suspicions were ill-founded. Yet three years later in 1983 in *Khawaja and Khera* the House of Lords do a complete turn around. There is to be no removal unless the Home Secretary can prove that in fact leave was obtained by deception. Why the change? I don't know exactly. But somewhere in the book I use the phrase: 'Thanet House slumbers while Brixton burns'. Thanet House is the place where immigration appeals are heard, and I am trying to convey that decisions of the Immigration Appeal Tribunal are not responsive to a new mood or new power within the black community. The opposite is clearly the case with the recent House of Lords decision. A pure description with none of the social dressing seems to me to obscure the legal process and weaken the kind of advice and representation which the informed practitioner can give. *Khawaja and Khera* has caused other problems. It came at the end of a busy week and I have tried to incorporate it fully into the text. It has meant much re-writing and re-arrangement, especially of Chapters 14 and 15. However its effect is so far reaching that we felt this necessary. A complete re-write was not possible and some awkwardness in the structure of these chapters is the inevitable result.

Finally my acknowledgments. I think the draft of this book has been on at least two holidays with me. My wife and children say it is worse than that. My first acknowledgment is to them, to Kieran, my youngest son, who obligingly slept while I wrote and everyone else went to the beach, to Ian and Jamie who at some stage were dragooned into doing my newspaper cuttings, and in particular to my wife, Jenni Hall, for all the unpaid work which she has put into the production of this book.

Then there are the people whose cases I have done. Clients are perhaps our greatest teachers though their services are usually unrecognised and

unrewarded. Some will read this. I hope so and thank them, particularly Anwar Ditta and Shuja Uddin and their three children Kamran, Umran and Saima, whose unremitting determination to be together blazed a new trail. I have also had enormous help from continuous discussions with colleagues in chambers, in particular Katherine Cronin and Nick Blake, who always acts as the devil's advocate. The chapter on Nationality and Right of Abode is based on our joint book, the *New Nationality Law*. I also had particular pieces of research done by Frances Webber and Andrew Huxley. Jas Chhotu arranged my files. The other group of people to whom I am indebted, particularly for their constant information on the latest changes in Home Office practice, has been the Joint Council for the Welfare of Immigrants (JCWI). Then there are the various people who have typed the manuscript: Maggie Adams, D. Adams, Valle Henry, Claire Fazan and Jennifer Peck. Finally I would like to thank my publishers who have supported me throughout.

I.A.M.

Temple, London EC4

February 1983

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