The Effect of the Introduction of DNA Testing on Immigration Control Procedures: Case Studies of Bangladeshi Families

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J. M. I.

Janet Ihenacho is a former student of the M.A. Race and Ethnic Relations Course, Warwick University 1989-90. Prior to that she taught science in the U.K. and Nigeria, at secondary and post-secondary levels. This paper is an adapatation of her M.A. Thesis.

Mel Thompson is the editor of the Research Papers in Ethnic Relations Series. The aim of this series is to publish papers based on research carried out at the Centre for Research in Ethnic Relations at the Univerity of Warwick. It will also publish papers from external authors, and the editor welcomes manuscripts from other writers and researchers (including research students) working in the field of race and ethnic relations. The main emphasis of the series will be on original research that will be of interest and relevance for students of race and ethnic relations and for those implementing equal opportunity and anti-racist policies.

CONTENTS

Chapter 1: Introduction

There have been great changes over the last 30 years in immigration policy particularly affecting the status of people of the 'New Commonwealth'. Prior to 1962, as British subjects, all Commonwealth citizens had full rights of entry and settlement in Britain in contrast to aliens who were subject to strict control both on entry and within Britain. Since 1962, progressively more stringent restrictions have been placed on the entry of commonwealth citizens which, while simultaneously giving concessions to those people with ancestral links with Britain, have particularly affected black people.

Despite the virtual cessation of 'primary' immigration with the implementation of the 1971 Immigration Act, the debate surrounding immigration has continued in a climate of public opinion, stimulated by the popular press, demanding 'tighter controls'. The pressure, in terms of political capital to be gained, to 'tighten the immigration screw' has proved irresistible. (Paliwala, 1990, Solomos, 1989) Inevitably the increasingly tight controls have adversely affected the only remaining groups of black people whose entry for settlement was still permitted, namely spouses, fiance(e)s, children and other dependent relatives.

The people of Bangladesh, because of their migration pattern and their comparatively late entry to Britain have been most severely affected by the tightening of immigration controls on dependent relatives, resulting in the wives and children in the sub-continent experiencing great difficulties in gaining entry to Britain. Although other groups and other nationals have experienced immigration problems, the prevalence of divided families in the Bangladeshi community in Britain has caused such hardship over years, even decades, that it has contributed to the present situation whereby the Bangladeshi community experiences unique problems associated with disadvantage and oppression (Alam, 1988).

A frequent political defence of immigration control is that it is necessary for 'good race relations'. In this context good race relations is viewed from a white perspective. Having repeatedly identified the black presence as a 'problem' (in terms of competition for jobs, housing, and pressure on services such as health, education and welfare benefits) and a 'threat' (to law and order, and to the 'British way of life') it is argued that British society can absorb or integrate only a limited number of (black) immigrants before there will be a situation of serious and even violent conflict. From a black perspective, immigration control, in its implementation and its effects, exacerbates the feelings of injustice, frustration, and anguish experienced by black people who are an integral part of British society. One of the most devastating manifestations of the injustice of immigration control is the way it has prevented or delayed family reunification.

The absence of close family members is a constant reminder to black and Asian settlers here that they are denied rights to family life which the white community take for granted.

Since there must be two sides to a 'relationship', the effect of a policy on 'race relations' must take into account the perceptions of the black community. In writing this paper I have tried to expose the intention behind the policy, and describe the experiences of control from the viewpoint of the community exposed to it.

In examining the development of the legal framework for control I was particularly interested in the use made of poverty and disease in potential immigrants as a justification for exclusion. These twin themes, incorporated in the Aliens' Act of 1905, run through all subsequent immigration legislation to the present time. The overriding concern at the beginning of this century was to minimise the social burden of immigration on the state. The tests which were incorporated into control procedures for the purpose of checking the health and financial status of immigrants have been developed and redefined in order to legitimise the exclusion of people judged 'undesirable' because of the colour of their skin. The transition from using medical testing for detecting disease to its use for purely control purposes has been an insidious and fundamentally

racist development. It is ironic that a medical test, a sophisticated blood test known as DNA profiling, has provided many Bangladeshi families with the evidence they need to prove the family relationships which have for years been disputed by immigration officials.

It is easy to lose sight of the racism of a system that requires women and children to submit to blood testing before their credibility can be accepted. The indignation and anger which greeted the announcement of the introduction of a pilot scheme for DNA testing in Bangladesh has been forgotten as a result of the relief it has provided many divided families. But it remains part of a system of control imposed by the state. The history of immigration legislation and administration reveal modifications introduced to plug loopholes and breaches in the system. I expected the State to at least attempt to introduce changes which would provide harsher controls on, or new requirements to be met by, those who could prove eligibility for entry as a consequence of DNA testing.

Immigration control operates in a complex way, or rather in a multiplicity of ways, for black people. It does more than exclude or control the rate of inflow of immigrants. It is a manifestation of the power of the State. The experience of control procedures prior to and on admission to Britain is a foretaste of the continuing control over the lives of black people in this country. Immigration control is operated by many branches of the state, so that controls are experienced by the black community in different places, at different times and from different personnel. As more services are linked to immigration status, those who are 'visibly foreign' are constantly being required to prove their eligibility. The State has assumed for itself greater powers of deportation and removal, powers which are being implemented with increasing strictness. (Gordon, 1981)

Black people are the recipients of essentially the same message from different sources, from various branches of the state, the media and the white community: that they do not belong, that their presence is a problem and that they are not welcome. This constitutes a pervading system of practical and psychological oppression. I have tried to locate immigration control procedures within this overall system of oppression and power relationships. At the same time, I am conscious of how sites of oppression can become sites of resistance. People of Afro-Caribbean and Asian descent have found a common identity and purpose in their struggle around immigration issues, including that of the divided families. DNA profiling has provided them with a new weapon in their struggle for family reunification.

The main objective of this paper is to analyse the potential and actual use of DNA testing in immigration procedures, and the response of the State to this new technique of testing.

In the following chapter, the development of immigration legislation and methods of administration during this century is discussed as a framework for the paper. The use of health and financial criteria in immigration legislation and implementation is considered as aspects of the developing system of control of the immigration process and, more fundamentally, of the immigrant communities. Chapter 2 also explains how the operation of control has been able to rely increasingly on the exercise of discretionary power in decision making; a power which is difficult to challenge. In chapter 3 the development of DNA testing is described. Its potential for establishing disputed relationships is seen as transferring a measure of power to those seeking admission, and obviating the need for the exercise of discretion.

Chapter 4 deals with issues that have arisen as a consequence of the practical implementation of DNA testing and the response of the state in terms of policy and legislative changes. This response is considered as an attempt by the state to maintain its control through the retention of discretionary powers.

The impact of DNA testing and the government's response on three Bangladeshi families is considered in chapter 5. Although the case studies form only a small part of this paper they do give an insight into the devastating power the state can wield over individual lives in the arena of immigration control.

Despite, or rather because of, the personal oppression experienced by these

families through prolonged family separations, each of these families is continuing its struggle for justice.
The remainder of this chapter deals with the migration of Bangladeshis to Britain, explaining why the incidence of divided families has been particularly high in their community and why they have been so vulnerable to the state's operation of immigration controls.

The Migration Pattern of Bangladeshis to Britain

Bangladesh is a comparatively new state. It came into existence when it seceded from Pakistan in 1971. It was formerly East Pakistan, and before the partition of India in 1947, it was East Bengal, an integral part of India. (Alam,1988, p.7). Its existence as an independent state was recognised by Britain in 1973.
Most Bangladeshi men now settled in Britain first arrived in the late 1950s or 1960s. About 95 per cent of them originated from the rural areas of Sylhet district of what was then East Pakistan. Many were young and unmarried. Those who had families of wives and children left them in their homeland as they regarded their stay in Britain as only temporary. Many Bangladeshi men came to Britain seeking employment with the intention of eventually returning home. They hoped to earn enough capital to establish themselves in business or to purchase land on returning to Bangladesh. (Alam, 1988, p.35) Their links with home remained close. They remitted money to their families to help maintain members of their immediate and extended family, and they made periodic visits home as a result of which marriages were contracted and children born.
As their aspirations for an early return to their homeland faded many sought for family reunification, applying for their wives and children to join them for settlement in Britain.
Although the statutory right of men settled in Britain to be joined by their dependent wives and children was protected despite other changes in Immigration legislation, the conditions imposed on their entry, particularly the requirement to obtain prior entry clearance before travelling to Britain, put formidable and even insuperable barriers in the way of family reunification. The entry clearance requirement was introduced in 1969 coinciding with the time when many Bangladeshi men were contemplating asking their families in the Sub-continent to join them. Some other groups from the Sub-continent had migrated at an earlier time, and had consequently already, to a significant extent, gone through the process of family reunification; whereas others followed a different pattern of migration, tending to enter Britain as family units rather than as individuals. Thus the Bangladeshi community was disproportionately affected by the introduction of the entry clearance requirement, and particularly by the administrative procedures which developed around it.
The extent to which families have remained divided is indicated by population figures which show an appreciable gender imbalance in the adult Bangladeshi community. The 1981 census figures reveal a male to female ratio of approximately 2:1.
The effect of prolonged separation has had a devastating effect on the morale of the individual families affected, and on the community as a whole, and is a source of continuing oppression. Because of administrative obstacles, the entry of children to Britain has been delayed, preventing them from joining the educational system until a later age. This has resulted in low standards of educational achievement, transmitting the economic and social disadvantage experienced by their parents for a further generation.
In its Report on Bangladeshis in Britain, the Home Affairs Committee recognised that many difficulties facing the community resulted directly or indirectly from the delays to family re-unification due to entry control procedures. The Report was intended to identify the disadvantages experienced by the community and recommend remedial measures. In its evidence to the Committee, the Tower Hamlets Homeless Families Campaign highlighted the adverse implications of the change in the Immigration Rules HC503 which required applicants for settlement to show the availability of accommodation 'without recourse to public funds'. (HC96-II, Session 1986-87, pp.44-45.) It would result in many men settled after 1973, being unable to bring their families from Bangladesh as the Tower Hamlets

housing authority insisted on the physical presence of family members before an application for suitable local authority housing could be submitted. (MacEwen, 1990) Considering the lack of alternative accommodation in Tower Hamlets where as much as 80 per cent of the housing stock is under the control of the local authority, this condition meant that in most cases a family newly arriving from Bangladesh would be homeless, and therefore automatically disqualified from being granted entry clearance.

The fact that the change in the rules was intended to target a particular group was emphasised by the Homeless Families Campaign:

It is clear that the policies and practices of central government coincide in this case with those of the local authority and adversely affect a particular section of the community making it even more difficult for people of Bangladeshi origin to get a house, or even to live together in this country. (HC96-II, Session 1986-87, p.45).

At the time this evidence was being collated those men already settled in Britain prior to 1973 were exempt from this requirement by the provisions of the 1971 Immigration Act, Section 1(5). Considering the purpose of this Report and the above quoted evidence, it seems extraordinary that the Government opened its Reply to the Report (Cm193, 1987) by stating its intention to repeal Section 1(5). Although confronted with a catalogue of grievances and injustices stemming from the administration of the system of entry control, the Government responded by imposing another barrier to family reunification.

Chapter 2: The Development of Immigration Legislation and Administration.

The development of Immigration control measures in this century can be seen as a response to the changing discourses around race, immigration, Britishness and the family. Existing images and myths are reinforced and perpetuated by these discourses, but also modified and new notions developed and disseminated.

The need for control over immigration is now accepted to such an extent that it has become part of the commonsense body of political thought. The very word 'control' encapsulates the complex structure of 'force relationships', to use Foucault's terminology, which operate at all levels and locations where immigration control procedures are in operation. In this chapter, the extension of immigration control will be noted as an ominous feature of the operation of state power over the lives of black people.

With the introduction of control measures immigration officials have been empowered to exercise control over certain immigrant groups. This control was focussed on the most powerless groups of people seeking admission: those perceived to be most 'different', either culturally or 'racially', and those who were powerless due to poverty.

The increasing medicalisation of control procedures has enabled new sites of power to be established. The development of health criteria in legislation and the increasing medicalisation in the administration of control is the main focus of this chapter; but the introduction of other sites of control is also discussed, as part of the development of a comprehensive network of agencies currently incorporated into the power structure of the state.

Despite shifting foci in discourses on immigration there are some common themes which can be traced. There has been a continuous preoccupation with the supposed threat to society posed by immigrants because of their poverty and disease. These fears resulted in provisions in the 1905 Aliens Act which is the first piece of modern legislation and the 'basis for all subsequent restrictions'. (Vincenzi, 1985, p.275)

The Aliens Act, 1905

The 1905 Act imposed immigration control on only those immigrants who travelled to Britain as steerage class passengers. Aliens who were first and second class passengers and therefore presumably more affluent, were exempt from control and were not classified as immigrants. The term 'immigrant' was thus not a value free term, being linked to 'poverty', 'undesirability' and the need for control.

Immigrants were classified as undesirable if they appeared to be unable to support themselves and their dependents either because of poverty or ill health. Immigration officers were given a considerable measure of discretion in making what were essentially subjective judgements. One of the main aims of the Act was to prevent the influx of poor people who might be a 'charge on the rates'. The Act also introduced internal controls, making aliens liable for deportation if, within 12 months of their entry, they were in receipt of poor relief, found wandering with no means of support or were living in insanitary or overcrowded conditions.

From the onset, medical officers were integrated into the operation of immigration control, as immigrants were subjected to medical tests; those considered diseased were classified as undesirable. The incorporation of health criteria into control procedures opened the door for medical techniques and testing to be used for purely control purposes, unrelated to health factors.

The 1905 Act empowered the Home Secretary to issue 'Rules' which governed the administration of control procedures, and to issue instructions to immigration personnel on practical guidance. The framework for modern immigration legislation and administration was set.

The control over aliens both on entry and internally was extended by the Aliens Restriction Act, 1914, introduced as an emergency wartime measure, but many of the restrictions introduced then have remained. For example, aliens were required to register with the police. Thus another branch of the state was incorporated into immigration control, a branch which has played an increasingly powerful role in the exercise of control. According to the British Nationality and Status of Aliens Act of 1914, all people of the British Empire were accorded the status of British subjects, denoting their duty of allegiance to the monarch. Although this status did not confer specific rights it did exempt subjects from the entry restrictions into Britain imposed on aliens. This status was confirmed by the British Nationality Act of 1948. Commonwealth citizens had the same rights to enter, live and work in Britain as 'native born and bred' UK citizens.

Introduction of Controls on Commonwealth Citizens

During the 1950s a considerable migration of people, first from the Caribbean and later from the Indian sub-continent, took place. The term 'immigrant', already linked with negative images of poverty and disease, gathered new connotations associated with 'race'. Although immigration from European countries was also taking place, the discourse on immigration became increasingly racialized until 'immigration' became a code word for 'black immigration'. In response to the debate, initiated by the State, (Solomos, 1989) but taken up by the media, on the social cost of an increasing immigrant population, the first restrictions on Commonwealth citizens were introduced by the Commonwealth Immigrants Act of 1962. This legislation subjected citizens of the United Kingdom and colonies (CUKCs) to immigration control except for those born in Britain or who held a British passport issued by or on behalf of the British Government. Commonwealth citizens were required to obtain work vouchers before travelling to Britain. This measure enabled the Government to impose precise controls on 'primary', that is male, immigration, by the simple means of controlling the number of work vouchers issued. It had the additional effect of introducing another source of control, namely the Ministry of Labour, now the Department of Employment.

For the first time a Commonwealth citizen could be deported, but only if not ordinarily resident and convicted and recommended for deportation by a court of law.

The 1962 Act was justified on the grounds of 'overpopulation, fears of unemployment and, most importantly, the difficulties of successfully integrating a substantial and visible immigrant population, that tended to be concentrated in poor urban areas, into a society in which racial prejudice and hostility towards the newcomers were publicly expressed.' (Evans, 1983, p.15).

Since 1962 Commonwealth citizens have been subjected to increasingly repressive and discriminatory controls; by stricter legislation, by changes in the rules

and as a result of the way in which the controls are administered by those, empowered by the state, in the expanding network of immigration control.
Although immigration legislation is devoid of references to race, the intention to exclude black people is implicit and at times explicit in the debate within and outside Parliament prior to enactment, and in the effect of the legislation. The 1968 Commonwealth Immigrants Act was introduced and passed through Parliament with indecent haste with the specific purpose of preventing the entry of Asians resident in Kenya. It provided that CUKCs with no grandparental connection with the UK were subjected to control. Thus was initiated a process of redefinition of who 'belonged' to Britain in terms of ancestral connection, a definition which automatically excluded black people.
Both the 1962 and the 1968 Acts protected the right of Commonwealth men settled in Britain to be joined by their wives and minor children. But in 1969 family members seeking settlement were required to obtain entry clearance from the British High Commission in their country of origin before travelling to Britain. This measure was primarily aimed at Asian families who were at that time undergoing a process of reunion. It was supposedly introduced to facilitate immigration procedures at Heathrow Airport. It resulted in the queues at Heathrow being removed to the Indian sub-continent, out of sight. The physical queues of people which, being 'visible', of necessity had to be dealt with in a reasonable time-span, were converted to 'paper' queues in the Indian Sub-continent.
This measure extended the structure of control from the port of entry to Britain to the homelands of these families. New sites for the operation of power were established. The remoteness of these locations from Britain enabled a degree of autonomy and secrecy in the operation of this power to be developed.

The Immigration Act 1971
The main instrument of Immigration Law is the 1971 Immigration Act. It incorporated controls over both aliens and Commonwealth citizens, and repealed previous legislation. It defined those who belonged to Britain, namely 'patrials', in terms of ancestral connection rather than citizenship. Thus a (black) CUKC, excluded by the 1962 and 1968 legislation, remained excluded from the elite category of 'belongers'. But a (white) Commonwealth citizen with one British parent regained freedom from immigration control and acquired patrial status. As a result of this provision an estimated 5 million people, citizens of Old Commonwealth countries, became exempt from immigration controls. (Evans, 1983, p.70)
The 1971 Act provides that any person entering the UK may be examined by a medical inspector or by any qualified person carrying out a test or examination required by a medical inspector. (Sch 2, para 1,2 and 7) The stated purpose of medical inspection was to protect the health of the general public and to ensure that potential immigrants are physically capable of supporting themselves and their dependents, so as not to be a burden on the state. The incorporation of medical personnel into the administration of immigration control has established a system of medical testing which has been used and abused for control and oppression. Medical examinations have been used to determine the ages of applicants and have included X-ray testing, a technique which should only be used if medically required, and whose validity, as a means of determining age, has been discredited.
Foucault describes how the operation of power in contemporary Western society relies on secrecy for at least some of its effect:

Power is tolerable only on condition that it masks a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms. ..For it, secrecy is not in the nature of an abuse; it is indispensable to its operation. (Foucault, 1979, p.86)
The exercise of power in the so-called 'virginity tests' depended on secrecy for its effectiveness and for its continuance. Once its existence was exposed it was impossible to maintain and indeed became a focus of resistance. Asian women were subjected to vaginal examinations in the course of 'virginity testing' as

part of immigration control at Heathrow Airport. The purpose of the tests had nothing to do with the health of the women, being used to justify their exclusion from entry. Such tests were also an effective means of demonstrating power over both the women and their men.

The 1971 Act empowers the Home Secretary to lay before Parliament rules under which those who are subject to immigration control may be given leave to enter. (Section 3(2))

Under the Rules in operation at the commencement of the Act, wives and children of Commonwealth men settled in Britain were eligible for settlement only provided that their sponsors were willing and able to maintain and accommodate them without 'recourse to public funds.' This criterion is, as Macdonald states, 'the great pre-condition of admission', (Macdonald, 1987, p.19) and has to be fulfilled for all dependent relatives seeking settlement, as well as those seeking admission for short visits, for medical treatment and for educational purposes. The intention to exclude the immigrant who might be a charge to the public purse because of his poverty, expressed in the 1905 Aliens Act, has become one of the prime excuses for refusal. However, the 1971 Act gave one important concession to those Commonwealth men who were already settled in Britain when it became effective on 1 January 1973. Section 1(5) stipulated that no Rule should cause these men or their families to be 'any less free to come into and go from the UK than if this Act had not been passed.'

Consequently men settled before 1973 retained the unconditional right to be joined by their wives and unmarried children below the age of 18 years.

This entitlement has been removed by the 1988 Immigration Act which specifically repealed Section 1(5) of the 1971 Act. All dependents of Commonwealth men are now required to satisfy the requirement as to maintenance and accommodation and it appears that it is being enforced with increasing strictness. This development is discussed more extensively below.

The repeated insistence on this prerequisite for entry has given credence and legitimacy to the myths and images portraying 'immigrants' as 'scroungers' off the welfare state, squandering (white) tax payers' money. The dangers of such stereotyping becomes apparent when it is appreciated that in popular parlance the term 'immigrants' is equated not only with 'black immigrants' but with all black people in Britain including visitors (who would be 'tourists' if they were white!) and British-born black people.

Immigration Rules

The 1971 Act is the main instrument for immigration control, defining those who are subject to control, but it is the rules which provide the guidelines for the administration of control. They set out the criteria for admission and the conditions under which admission may be granted. (Evans, 1983, p.110) The Act empowers the Home Secretary to formulate Rules which are put before Parliament. They become effective unless either House of Parliament vote against them within 40 days in which case the rules are to be suitably amended. This enables changes in the rules to be made from time to time with the minimum of delay, debate and publicity.

Since 1973, when the 1971 Act came into effect, there have been a number of changes in the rules which reflect the increasingly repressive nature of immigration control. The changes made are an indication of the specific groups of people targeted for stricter control at any particular time. For example, husbands and fiances have been a prime target for control as they are seen as a strain on the employment market and also as 'heads' of new black families. As a consequence the rules governing the conditions of their entry have undergone many changes, ranging from complete exclusion (the 1973 rules allowed entry only when exclusion was considered to be undesirable), to the present restrictions which include the 'primary purpose' rule. The changes which have taken place over the past 17 years reflect the struggle between the state's wish to prevent the entry of any more black men into Britain and black communities and particularly black women, campaigning against the sexism and racism inherent in the restrictions imposed by the rules.

Most informative is a study of the way in which these rules are interpreted and administered.

The administration of immigration control

Macdonald (1987, p.27) refers to the 'vast submerged section of immigration practice to which members of the public and those affected by it are not privy' enshrined in the secret and unpublished instructions issued to immigration officers, including entry clearance officers. The secrecy surrounding these instructions has made it possible for attitudes, assumptions and stereotypes to be incorporated into the way subjective and discretionary decisions are taken. Secrecy provides a cover for how the system is operating and makes the challenging of these attitudes more difficult. However from time to time some indication of the policy objectives and underlying assumptions have come to light.

Home Office instructions in 1979 referred to the need to be particularly vigilant to prevent evasion by people from the 'pressure to emigrate' countries. The Home Office admitted that 'nationals of rich countries are likely to be subject to less intensive scrutiny and are less likely to be refused than nationals of poor countries.' Although the 'poor countries ' were not identified, their nationals have been picked out by immigration personnel as being black.

The use of x-rays and virginity testing was based on secret internal instructions to immigration officers. Instructions have also laid down guidelines for the hypothetical questioning of spouses for determining the primary purpose of the marriage. (Bevan, 1986,pp.14-15)

Because of the requirement of prior entry clearance, those wives and children wishing to join their sponsors settled in Britain first encounter the system of control at the British High Commission in their country of origin. The families of Bangladeshi origin have been most severely affected because of the pattern of migration of the Bangladeshi community in relation to the timing of Immigration legislation. For this reason the impact of the immigration controls on people of Bangladeshi origin will be considered.

The initial step for a person in Bangladesh wishing to apply for settlement is to lodge an application with the High Commission in Dhaka.

Every applicant for entry clearance is allocated to one of 4 queues according to the priority attached to his or her application.

Table 1: The number of applicants awaiting 1st interview in Dhaka.

	Q1	Q2	Q3	Q4	
Sept. 1986	640	1900	130	2700	
Sept. 1987	400	1800	140	2600	
Sept. 1988	230	1600	150	2100	
Sept. 1989	120	650	120	1400	

Queue 1 (Q1)- Applicants with a claim to right of abode; dependent relatives over 70 years. and special compassionate cases.
Queue 2 (Q2)- Spouses and children under 18 years (1st time applicants).
Queue 3 (Q3)- Fiance(e)s and others (1st time applicants).
Queue 4 (Q4)- All reapplicants for settlement.
(Source: Hansard, Vol.164, Col 468, Written answers 8.1.90)

As the queues are simply names on paper the pressure involved in dealing with a physical queue is absent. In fact it is apparent that the delays experienced by applicants in the sub-continent are part of the mechanism of control. A Home Office briefing paper in 1983 noted that the number of ECOs at a post was 'the prime regulator' of immigration from the Indian sub-continent and that 'provided the queues do not become too long, this form of administrative regulation can continue.' This method of control is comparable with the special voucher system for the admission of British overseas citizens. The rate at which they are allowed to enter Britain is controlled by operating a waiting list of applicants. The delays and uncertainties built into this system add to the psychological control over the communities affected by these procedures.

Table 2: Waiting time (months) in Dhaka

	Q1	Q2	Q3	Q4
Oct. 1986	3	8	8	22
Oct. 1987	3	7	7	21
Oct. 1988	3	7	7	23
Oct. 1989	3	3	3	11

(Source: Hansard, Written answers, Col 47/48, 18.12.89)

As seen from table 2, the waiting time, which is the time that elapses between the application being made and the first interview, could be as high as 23 months for reapplicants. First time applicants also experienced considerable delays. A high proportion of initial interviews resulted in a decision being deferred until after a subsequent interview, and other investigations, all of which increase the delays in the operation of the system. It has not been unusual for 2-3 years to elapse between the initial application and a final decision being taken by the ECO.

At the interview the applicant has to establish his or her entitlement to entry clearance. For Bangladeshi families the greatest difficulty has been to prove to the satisfaction of the ECO that they are related as claimed to their sponsor. The non-availability of documentation such as birth and marriage certificates has contributed to their difficulty. But the suspicions and doubts in the minds of the ECOs coupled with the intention to refuse entry clearance in as many cases as possible have proved to be the main barriers to Bangladeshi families. Instructions and advice notes issued to ECOs encouraged the development of expectations and attitudes which would have affected their dealings with entry clearance applicants, and their exercise of discretion. A 1976 paper prepared in Dhaka stated that 90 per cent of all applications included bogus children. (CRE, 1985,p.21) The CRE investigation found ECOs having expectations of a high incidence of deception in applications, as high as 95-99 per cent. (CRE, 1985, p.21)

Investigations into the operation of immigration control reveal how the interviews are conducted in a search for 'discrepancies' which can form the basis of a refusal rather than a search for corroboration of the claims of the applicants being interviewed. The zeal with which cases of fraudulent claims are uncovered is not balanced by an equivalent drive to ensure that genuine applicants are enabled to exercise their rights. The result has been a high refusal rate of applications for settlement and the exclusion of many people who have subsequently been able to prove their relationship.

Table 3: Applications for Entry clearance for settlement of Wives and Children- Initial Refusal Rates in Dhaka.

Year	Applications refused	Applications granted	Initial refusal rate %
1985	4200	4170	50.2
1986	2580	3040	45.9
1987	1060	2410	30.5
1988	1370	3060	30.9
1989	1490	4310	25.7

(Source of application statistics Home Office, Control of Immigration Statistics UK 1989, Cm 1124)

The figures in Table 3 refer to those applications refused and granted at the initial stage, that is by the decision of the ECO. Some of those refused were subsequently granted on appeal. Refusal rates are high throughout the sub-continent, but Bangladeshi applicants have encountered significantly higher levels of suspicion. For example, in 1985, in Bangladesh 1 in 2 applications were refused. Over the same period, approximately 1 in 4 were refused in Pakistan and 1 in 10 in India.

The immigration authorities have used what has become known as the 'Sylhet Tax Pattern' as a justification for refusals. Many Bangladeshi men on settling in Britain sent money home to help in the maintenance of dependent relatives. If the man was unmarried he would contribute to the support of members of his

extended family, nephews, nieces or younger brothers and sisters. A man in this position realised that he could gain tax relief in Britain by claiming these dependents as his own children. This resulted in false information about his family being recorded on his income tax forms. Difficulties arose when subsequently, having married and had children of his own, he applied for his family to join him. His actual family did not correspond to his 'tax' family and he resorted to various methods of trying to match his applicant family to the data on his tax records. Usually this was accomplished by adjusting the ages of the applicant children to correspond with those of the 'tax' children, and/or claiming other children, whose ages corresponded with the tax records, as his own children. In cases of the latter type, usually no application for entry clearance was made on behalf of these children, but the immigration authorities required that full family details be given by the sponsor even for those children for whom entry clearance was not being sought. Similarly discrepancies between a man's real wife and 'tax' wife needed to be accounted for, by false declarations of age and date of marriage of the actual wife, or by claiming that the first wife had died or been divorced. So many families were caught in a situation of being closely examined at the interview stage on family relationships, names, ages, dates of events, and on numerous other personal details. Family members were questioned individually, even young children, and their responses compared and crosschecked with those of the sponsor and with his tax records. Any discrepancies were regarded as evidence that the credibility of the total application was destroyed and resulted in refusal.

This process could take place over a period of months or years. After the initial interview, the ECO could request more documentation, and a decision deferred until after a subsequent interview. Crosschecking with tax records in Britain increased delays. It also enabled yet another arm of the state to enter into the arena of immigration control. Sponsors were encouraged to make full 'confessions' of previous 'bogus' applications and expected to make tax refunds. The practice of checking applications with tax records in Britain has now ceased. (Home Office, 1986, para 2.6) Since the withdrawal of tax allowances for children, the usefulness for immigration work of such checks has diminished. In order to detect 'discrepancies', it was sometimes necessary to determine the ages of the children applying for entry clearance to compare with the claimed ages on tax forms or other documents produced. A medical examination was often requested by the ECO for this purpose, and it became standard practice to subject children to x-ray examinations for the sole purpose of age determination. There are also reported cases of the clinical examination of women, including gynaecological examination, for age determination, to decide whether she could reasonably be the mother to certain children as claimed. (Lal and Wilson, 1986) Fees were charged for these examinations, to avoid any burden being put on the British tax-payer. The CRE (1985) reported cases where applicants did not submit to a medical examination because of lack of funds to pay for it. Lack of financial resources was again a direct cause of not only excluding people from entering Britain but also of maintaining divisions in black families.

If after interviewing the applicants, and carrying out any other investigations he thought appropriate, there were still some doubts in the mind of the ECO he might decide that a 'village visit' to the home of the applicant family might be helpful. The logistics of village visits have been described elsewhere, but essentially they would seem to resemble miniature invasions of between 2 and 4 ECOs, accompanied by interpreters, arriving unannounced in the village. The element of surprise was considered crucial to prevent 'collusion' so the ECOs would quickly separate after arrival, some to question villagers and the other group to question family members. The net of British immigration control has spread not only to the homeland of Bangladeshi people but into their villages and very homes. Their personal papers such as letters and school reports, and family photographs are scrutinised. Their relations and friends are questioned. The most private details of their family life are investigated; the interaction of members of the family are watched; their physical features noted and commented on.

The fact that such intrusive visits are allowed to take place is indicative of the operation of power.

Power is everywhere ...because it comes from everywhere. (Foucault, 1979, p.93)
The whole ritual of immigration control depends on the operation of power in the relationship between the applicants who are mainly black people and those operating power, mainly white people, on behalf of the state. A system of power is most effective when it operates repeatedly, by different people, at different times and in different places. Immigration control now operates on black people long before they arrive in this country, starting from their very homes.
Applicants play the role of supplicants, not applying for what is their legal entitlement, but asking for what may be grudgingly awarded as a 'concession'. They may be humiliated by degrading surroundings at the BHC. They play the role of the 'accused' in an interview which more closely resembles an interrogation. They are subjected to demeaning attitudes, intrusive questioning and accusations of deceit and other wrongdoing. They are questioned in a language they do not understand and may communicate only through an interpreter. They may be required to 'confess' and make recompense. They are made to pay for every step of the humiliating process. They are forced to submit to medical tests of various types by people who have no concern for their health. Sponsors now have to provide evidence of their financial status and undertake not to make use of certain benefits of the welfare state that they have helped to finance. They may be physically a part of Britain but the clear message to them is that they do not belong and they are set apart.
The role of the ECO is that of authority figure in the power relationship. He is the controller, interrogator, investigator and judge. He has the power to allow children to join parents, and wives to join husbands; and the power to keep them apart.
Apart from immigration and medical officers, there are other officials who are involved in the administration of control. Within Britain many rights and activities are linked to immigration status. Coupled with the increasing powers of the state to deport and remove unwanted 'immigrants' and the increasingly strict application of these powers, the immigration status of anyone who is 'visibly foreign' (that is black) is subject to scrutiny. There is a constant checking of immigration status by different officials at different locations: housing departments, schools and places of employment. A person's entitlement to medical treatment has also been made dependent on immigration status. The police work closely with the immigration department in their hunt for 'illegal immigrants' and it has become standard practice for any black person having dealings with the police, even as a complainant, to be required to produce his or her passport. A black person in Britain is subjected to control through checks, crosschecks, and exchange of information from one department to another. The right of black people to live in Britain and to enjoy the most basic amenities is open to constant challenge.
An increasingly complex system of control over the lives of black people operates in contemporary Britain where 'human rights' have become equated with 'citizens' rights' and 'citizenship' has become linked to (white) 'ancestry'. This is the justification for the denial of the right to family reunification for thousands of families.

Chapter 3: The Development of DNA Testing

As discussed in the previous chapter, immigration legislation and administration has relied in its development on medical tests and health criteria. Consequently, medical personnel have become part of the body of people empowered to exercise immigration control. An important feature of this system of control is the large role of discretion and subjective judgements in decision taking. This gives broad discretionary powers to individual officers, which not only empowers the officials but also renders those applying for admission more powerless, as they are unable to satisfy the undefined and indefinable requirements of the immigration officers. The decisions of immigration officers

to refuse applications for admission, being largely discretionary, have proved very difficult to challenge.
The development of a new technique in medical testing, DNA profiling, has considerable implications in immigration procedures. It enables close relationships such as parent-child relationships to be conclusively established. Thus it has the potential for eliminating the uncertainty and subjectivity associated with discretionary decisions, empowering family members seeking settlement in Britain to establish disputed relationships and thus their right to entry.
In the next two chapters, the development of this new technique and its implementation in immigration control is analysed. Particular importance is attached to the state's endeavour to retain the discretionary feature in decision making as this results in the retention of power by those making the decisions.

The Limitations of Blood Group Testing

Evidence based on blood tests has been used in cases where relationships, particularly paternity, are issues of dispute, however it has been largely limited to excluding an individual from a relationship rather than proving that two people, such as father and son were related. Conventional blood testing was unable to conclusively establish close relationships such as parentage.
More recently blood testing techniques have become increasingly sophisticated, enabling the identification of a greater number of blood systems (blood group antigens). This has increased the value of blood tests in positively confirming a relationship such as paternity, particularly when a rare antigen is identified in the blood of both child and purported parent. (Webb, 1986) Based on the results of these tests it has been possible to give evidence as to a disputed relationship in terms of statistical probability. For example, in a 1983 case, Dhanbai Ranji Vasta and 3, (Unreported, November 1983) the tester was able to state that only one in 333,000 couples unrelated to the appellants could provide blood samples which would be consistent with parentage of the children in dispute. (Webb, 1986) The Immigration Tribunal, despite undisputed 'serious discrepancies' in their evidence was sufficiently convinced that the appellants' identities were established to allow the application.
However two issues arise which have caused the evidential validity of blood tests in immigration cases, compared with, for example, paternity suits, to be questioned. Firstly it would be unlikely that a couple would wish to sponsor a child who is completely unrelated to either of them. In the majority of immigration cases where relationships are disputed it is suspected that the child is a nephew or niece to one of the claimed parents or in some other way closely related. According to Professor Dodd.

> The closer to the appellant children one moves in terms of relationship the greater the chance of the relative having blood types in common with the child. (Webb, 1986, p.56)

Evidence expressed in terms of the probability of people being related as claimed rather than being completely unrelated is inappropriate in immigration cases where the sponsor-applicant relationship is close, but may not necessarily be that of parent and child.
Secondly, the calculation of statistical probabilities relies on the knowledge of the incidence of blood group antigens in a particular population. It is known that the incidence varies between different ethnic groups but statistics have been based on European-based research. With these two constraints, expert testimony on blood grouping tests was given in negative terms such as 'the results show nothing to suggest that the family is not related as claimed'. In the 1985 case R v IAT ex parte Ashiq Ali, Vann J in part of his judgement stated that all that could be deduced from the blood testing evidence was 'the exclusion of the possibility that the applicant was not the son. More than that it did not do.' (Quoted in Webb (1986) p.56)

The Discovery and Advantages of DNA Testing

In 1985, Dr (now Professor) Alec Jeffreys reported the discovery of DNA testing. DNA testing has proved to be the most precise means yet discovered of establishing close relationships such as paternity.

All cells of the human body contain DNA which is the genetic material contained in the chromosomes. Each human cell contains 46 chromosomes arranged in two sets of 23 pairs. One set of chromosomes is inherited from the mother, the other set from the father. For an individual the structure of the chromosomes in every cell is identical. However, although most parts of human chromosomal material does not change from individual to individual there are specific regions in the chromosomes which are highly variable. The DNA test as developed by Prof Jeffreys is highly complex, but entails isolating the genetic material from a suitable sample, usually blood, and exposing it to 'restriction enzymes'. These attack the DNA molecules at specific sites, breaking the DNA into fragments. The resulting fragments are subjected to gel electrophoresis, a physical means of separating very small quantities of material. This process results in the DNA fragments being separated into a number of clusters or bands on the surface of the gel. The bands of fragments can be transferred onto a paper-like, nylon membrane by a process called 'Southern blotting'. The membrane is exposed to radioactive 'probes' which fasten on to the DNA material. It is possible to get a permanent visual image of the bands by putting the nylon membrane in contact with an x-ray film. The positions of the DNA fragments are recorded as a series of bands or stripes (similar to the bar coding on supermarket goods) which is known as a DNA profile or DNA 'fingerprint'.

Of the bands in the DNA profile of a person, half are inherited from each parent. Every individual has a unique DNA profile, except for identical twins as they inherit the same genetic material. The analysis of the results is done by comparing the profile of the child with that of his parent or parents, since each band in the child's profile must have been inherited either from the father or from the mother.

The potential of this new technique in immigration casework was first demonstrated in the case of Andrew Gyimah, a British-born Ghanaian. Andrew, having left Britain as a child was refused admission when he attempted to re-enter to join his mother at the age of 15 years. The immigration authorities believed that Andrew was in fact a nephew to the woman he claimed was his mother. DNA testing revealed a high number of shared bands between Andrew and his claimed mother. The chance of this match occurring at random was estimated at 30 thousand million to one. Despite these results the Home Office did not immediately concede the case. It was not until the day the case was to be heard that the Home Office conceded without the technique being legally tested. (Kelly, Rankin and Wink, 1987).

This case was hailed as a milestone in the field of immigration and attracted much interest at the Home Office and Foreign and Commonwealth Office. At last there was a scientific technique which could prove, rather than just disprove, disputed relationships. (Fransman and Davidson (1988) p.57)

The admissibility of the evidence from DNA testing has subsequently been accepted by the courts in establishing paternity in affiliation and divorce proceedings and as forensic evidence in criminal cases, as well as in immigration cases involving disputed relationships. (Fransman and Davidson, 1988) In the United States the admissibility of DNA evidence is still determined by the courts in individual cases as it has not been accepted as a new procedure at pre-trial admissibility hearings. (White, 1990).

Once the significance and scientific validity of DNA testing was appreciated by the Courts a number of immigration cases of long standing were finally resolved in favour of the applicants who used evidence from DNA testing, for example Amiruzzaman, a Bangladeshi boy. This encouraged other applicants who had previously been refused entry clearance on the ground of not being related as claimed to travel to Britain as visitors, and while in Britain to undergo DNA testing to support their appeal or re-application.

The introduction of the visa requirement in September 1986 for visitors to Britain from India, Pakistan and Bangladesh made it increasingly difficult for applicants to enter Britain to undergo the test, particularly as any person who had been refused entry clearance for settlement purposes would be treated with a considerable degree of suspicion by ECOs if he or she applied for a visitor's visa. The imposition of a visa requirement constituted an effective barrier to those applicants wishing to avail themselves of the new DNA testing technique. This barrier was strengthened by the enactment of the Immigration (Carriers Liability) Act, 1987.

However the Immigration and Nationality Department of the Home Office appreciated that DNA testing would provide a means of finally resolving contentious immigration cases and a Pilot Scheme involving DNA testing as part of entry clearance procedures was undertaken. Originally planned for Bangladesh only, the Scheme was established in both Pakistan and Bangladesh.

The Pilot Scheme for DNA Testing

Thirty six families took part in the Pilot Scheme. Most were from the entry clearance queues in Bangladesh and Pakistan, but a few special cases, nominated by British MPs or Immigration Agencies were included. A total of 103 children were involved. Of these children, 49 had previously been refused admission and 54 were first-time applicants. (Home Office, 1988) Participation in the scheme was voluntary and involved no additional cost to the participants. Blood samples of the applicants residing in the Indian Sub-continent were collected by medical personnel at the British High Commissions in Dhaka and Islamabad and sent to Britain for testing. The actual testing was done at the ICI Cellmark Laboratories, Abingdon under the personal supervision of Professor Jeffreys.

As well as DNA testing, the blood samples collected were also subjected to conventional blood grouping tests, referred to in the Home Office Report (1988) as Blood Group Polymorphism (BGP) tests. By doing this parallel study it was possible to compare the DNA results with the results from BGP tests.

The objectives of the Pilot Scheme were stated as being:

(1) to gauge whether applicants, particularly those coming through the system for the first time, are interested in proving their relationships in this way;

(2) to assess the feasibility of taking blood samples from applicants both here and abroad;

(3) to consider whether the procedures devised for the pilot scheme need improvement;

(4) to look for any indications of the impact the technique would have if used generally. (Home Office (1988) para 8)

Interpreting Results

The DNA profile appears as a series of bands each of which is inherited from the parents of the individual tested. However in about 1 in 10 people tested a single band occurs which cannot be ascribed to either parent and which occurs as a result of a mutation. In approximately 1 per cent of the population a double mutation occurs producing 2 bands in the profile which cannot be matched with the profile of either parent.

When DNA testing is used to establish disputed relationships the profile of each child is compared with that of his or her claimed parent or parents. Normally each of the bands in the child's profile will match with bands in the DNA profile of the father and/or mother. Such matching will confirm the claimed relationship. However in those cases where there are 1 or 2 bands not found in the parents' DNA profile, there is less certainty in the results.

In the Pilot Scheme there were a number of children for whom only one parent was available for testing. In such cases the bands shared by the child and parent are identified and the percentage band sharing is calculated.

On average, two unrelated individuals show a band sharing of 25 per cent, but a child shares 62.5 per cent of his or her parent's bands. (Siblings, also having a 'first degree' relationship, have 62.5 per cent band sharing.) DNA profiles of persons less closely related such as uncle and nephew/niece (that is, a 'second degree' relationship) would be expected to show 44 per cent band

sharing. However these are averages and variations do occur, particularly in those persons where mutant genes are present.

Instances were found where the results were such that no unambiguous conclusions could be drawn. For example, the level of band sharing between one child and his claimed father was 56 per cent, a result equally compatible with the relationship being nephew and uncle as father and son. In cases where the degree of the relationship could not be ascertained a more refined test, known as the single locus probe, was carried out. In this test only one of the regions of high structural variability within the chromosomes is targeted by the probe. As a result it is possible 'to identify the fate of single locations of genetic material as they are passed from parent to child' (Home Office, 1988, footnote to para 20) and hence verify or exclude biological parentage.

The DNA tests carried out under the Pilot Trial, with further single locus probe tests in 22 cases were able to establish parentage well beyond the legal requirement of 'balance of probability' in all but 4 cases. In 2 of these remaining 4 cases, the blood samples were too poor in quality for single locus probe testing to be carried out. In the other 2 'uncertain' cases even after single locus probe tests the actual degree of relationship could not be ascertained.

These four cases are particularly interesting as in each case the DNA evidence reveals that although the child cannot be the off-spring of both parents as claimed, he or she is almost certainly the child of one of the claimed parents and closely related (probably as niece or nephew) to the other. Thus although 'more than one possibility as to parentage' is left open in these 4 cases, on the balance of probabilities they were each related as claimed to one parent.

In 4 other cases the relationship between one of the claimed parents and the child was established but the second claimed parent was excluded. One child (of family 19) was the off-spring of the father only; one (of family 25) was related to the mother only. The other 2 children (of family 31) were proven to be related to the father as claimed but shown to be the off-spring of different women. (The mother or mothers were not available for testing.) The point of contention as far as the immigration authorities were concerned was that the father had claimed that they were the off-spring of the same woman. In addition the issue of legitimacy of the children was raised which may be relevant in decisions as to entry clearance.

Thus out of the 103 children there were almost certainly 8 children, including the 4 classified as 'more than one possibility as to parentage', definitely the offspring of one claimed parent but not of the other. Cases such as these, where DNA testing reveals that a child is related to only one claimed parent raise a number of important issues which will be considered in detail below.

Of the 103 children tested 86 were shown to be 'related as claimed' or to have a 'high probability' of being related as claimed. The slight element of doubt was ascribable in most cases to the occurrence of a single or double mutant band. For the purposes of immigration law and practice, the tests are conclusive enough to establish the relationship.

The results can be summarised:

DNA Results	Number
Related/High probability related as claimed	86
Related to one parent as claimed, other not	4
More than one possibility	4
Not related to either parent as claimed	9

(Home Office, 1988, Annex I)

The 9 children proven not to be related to either parent as claimed, comprise less than 9 per cent of the total sample tested. More than 91 per cent of the sample were related to at least one parent as claimed, and most of these were able to establish their relationship to both parents.

The results were also analyzed according to two categories: those children applying for entry clearance for the first time, and those who had been previously refused:

	Previous	First time

	Refusals	Applicants	Total
Related or probably related as claimed	45	41	86
One parent related as claimed, other not	2	2	4
More than one possibility	0	4	4
Not related to either parent as claimed	2	7	9
Total	49	54	103

(Home Office, 1988, Annex I)

Of the 49 children who had previously been refused entry clearance only 2, comprising 4 per cent of the sample, were shown not to be related to either parent. The remaining 47 children were related as claimed except for 2 who were shown to be related to only one of the two claimed parents. The Home Office were understandably reluctant to draw any far reaching conclusions from these statistics. The size of the sample included in the Pilot Trial was small. It could also be argued that the sample was to some extent self-selected. Participation was voluntary, and one would anticipate that persons who had knowingly made bogus claims for the purposes of securing entry clearance would not submit to DNA testing, if fully appreciating the capabilities of the tests. Nevertheless these results should be a serious cause for concern, showing that such a high proportion of the children tested had previously been wrongly refused entry clearance. The results also challenge the assumptions, attitudes and directives of the immigration authorities in Bangladesh and Pakistan concerning the credibility of entry clearance applicants of those countries. It is disappointing that the Home Office Report on the DNA Pilot Project focuses less on past injustices, preferring to emphasise those cases which involve misrepresentations.

[R]esults show that false claims about parentage were made by or on behalf of children in 8 of the 36 families in the pilot trial. It is worth noting that in 5 of these 8 families other applicant children were shown by the tests to be the true children of the claimed parents. This tends to confirm that a favourable DNA result on one child cannot be taken as indicating that other applicant children in the family are related as claimed, and vice versa. (Home Office, 1988, para 31).

Such comments would encourage ECOs to retain their attitudes of scepticism, approaching each applicant with the assumption that he or she is making fraudulent claims. By interpreting the findings by 'families' rather than 'children' it makes the apparent incidence of deception seem greater.

In only 5 of the 36 families were there found to be applicant children who were the off-spring of neither parent. It is conceivable that in those cases where the children were related to only one of the claimed parents, 'false claims' may have been made unwittingly.

The Pilot Trial revealed that most but not all the families contacted were interested in proving their relationship using DNA testing. For example, out of 20 families selected from the entry clearance queues in Bangladesh, invited to participate, only one family refused (Home Office, 1988, para 12). The whole procedure was found to be feasible. Only one blood sample reached the testing laboratory in such a condition that it could not be tested.

The CRE (1985) had found that the Home Office and Foreign and Commonwealth Office were concerned more with detecting bogus applicants than facilitating the rights of genuine ones. This bias remains. The anticipation of fraud and deception in applicants has resulted in great emphasis being placed on developing procedures for the taking of samples for testing and the checking of results:

It is obviously crucial to check the identity of the person giving blood to guard against any risk of impersonation and fraud (Home Office, 1989, p.2)

Procedures for DNA Testing

The following procedures were devised for DNA testing for the purposes of the Pilot Scheme and have remained basically unchanged since then. Blood samples taken overseas are taken by a doctor on diplomatic premises under the supervision of consular staff. A passport-sized photograph of the applicant from whom the blood sample is taken is endorsed by the doctor as being a true likeness of the person sampled. This photograph is sent direct to the Immigration and Nationality Department (IND) of the Home Office to be checked against the photograph in the applicant's passport. The blood sample is sent directly to Cellmark laboratories for testing.

The question of provenance of blood samples has been seen to be crucial. For example, the Adjudicator in the case of Gul Firaz implied that because the blood samples had been taken 'merely' by a Dr Malik of Islamabad rather than a British Embassy doctor, the 'evidential value of the report was diminished' (Webb, 1986).

Where the sample is taken in Britain the procedure is basically the same except that the person taking the sample should be an approved doctor or blood tester. The sampler is expected to endorse two recent photographs of the person being tested, and the person being tested is required to sign in the presence of the sampler that he or she has not received a blood transfusion within the last 3 months (Home Office, B2, (1989) and JCWI Bulletin, July 1987).

In the Pilot Trial all results were sent directly to IND for consideration and decisions as to relationships were determined relying heavily on the evidence provided by DNA test results (Home Office, 1988). Currently, in the case of new applicants who present DNA evidence, the reports are sent to the High Commission. The ECO is then held responsible for 'validating' the results by obtaining a separate copy of the results directly from Cellmark 'to guard against substitution' (Home Office B2 Division, 1989, p.2). This has the additional effect of incorporating yet another delay factor into the immigration control system.

Chapter 4: The Application of DNA Testing in Immigration Control Procedures.

The availability of DNA testing meant that many problems associated with applications for entry clearance for dependent relatives could be conclusively settled. The validity of disputed family relationships could be determined, eliminating doubts and the need for the exercise of discretion.

The Pilot Trial established the feasibility of the procedure. It also indicated the extent of erroneous decisions previously made by immigration officials. For the first time applicants had the means to challenge effectively both the past refusals and the attitudes and prejudices harboured by those exercising control. The Government had the opportunity to correct past injustices, to exercise flexibility and magnanimity to those family members who were able to prove conclusively that they had been wrongly excluded.

In this chapter the effect of DNA testing on the administration of control and the development of Home Office policy is analysed. The Home Office has largely declined the opportunity to acknowledge and correct past injustices and it has preferred to retain the power to give concessions, involving discretionary decisions, rather than recognising the rights of individual applicants. Thus families continue to be subject to the changing system of power.

As families have established disputed relationships, existing means of exercising control have been retained and strengthened. Administrative delays and financial criteria were previously part of the strategy of immigration control. In this chapter these issues are re-examined in the context of DNA test availability.

A number of new issues have assumed importance directly as a result of the introduction of DNA testing. Firstly, DNA testing is very expensive which limits its availability, and which raises questions about the funding of a Government sponsored scheme. Secondly, as a test is now available for providing, in most cases, proof of parentage of a highly conclusive nature,

there may be a danger that the position of the 'balance of probabilities' might be shifted in immigration cases. Thirdly, the policy and practice of the Home Office on the 'over-age applicants', that is, those children who are now over the age of 18 years, needs to be considered. Fourthly, delicate issues arise in those families where one or more applicant children are found to be related to only one of their claimed parents.

The development of Home Office policy on these issues and the development of new legislation and policies which in their effect serve as further obstacles to those who would have benefited from DNA testing, are addressed below.

Administrative Delay as a Weapon of Immigration Control

As noted earlier, delaying tactics have been utilized as a tool in controlling the number of immigrants entering Britain. It was hoped that the introduction of DNA testing would at least reduce the time taken between applications for settlement and final decisions. British Immigration officials were quoted as saying about DNA testing: 'tests will take about a month to complete and will speed up the processing of immigration applications in Dhaka'.

Initially, at least, the anticipated improvements in speeding up the application procedures did not materialize. Where improvements have been achieved they have usually resulted from hard fought campaigns.

Those persons who, having previously been refused entry clearance, undertook privately to use DNA testing to establish their relationship with their sponsors were required to submit a fresh application and join the re-applicant queue. The DNA evidence would only be considered when they reached the top of the queue, a process which could take nearly two years.

As noted above, despite the rigourous procedures adopted when blood samples are taken to prevent fraudulent practices, the immigration authorities introduced another set of procedures involving communication between the ECO and the testing laboratories, an unnecessary procedure (in view of other safeguards) which could cause an additional delay of up to 3 months (Divided Families Campaign, 1989).

The UKIAS has suggested that applicants for settlement should be able to opt for DNA testing at an early stage, and that those willing should be put in a 'fast stream' or separate queue so that the 'waiting period reflects the saving of staff time on the interviewing process' (UKIAS Annual Report, 1988-89).

The Divided Families Campaign argued that applicants, formerly refused entry clearance but now having DNA evidence establishing their relationship, should not be regarded as re-applicants and subjected to further delays. Instead their previous application should be reconsidered in the light of the new evidence, thus minimising the need for reinterviewing and other administrative procedures (JCWI, 1989, Briefing Paper).

Possibly as a result of campaigns by pressure groups, the Government gave a concession to reapplicants with DNA proof of relationship in stipulating that they would be 'fast-streamed', but at the same time it limited its concession to cases where 'there are no other issues than relationship' (HC, Col 695, 11 January 1990). This restriction is considerable, as other criteria for settlement applications have been raised as relationship issues have been settled. The questions arising from these criteria are discussed below.

The time scale involved in the action of the Home Office to incorporate DNA testing in entry control procedures is indicative of how delays and inaction can be used to reduce (black) immigration.

The results of the pilot trial were published in July 1988, more than 2 years after the details of the operation of the scheme were first agreed. At the same time the Home Secretary announced that DNA profiling appeared to be the most accurate method for determining relationships and that the Government would continue to accept DNA evidence. The announcement of a centrally organised scheme was expected to be made shortly. However it was not made until nearly a year later. On 14th June 1989, the Secretary of State for the Home Department announced that a scheme for incorporating DNA testing into the entry clearance procedure, for first-time settlement applicants only, would be introduced later in 1989. At the time of writing, more than one year after this announcement was

made and five years after DNA testing first became a possibility, the scheme has yet to be introduced.
However, DNA profiling continues to be extensively used. The extent to which it is being used can be estimated from a reply by Tim Renton, Minister of State, Home Office, when he stated that IND received 750 DNA test reports within a 4 month period in 1989 (HC Debates, Col 1046, 13 April 1989). Cellmark Diagnostics, the laboratory where all DNA testing for immigration cases is carried out, claim that it has reported on over 15 thousand immigration samples since its establishment in June 1987 (Personal communication).

The Financing of DNA Tests
The costs involved in DNA testing are high. The charge for the test itself is currently fixed at œ122 exclusive of VAT, œ140.30 including VAT. This is the cost of each blood sample tested. Immigration cases involving a family consisting of parents and two children would usually require the testing of 4 blood samples, that of each of the parents as well as those of the children, as DNA testing involves the comparison of the DNA profiles of the children with those of the claimed parents. Thus the costs involved for large families are considerable. In addition a variable fee is charged by the doctor taking the blood sample. For example, the London Hospital charges œ25.20 per person for blood sampling (Fransman and Davidson, 1988).
The cost of applications for settlement has increased in recent years. Formerly no charge was made for settlement applications but a non-refundable fee of œ10 was introduced on 1 January 1985. By the beginning of 1987 the fee for each passport, which could include the whole family, had increased to œ50. A further increase was introduced in 1988, with effect from 1 June, to œ60 per person. This resulted in a considerable increase for many families (JCWI, Annual Report 1987/88).
Although the families who participated in the pilot trial were not required to pay for the tests, the vast majority of tests have been undertaken and paid for privately. Considering the position of the sponsoring Bangladeshi men in British society this must constitute a considerable financial burden on them. There are concerns that a DNA scheme which forms part of the official entry clearance procedure might constitute yet another hurdle to be surmounted by applicant families because of the costs involved.
Home Office representatives have made it clear that any centrally run scheme incorporating DNA profiling in immigration control procedures should not be paid for by the general British tax payer. Tim Renton speaking in the House of Commons said:

We are now bending our minds as to how to introduce a centrally run scheme which will be fair to all applicants and which will avoid erecting financial barriers which could be deterrents to genuine applicants, without causing the general taxpayer to pay (HC Debates, col 1047, 13.4.89).
In his statement to the House of Commons on 14 June 1989, announcing the introduction of DNA testing, the Secretary of State for the Home Office stated:

The level of the fee to be charged for applications will need to strike a balance between not imposing too great a burden either on the individual applicant or on the taxpayer.
Further light was shed on the Government's intentions concerning funding of the scheme in a leaked document, a briefing note for ministers prepared by IND:

The [Parliamentary] announcement [on DNA testing] ..does not indicate how the scheme will be financed. The intention is to make a separate announcement on the funding arrangements shortly before the scheme comes into effect, to avoid a rush of applications aimed at beating the associated increase in the settlement fee.
It would appear then that the intention is to finance a centrally run DNA scheme by a general increase in settlement fees. Any further increase in the already high fee would be punitive. It would also be unfair as the scheme which is to

be financed by a general increase will be available only to 'first time settlement applicants'. It is these applicants who are least likely to need to avail themselves of DNA testing as they are mainly recently constituted families, more likely to have documentation to support their application and provide evidence of relationships. Re-applicants include those people who have been unable to supply immigration authorities with acceptable evidence of relationship and for whom DNA testing provides their only hope. The very fact that they have previously had their application(s) refused causes their fresh application to be regarded with scepticism. This category, which includes many people wrongly and repeatedly refused over a number of years are not only to be excluded from the proposed scheme but are to be required to subsidise it.

An efficiently organised scheme using free DNA testing for all applicants on a voluntary basis could probably be largely, if not wholly, financed by the resultant savings on other lengthy and costly procedures, including long interview sessions, village visits, and the composition of explanatory statements for appeals. Village visits have been regarded as valuable in resolving relationship issues but are costly in resources. As the need for procedures which are expensive in terms of man/woman-power, is reduced it should be possible to reduce staffing levels in the British posts with resulting financial savings.

When new measures are introduced which are seen to result in preventing (black) people from entering Britain, the funding of such measures by the tax payer is not an issue. For example the introduction of the visa requirement for visitors from five African and Asian countries in 1986 required a massive injection of money to meet the additional cost of diplomatic facilities and staffing levels. It would appear that measures which would tend to exclude black people from Britain can be readily financed by the British Government; but those procedures, such as DNA testing, which would facilitate genuine family members of black people settled in Britain from exercising their rights of settlement and of family unity, are perceived as being a burden on the taxpayer. This would appear to be a means of justifying Government policy and attempting to win popular political support. It also constitutes a further development in constructing images of (black) immigration as being a drain on (white) Britain's resources and services. The fact that the sponsors themselves may be both British and taxpayers is ignored.

The only financial assistance currently available to applicants to meet the cost of DNA testing is through an extension of legal aid. Although legal aid is only given in cases where entry clearance applications have already been refused, applications for legal aid extensions are rarely refused and are speedily dealt with, being processed within 2-7 days (Fransman and Davidson, 1988). Cellmark Diagnostics confirm that 'a large proportion' of the testing they carry out for immigration cases is paid for by 'Legal Aid Green Form Extension' (Personal communication).

Although this is a positive development, the delays frustration and financial burden the sponsor and his family must have already experienced before getting this assistance must not be forgotten.

Balance of Probabilities

As in all civil claims, the requirement of proof in immigration cases involving disputed relationships is to prove on 'the balance of probabilities' that the relationship is as claimed. The burden of proof has been put on the applicants; that is, it is for the applicant to prove his/her relationship rather than for the immigration officer to accept the claimed relationship unless there is evidence for him to doubt it.

Applicants in the Indian Sub-Continent, and particularly in Bangladesh, have to overcome the scepticism of ECOs. Ms Mactaggart of JCWI referred to the method of interviewing by ECOs as searching for discrepancies rather than looking for corroboration (Home Affairs Committee, 1986, Evidence p.121).

As regards DNA profiling, it has been found that in most cases the evidence it provides is quite conclusive in either establishing or excluding parentage. However, in a minority of cases there may be less certainty, particularly, as

discussed above, when the percentage bandsharing is equally consistent with both a first- and second-degree relationship. In such cases the policy of the Home Office has been stated in guidelines circulated to ECOs, IOs and Presenting Officers:

..where DNA evidence supports the claimed relationship on clear balance of probabilities, we would regard this as conclusive. The bench mark we have adopted for this purpose in B2 [the Policy Division of the Home Office] ..is that when the test report shows that the probability of the claimed relationship is at least two or three times greater than any other relationship, this should normally be regarded as sufficient without further enquiry (Home Office, 1989). Where the evidence suggests that the probability in favour of a claimed relationship is twice as likely as not, or less, then the DNA evidence would still be considered in the applicant's favour but would need to be viewed as part of the total evidence; whereas 'conclusive' DNA evidence would obviate the need for any further enquiries as to relationship issues.

Fears have been expressed that, as some applicants with DNA evidence are able to offer a standard of proof greater than that legally required, the danger exists that those responsible for making decisions may look for a higher standard of proof than the balance of probabilities in all applicants. The danger of this happening would seem greatest at the level of the decisions made by ECOs. Imman Ali, who works at the Bangladesh Immigration Advice Service, reports that the British High Commission, Dhaka expected a higher standard of proof than the balance of probabilities in those applying, as British citizens, for a certificate of entitlement. The High Commission was of the view that since the benefits were greater the standard of proof should be greater. This, Ali argues, was wrong since entry clearance and certificate of entitlement were both matters of civil claim (Imman Ali, 1986).

It is crucial that as some persons establish their rights by means of DNA testing, it does not become more difficult for others, who cannot or choose not to avail themselves of the test, to satisfy the ECOs of their relationship, because the expectations of ECOs are raised.

The Home Office has rightly stipulated that DNA testing should continue to be voluntary, and that those who decline the test should not have the fact of their declining held against them. It is important that this policy be adhered to and that those involved in making and monitoring decisions assess the criteria used when refusals are made.

Over-age Children

One of the most contentious issues emerging from the usage of DNA testing is that of 'overage' applicants. These are children whose previous applications for entry clearance were rejected on the grounds that they were 'not related as claimed'. Despite appeals and reapplications they were unable to convince the immigration authorities of their parentage. DNA profiling has provided many of these children with a means of establishing their relationship, and revealed the extent to which wrong decisions have been made by both ECOs and adjudicators.

The Immigration Rules require that children applying to join their parents in Britain should be under the age of 18 years at the time of application. Children over 18 years are required to qualify for settlement in their own right unless there exists 'the most exceptional compassionate circumstances' (HC 251, para 55). Because of procedural delays, and repeated refusals of their applications many children who had applied when very young are now over the age of 18.

Some interim policy guidelines for ECOs were laid down in the Progress Report circulated to immigration officers:

..overage reapplicants should be considered under paragraph 52 [of the Immigration Rules]. Anyone who is able to satisfy these requirements should be admitted in the usual way; but otherwise the case should not be refused but instead deferred pending Ministerial decisions on the exercise of discretion (Home Office, 1989).

Paragraph 52 referred to above, provides that relatives of persons settled in Britain may be admitted for settlement only if they are wholly or partly dependent on their sponsor and where 'they are living alone in the most exceptional compassionate circumstances ..' (HC 169 para 52; para 56 of the current rules, HC 251).
Subsequently, the Secretary of State outlined the government's policy on overage applicants who are unable to meet the exceptional requirements set out in paragraph 52 of the Rules in his statement to the House of Commons on 14 June 1989:

Some one who was refused admission as a child when DNA was not available but has later established the claim to relationship should not by virtue of that fact automatically qualify for admission if the other qualification, namely childhood, is no longer fulfilled.
The Secretary of State made it clear that there would be no change in the Rules which would facilitate the admission of overage applicants. However, he conceded that in certain circumstances he would be willing to waive the Rules. He set out the criteria that re-applicants over 18 are required to fulfil for an application to be considered outside the Rules:

a. that he was refused entry clearance as a child on relationship grounds;
b. that DNA evidence establishes that he was, after all, related as claimed;
c. that he is still wholly or mainly dependent on his sponsor in the UK; and
d. that there are compassionate circumstances in his case.
I shall not regard the fact that a re-applicant was refused entry clearance as a child on relationship grounds on an earlier occasion ...as satisfying the requirement that there be compassionate circumstances.
The Home Secretary also indicated some of the particular circumstances of each case that he would consider before exercising his discretion:

a. the degree and nature of the dependency;
b. the extent and nature of the compassionate circumstances;
c. the re-applicant's present age and marital status;
d. whether other close family members, such as siblings, are already settled in the United Kingdom;
e. the lapse of time between the original application and the re-application.
Predictably 'numbers' will play a part in the extent to which the Home Secretary will exercise his discretion in favour of overage applicants. In a Home Office B2 Division document on the time-tabling of the DNA announcement, the officials who are responsible for implementing this policy indicate that only a limited number of this category can expect to be successful as:

...we are looking for compassionate features which distinguish the particular case from the generality of overage reapplicants. It would be crucial to hold this line to ensure the concession remains the exception rather than the norm in cases involving overage reapplicants.
Thus the decision was taken not to consider the merits of each individual case, but to consider each case relative to others. The above passage makes it clear that only a minority of overage applicants would be granted this concession outside the rules, the majority will remain excluded. If this policy is adhered to it will require an applicant to engage in 'an auction of misery... to establish that his/her plight is worse than that of the generality of cases which have similarly been refused admittance' (JCWI, 'The DNA fingerprint test: The Home Office gives a little, takes a lot', 26 June 1989).
The Home Secretary also indicated that in considering the 'compassionate circumstances' he would pay greater consideration to those of the applicant abroad than the circumstances of the sponsor in Britain. This provision is intended to exclude as many re-applicants as possible. It will also cause unnecessary suffering to the sponsors in Britain, many of whom are, with increasing age, living in conditions where they need the support of their children.

If the principles of natural justice were to be applied, in those cases where previous decisions by ECOs and the appellate authorities were shown to be conclusively erroneous, those decisions would be reversed and the effect of those wrongful decisions put right as far as possible and as speedily as possible. By limiting the remedy to only a minority of reapplicants, and by refusing to consider the circumstances of the whole family, justice is restricted. The policy penalises those overage children who, having been refused entry clearance and prevented from a complete family life, have rebuilt their lives with a measure of success overseas.

This policy came into effect on 8 July 1989 and by April 1990, decisions on 83 'overage' applicants had been taken under the terms of the 'concession'. Of these, 32 were granted admission outside the Immigration Rules, constituting 38 per cent of the total decided. At the same time, about 200 cases were awaiting a decision in B2.

In Bangladesh, overaged reapplicants are placed in Queue 4. At the end of February 1990, Queue 4 contained 880 reapplicants, a substantial proportion of whom were overage reapplicants.

These statistics indicate the way in which this policy is going to be implemented: concessionary entry grudgingly given in a minority of cases, with extended delays and frustration for all. When the reapplicants reach the top of the Queue their cases will be considered by an ECO, involving a further interview, under para. 56 of the new Rules, HC 251. If they satisfy the conditions of being dependent on their sponsor in Britain and living alone in considerable hardship, then the ECO may issue an entry clearance. If not the case may be referred to the Home Office, B2, where it will be considered under the 'concession'. The operation of this policy involving a discretionary decision outside the Rules, offers the Secretary of State a large measure of protection from appeal. Conversely, and more to the point, it offers very little power to unsuccessful applicants to appeal the decision.

Children related to only one parent as claimed

The Pilot Trial revealed 8 children out of 103 tested who were found to be related to only one of the two claimed parents. It could be reasonably anticipated that a number of other similar cases would be revealed as DNA profiling became more widely used. The Home Office Policy division refers to the 'surprising' number of such cases which raise 'difficult issues which often need further sensitive enquiries before they can be resolved' (Home Office, 1989, p.3).

However, those who administer immigration policy have not been renowned for their sensitivity in resolving difficult issues in the past. The possible repercussions of enquiries being made, particularly in those cases where DNA testing reveals a child is related to the mother, but not to the claimed father, are so extensive, that assurances were asked for and given by the Home Office that a 'humane and compassionate view' would be taken of such situations (UKIAS 1988/89 Annual Report, p.17). The issues involved and policy to be followed depend on whether the child is proven to be related to the claimed mother or father.

Child not related to claimed father

UKIAS reveal that in 1986 the Home Office had agreed that where an illegitimate child was not the first or last in the sponsor's family and had been brought up as part of that family, the child would be admitted without the need to inform the sponsor of the DNA results. (Where the child were the first or last evidence would be required to show that the child had been brought up as part of the family) (UKIAS Annual Report 1988/89). However in 1988 and 1989 the Home Office insisted on evidence that the sponsor, being aware of the true situation as to the paternity of the child, continues to accept responsibility for that child.

As there is clear provision in the Rules for admission of illegitimate children, the shift in position as regards policy over such children would appear to have the aim of restricting the number of children admitted for settlement, and

having a complete disregard for family unity and for the status of women. This stance was tested in a case (TH/35276/87) heard before the Chief Adjudicator in November 1988. The case involved 5 appellants, the first being the claimed wife of the sponsor. All had been refused entry clearance on the grounds of not being related as claimed to the sponsor, but after DNA testing the 3 eldest children were proven to be related as claimed to the sponsor (father) and the first appellant (mother). The 5th appellant, a 7 year old girl, was shown to be a child of the 1st appellant but unrelated to the sponsor, her claimed father. Evidence was produced that a 5th child had since been born to the sponsor and his wife. The Home Office Presenting Officer was willing to concede the first 4 cases but instructed to resist the 5th appellant. The Chief Adjudicator allowed the appeal of the 5th appellant, based on the 'limited and circumstantial evidence' available to him that the child had been 'part of the family unit consisting of the sponsor and the remaining 4 appellants.' He decided the child was entitled to admission under HC 169 para 50(c) as the daughter of the 1st appellant and the adoptive daughter of the sponsor, and under para 50(f) as her exclusion would be 'highly undesirable'.

This case was heard in chambers and in the absence of the sponsor. The Court recognised the need for confidentiality even if the Home Office did not. It is to be hoped that this case will be regarded as a precedent. Possibly as a consequence of this decision the stated Home Office policy is more sensitive. It acknowledges that the sponsor may not be aware that he is not the actual father of the child, and that if the facts were to be disclosed there may be serious repercussions both for the wife and the child (Home Office B2, 1989). In such cases the declared policy is to consider whether the child should be granted admission as a child of the family under HC169 para 50(f) if the child has always been part of the family and the sponsor 'exercised paternal responsibility'. The policy guidelines, now mindful of the need for discretion in disclosing DNA evidence, advise:

If the sponsor or other family members ask for information about or copies of DNA reports, they should be referred to their representatives for advice (Home Office B2, 1989).

Child not related to claimed mother

Where a child is proven to be related to the father but not to the claimed mother, the Home Office acknowledges that the child may have entitlement to admission under the Rules depending on the circumstances of the individual case. For example, if the biological mother is dead, the child could be admitted under HC 169 para 50(d); if the father claims sole responsibility 50(e) applies; otherwise it may be considered that exclusion of the child would be undesirable and admission considered under para 50(f).

Changes introduced since DNA Test Availability

The difficulties in establishing relationships between applicants and sponsors were in many cases insurmountable prior to the advent of DNA testing. This requirement, of proving the claimed relationship, was a useful weapon in the armoury of immigration control. This weapon has become virtually obsolete with the evidential proof that DNA profiling affords to those applicants who are willing and able to utilise it. It is necessary to consider what the political response has been to the loss of this power.

As discussed above, the imposition of visa requirements on all visitors to Britain from the Indian Sub-Continent effectively prevented dependent relatives who had tried unsuccessfully to obtain entry clearance for settlement, to enter Britain to take the DNA test.

Subsequently, the test became available to applicants in the Indian Sub-Continent, although at considerable expense. As DNA tests have become more accessible, so the cost of entry clearance charges have been increased.

The use of procedural delays as a method of immigration control has already been considered above. The insistence that those, wrongly refused but now able to establish relationship issues, should make a fresh application and thereby put themselves at the end of a lengthy reapplicant queue is not only manifestly

unfair but has given the government the opportunity to introduce fresh conditions to be fulfilled by applicants and sponsors.

Requirement of Maintenance and Accommodation

Prior to the enactment of the 1971 Immigration Act, the wives and children of Commonwealth citizens settled in Britain had the unconditional statutory right of entry for settlement. The 1971 Act provided that after commencement, 1 January 1973, Commonwealth citizens would have to be willing and able to provide their dependents with both adequate accommodation and maintenance 'without recourse to public funds'. However the existing rights of those Commonwealth citizens settled prior to 1973 were guaranteed by Section 1(5). Under HC 169 para 46, the Rules provided that wives and children under the age of 18 years of Commonwealth citizens settled or having the right of abode on 1 January 1973 were not required to prove their ability to maintain and accommodate their relatives. Many Bangladeshi men benefitted, in principle if not in practice, from this provision.

This guaranteed right was removed by the 1988 Immigration Act, and implemented by the amended Rules, HC 388, with effect from 1 August 1989. It follows that applications received since that date will be decided in accordance with the new provisions. All Commonwealth citizens are now required to show that they are able to accommodate and maintain without recourse to public funds those wives and children who are applying for settlement.

The rationale for the repealing of Section 1(5) of the 1971 Immigration Act must be questioned. It penalises those men who have been living, working and paying taxes, including National Insurance contributions, in Britain for at least 16 years, and in most cases considerably longer. This change in its timing and effect appears to have been introduced to obstruct the settlement of those relatives who have been able to exercise their rights to family unity only with the availability of DNA testing.

Wives of Polygamous Marriages

There is another measure introduced in the 1988 Immigration Act which will have significant impact on the Bangladeshi community. It restricts a man who has married polygamously, even though the marriage(s) may be recognised under British law as valid, to sponsoring only one of his wives for settlement. Other wives and their children are condemned to live lives of exile. Indeed it is likely that they would have considerable difficulty in obtaining a visa for a visit. These wives are denied their rights to family life and to procreation. This measure can be explained in terms of the state attempting to regain ground lost to the Asian community in general but the Bangladeshi community in particular as a result of DNA testing. The numbers of such 'polygamous' wives seeking admission were very small. The government's own estimate was that about 25 such women gained settlement each year (Cm 199, 1987, 6). In addition no wives of polygamous marriages, not even the first wife, was allowed to claim any benefit or pension and consequently could not be considered a drain on public funds.

The purpose behind the Home Office insistence that those who having previously been refused admission should now submit a fresh application now becomes clear. As one barrier to the 'flood' of immigrants is breached, new barriers must be erected. Meanwhile the progress of those who have overcome the 'relationship hurdle' needs to be stemmed, or better still reversed, to enable the new barriers to be put in front of them rather than allowing them to achieve their goal of family reunion.

A case decided before the divisional court (Regina v Secretary of State for the Home Department ex parte Uddin and another) could have far reaching implications in this context.

Implications of R v Secretary of State ex p. Uddin

Both applicants were appealing against a decision of the Home Secretary not to refer their case under Section 21 of the Immigration Act, 1971. Mr Uddin, originally from Bangladesh but settled in Britain, had applied for his wife and 2 children to join him in 1975 and again in 1981, but both applications had been

refused, and the appeals procedure had been exhausted. He had been unable to convince the adjudicator of his credibility.

After obtaining DNA evidence proving his children's relationship to both himself and his wife in 1987, Mr Uddin's representative requested the Home Secretary to exercise his powers under Section 21 to refer the case to an adjudicator. Section 21 allows the Home Secretary to 'refer for consideration...any matter relating to the case which was not before the adjudicator or Tribunal', the case being one which had been dismissed on appeal. It further stipulates that the 'adjudicator or Tribunal shall consider the matter which is the subject of the reference and report to the Secretary of State the opinion of the adjudicator or Tribunal thereon'.

The Home Secretary had declined to refer although he accepted that the new evidence established the disputed relationships. The Judge decided in his judgement that the Home Secretary had not had in mind the full extent of the powers under section 21. The Home Secretary had considered that despite the DNA evidence which he accepted, 'the only way forward for the applicants was a fresh application for settlement'. The Judge could not agree with this view as 'where fresh evidence becomes available it is possible not only to ask an adjudicator to evaluate its credence but also to ask him to consider its effect on the case as a whole.'

Although accepting that the applicants have the option of reapplying with the DNA evidence the judge considered those applicants who know they can not meet the requirements of the rules through being overage or unable to accommodate and maintain without recourse to public funds. The Home Office argument was that if their fresh applications were refused they could appeal to an adjudicator, who if he refused their appeal, could recommend that they be treated favourably outside the rules. 'My reaction to this latter suggested alternative is that the Secretary of State might well think it better to seek the opinion of an adjudicator straight away under section 21 rather than to wait and see if it is forthcoming on the dismissal of an appeal against the refusal of an application under the rules.'

The outcome of this judgement was only to nullify the discretionary decision made by the Secretary of State not to refer. However, if as a result of this the Home Secretary is persuaded to exercise his discretion to refer similar cases for consideration under Section 21, the adjudicator could consider how the new DNA evidence might have affected the original immigration decisions if it had been available at the time those decisions were taken. It would be equivalent to reopening the previous application and reconsidering the decision taken in the context of the rules in force at that time.

The rules make it clear that a person 'shall not be refused an entry clearance... solely on account of his becoming over age between the receipt of his application and the date of the decision on it' (HC 169, para 12). If previously decided cases could be reopened under section 21 referrals, the age of the children and the requirements of the rules, at the time that application for entry clearance was made, should determine how the whole case is reconsidered. This option would seem to be more equitable, as well as being quicker, simpler and cheaper to administer, than asking applicants to begin the application procedure anew.

Chapter 5: Divided Families in the Bangladeshi Community: Three Case Studies

The three families I met had all experienced long periods of division as a result of difficulties in getting entry clearance. Each family had used DNA testing in an attempt to establish relationships which were disputed by the immigration authorities.

The family of Mr Altab Ullah

Mr Ullah is about 60 years old. He is a Bangladeshi citizen but has applied for British citizenship. He first applied for his family, his wife, 4 daughters and one son, to join him about 18 years ago. His application was refused as the ECO was not convinced that they were in fact related to him as claimed. An appeal

against the refusal was made but Mr Ullah said that it was not followed up as he visited Bangladesh for 2 years at the time the appeal should have been heard. A fresh application made in 1985 or 1986 resulted in entry clearance being granted to his wife, Mrs C Bibi, and their youngest daughter. By this time 2 of his daughters were married in Bangladesh and a third daughter came to England on the basis of marriage. However his son, Abdul Khalique was again refused entry clearance. At this point Mr Ullah was advised to approach the local M.P., Clare Short, about his case. Clare Short went to Bangladesh in 1986-7 to visit the villages of some of her constituents, including Mr Ullah. As a result of her visit a village report which was favourable to Mr Ullah's son was sent to the Home Office.

The Home Office accepted the report, but then requested the family to submit to DNA testing. The tests were carried out in May 1988. The DNA test report found that the claimed relationship was established, the odds against Mr Ullah and his wife not being the parents of Abdul being 2,000 million million to one. Abdul, who was only 14 and a half years old when he originally applied to join his father in 1972, was by this time over the age limit, for immigration purposes, of 18 years. However he was not married. The family then awaited the Home Office's policy decision on overage children, a decision which was not announced until June 1989. He has been refused entry to Britain and remains separated from his family.

Abdul is the only son of his father and has spent 18 years trying to join his father in Britain.

Mr Ullah told me of some of the hardships of his own life. He was separated from his father for 10 years as his father was in Singapore during World War II, and his mother died when he was very young. He told me how he has always hoped to see his son married and to have grandchildren.

Mr Ullah works in a factory and his health has suffered because of the nature of the work and the poor working conditions. He feels that if his son were here he would not have to work so hard.

The Family of Abdul Hakim

Mr Hakim first arrived in the UK in 1958 and became a British citizen in 1962. He first lived in Manchester, later moving to Birmingham.

He originally applied for his wife and 4 sons to join him in 1975, but the application was refused as the ECO did not believe his family were related as claimed to Mr Hakim. He said that he appealed the decision but that the appeal was not heard as his solicitor, who was Bangladeshi, returned to his homeland. After moving to Birmingham Mr Hakim sought assistance from the Handsworth Law Centre. As in Mr Ullah's case he was advised to contact Clare Short who also visited Mr Hakim's family in their village. By this time, 1986-87, his 2 elder sons were married and therefore not considered for settlement. However, a village report was submitted by Ms Short's team to the Home Office, favourable to Mr Hakim's wife and two younger sons. The Home Office asked the family to undergo DNA testing. The results established the claimed relationships.

His wife and sons were then required to be interviewed again at the British High Commission in Dhaka. His wife was given a certificate of entitlement and his youngest son was also given permission to enter Britain. They came to Britain in November 1989. However his third son was refused entry by the ECO in Dhaka on the grounds of being overage. He was 12 years old in 1975 when the original application was made, but about 25 years in 1988 at the time of the interview. While we were discussing the reasons for his son's exclusion Mr Hakim questioned why the age limit was set at 18 years. To him it seemed a quite arbitrary and artificial barrier, that it might just as well be 12 years or 30. He said that passing the age of 18 years does not cut off the link, the relationship between child and parents. As for his own son, he asked who had made him overage. By this he meant that if the correct immigration decision had been made at the time of the first application his son would not have been 'overage'.

Mr Hakim is now 63 years and, like Mr Ullah, had hoped to have the help and support of his children as he approaches old age. His wife broke her arm on the journey to Dhaka for the last interview and it was apparent that it had not

healed well. I believe this was pointed out to me to emphasise the need they feel for the support of their sons.
Mr Hakim said, 'Who else will look after me now that I am old? Will the white people?' This reflects the isolation his community feels. It is also a poor reward for 32 years of hard work in Britain, most of that as a British citizen.
Both Mr Ullah and Mr Hakim were first informed of DNA testing by the Home Office, and were able to get legal aid extensions to meet the cost of the tests.

The family of Abdur Rob

Mr Rob came to Britain in 1963 and became a British citizen in 1971. His wife and 4 sons applied to come to join him in 1974, but the application was refused in 1975. The family appealed this decision and the appeal was allowed in 1976 for Mr Rob's wife and 2 younger sons. His elder two sons, Shorif and Mozir Uddin were refused on the grounds that they were not related as claimed to Mr Rob. Their mother and 2 brothers left Bangladesh for Britain in 1977, hoping that the family would soon be able to arrange for Shorif and Mozir to join them.
The separation of the family caused exceptional distress and anxiety to Shorif. His mother described how he wrote repeatedly, asking when he and his brother would be able to join the rest of the family. He was so affected by the separation that he became mentally sick. His mother recalled how when she returned to Bangladesh his condition improved, only to deteriorate again after she had returned to Britain.
Meanwhile a fresh application lodged in 1978 by the two brothers was refused in 1980, and the appeal against this refusal dismissed in 1982. The family continued by every means at their disposal to establish that Shorif and Mozir were genuine sons of the family. A village visit undertaken by a London solicitor, Graham Smith, and conventional blood tests on the two boys, both supported the claimed relationship.
As a result of a Tribunal decision, children having a claim to British citizenship by descent could travel to Britain without entry clearance to exercise their right of abode, and if entry were refused they had the right to appeal that decision before removal. The family were advised to write Shorif and Mozir that they should travel to Britain on that basis. The two sons came in 1986. On arrival they were refused entry but granted temporary admission. Once in Britain they underwent DNA testing which confirmed the relationship between themselves and Mr Rob and his wife.
The Home Office responded to this new evidence by instructing them to return to Bangladesh and to reapply for entry clearance. At this time the reapplicant queue, Q4, was very long and joining it would have entailed another delay of nearly 2 years before they could be interviewed. At this stage Shorif's health deteriorated to such an extent that he was too ill to travel, and he was admitted to an open hospital for the mentally ill, Highcroft Hospital, Erdington.
His mother described how she had visited him every day and taken him food. When I commented that this must have been difficult with her other family commitments, she replied that she could not keep apart from him. She was very much aware that his illness was a direct consequence of all the years of separation and uncertainty.
For 18 months Shorif and his brother, Mozir, lived under the threat of removal from Britain and further prolonged separation from their family. When the removal order was finally served Shorif walked on the railway line and was killed by a train. The coroner found that his death was not an accident; that Shorif knew the consequences of what he was doing. He had committed suicide, the coroner decided, while under strain directly resulting from the 'stress and uncertainty as to whether he could stay here' and 'intolerable bureaucratic delay'. Shorif died in November 1987 after spending 15 years trying to join his family. Mozir was allowed to remain in Britain after the death of his brother.

Conclusion

These 3 case histories give some insight into the impact of immigration control procedures on individuals and on family life in the Bangladeshi community. The divisions resulting from the migration process have been perpetuated by administrative delays, and subjective, discretionary decisions by ECOs in the Indian Subcontinent.

These families have been struggling for reunion for periods ranging from 14 to 18 years. In the first two cases their struggles continue. They are seeking a judicial review of the Home Office's decision not to grant the 'concession' in favour of their overage sons. In the third case the struggle has been terminated by the tragic death of their son. Their solicitor is claiming compensation from the Home Office for the suffering they have experienced through the loss of their son.

Each of these families have one aspect in common. They were denied the right of family unity on the grounds that the relationships claimed were fraudulent. They were effectively branded as liars. They have all submitted to the indignity of DNA testing as a final means of establishing their veracity and the genuineness of the family relationships. In the cases of Mr Ullah and Mr Hakim, these tests were actually suggested by the Home Office. They have all been successful in proving that they were who they claimed to be; that the children concerned have been wrongly excluded from Britain for many years.

The results of the DNA testing being positive in each case, raised the hopes of the families that they would be reunited, but they experienced only further delays and indecision. The psychological impact of such strategies on most families exposed to them can only be imagined. In the case of Shorif Uddin though there is little doubt that the prolonged separation and uncertainty, the cycle of applications and decisions, appeals and refusals, with hopes raised and then crushed, caused such mental suffering that he chose to terminate his own life at the age of 25 years.

The British government had the opportunity to rectify the injustices of the past when formulating its policy concerning those children who have been shown to have been wrongfully excluded but who have become overage. It could have shown some magnanimity in allowing all such overage children with DNA evidence the right to join their families in Britain if they wished to do so. It has responded by effectively imposing a quota system on 'overage' applicants, stating that its intention is to grant admission only in a minority of such cases.

The refusal to consider any compassionate circumstances in relation to the family members settled in Britain in deciding who to admit and who exclude, appears arbitrary and unjust, resulting, if not aiming at, denying admission in as many cases as possible.

Chapter 6: Conclusion

The participating states will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family. (Helsinki Accords)

Despite the emphasis placed on the value of the family as a social unit in contemporary British society, there would appear to be a double standard as some family units are perceived as worth defending whereas others are pathologised. Social ideals have been based on middle class standards and judgements. Poverty and deprivation has been an adequate justification for breaking up family units. In the 19th century, the response of state officials to destitute families was to remove the children from their parents. Black people have been arbitrarily moved from one location to another, as slaves or indentured labourers, with a complete disregard to their family life.

The right to family unity is protected in EEC law under which an EEC national, exercising his or her right of free movement, may be joined by his or her spouse and all other dependent relatives, including parents and children. (Grant, 1987) The overwhelming majority of EEC nationals enjoying this protection of family unity are of course white. British immigration law plays lip service to the rights of black people to enjoy family life. Although these rights appear to be

protected by legislation and by international declarations to which the U.K. is a signatory, yet in practice many families have found the administration of immigration control has denied them the right to live together as a family unit. The European Convention on Human Rights, while upholding the right to family life has proven to be of limited value. In its rulings the European Court of Human Rights has suggested that immigration measures in a member country which result in families being separated do not necessarily infringe the Convention as the family may be able to live together in the country to which the non-European family member belongs.

The medicalisation of immigration control procedures coupled with the secrecy surrounding the operation of control measures has enabled medical tests to be used for control purposes. Some of the procedures and tests which black families have, in their desire to live together, been required to undergo, would be regarded as unacceptable by most British people. The extreme example was the 'virginity testing' of young Asian wives. Submission to conditions and tests which would be intolerable to the generality of the British public should not be expected of any persons.

The announcement of the introduction of a new medical test, DNA profiling, provoked a hostile response from the Government of Bangladesh and the Bangladeshi community in Britain. The benefits gained by many families as a result of DNA testing has resulted in the test becoming not only acceptable but sought after. However the position of the applicant families relative to the immigration authorities has constrained them to accept this procedure as part of the system of control. In a system of control which has repeatedly used secrecy, 'the most formidable enemy of human rights' (Bevan, 1986, 15), it may not be overly cynical to consider possible abuses of DNA testing. Is it possible that the authorities, having access to blood samples given for this specific test, may at some time choose to carry out additional types of blood testing; testing which could provide the state with other grounds for refusal of leave to enter?

Since DNA testing became widely available there has been a number of positive changes affecting many dependent relatives in Bangladesh seeking settlement in the U.K.

In Dhaka the number of applications outstanding at the end of 1989 had been reduced to 4,000. (Home Office, 1989, Cm 1124) This figure corresponds to approximately half of the number outstanding at the end of 1987, and only a quarter of those at the end of 1985, the year in which DNA testing first became available.

The initial rate of refusal of applications for settlement has also undergone a significant reduction over the last 5 years, dropping from 50.2 per cent in 1985 to 25.7 per cent in 1989. (See supra, p.29)

Both the UKIAS and JCWI refer to a more positive approach to applications for settlement in the British High Commission in Dhaka compared to what existed formerly. This change is attributed to the arrival of a new First Secretary 'who discouraged unnecessarily detailed and petty enquiries'. The fact that applicants could avail themselves of DNA testing if initially refused entry clearance, and the revelation that many genuine applicants had been rejected in the past as bogus, may have contributed to this change in attitude.

Even more striking is the increasing proportion of successful applications which are granted by the ECO rather than after an appeal:

Table 4 Proportion of successful applications which were granted by the ECO

	Applications granted initially	Applications granted on appeal	Total applications granted	Percentage granted initially
1985	4170	1790	5960	70.0
1986	3040	1080	4130	73.9
1987	2410	720	3130	77.0
1988	3060	520	3580	85.5
1989	4310	360	4680	92.3

(Source of statistics: Home Office, Control of Immigration: Statistics UK 1989, Cm 1124)

These figures also reveal an absolute increase in the number of successful applications which is of itself significant.

The change in attitude in Dhaka has resulted in a reduction in delays experienced by applicants. Fewer applications are being referred to the Home Office for further enquiries to be made in the UK, a procedure which could cause an additional delay of between 6 and 12 months. (HC 319, 1990, p34) Overall, the change in ethos has dramatically reduced the waiting time in the applicant queues, particularly the reapplicant queue, Q4. Whereas in recent years applicants in Queue 4 could expect to wait for at least 20 months before being interviewed, by the end of 1989, the waiting time had been reduced to 9 months. These changes are certainly positive but when compared with what appertains in British posts in Eastern European capitals (where applications for settlement from white families are considered) the gains can be put in perspective. According to the recently published report into Administrative Delays in the Immigration and Nationality Department of the Home Office, HC 319, the maximum waiting time for settlement applications in capitals such as Bucharest, Warsaw and Budapest, is 3 days.

Poverty has been used as a justification for excluding a person from entering Britain. In implementing the 1905 Aliens Act, the immigration officer was advised to check the financial resources available to those seeking admission. Now that (black) immigration is virtually restricted to dependents of people already settled, the sponsor is required to furnish evidence of his financial status, and may be required to sign a written undertaking to maintain his dependents. This may include a declaration agreeing to repay any claims made on public funds by his applicant dependents after their admission. Any claim made for income support or housing benefit may not only be recoverable but be regarded as a breach of the Immigration rules and conditions of entry. This imposes severe restrictions on families who may avoid claiming much needed benefits for fear of immigration repercussions. Thus the system of immigration control is extended to within the U.K., and to the post-entry period.

Similarly, as a person's entitlement to medical treatment has become linked to immigration status, health issues have again produced a new source and site of control, control after entry. Persons seeking medical treatment may be required to prove their entitlement, by being questioned about their period of residence in Britain and they may be required to produce their passports. Instances of claims for welfare benefits or medical treatment resulting in immigration checks indicate an exchange of information between different state institutions resulting in more effective post-entry controls.

This century has seen the development of an effective, powerful and complex system of immigration legislation which has become increasingly exclusive. The operation of this system has become more powerful with stronger legal sanctions such as wider powers of deportation and removal, and the criminalisation of immigration transgressions. But it has also become more effective and consequently wielded more psychological control by the incorporation of more loci of control. The main focus of this paper has been the operation of power through the medicalisation of immigration control, and the extension of control to other sites and agencies has only been briefly discussed due to the limited scope of this paper. But the strength of the system lies in its multiplicity of sites and personnel, its complexity of operation and the co-operation and communication between the various agencies operating control.

The Government's response to a system of testing which has the potential for eliminating doubts concerning relationship issues in immigration matters has been prevarication and delay. The need for discretionary and arbitrary decisions by immigration officers and Home Office personnel could have been eliminated. DNA testing gave a measure of power to those enabled to establish disputed relationships. The long awaited policy on 'overage' applicants retained the operation of discretion and consequently the power relationship between applicants and officials. The implementation of this policy is supposed to grant concessionary admission, outside the Rules, to a number of overage

applicants. However by restricting the 'concession' to only the most exceptional compassionate cases the policy appears to concede nothing as the existing rules provide for the admission of relatives in exceptional compassionate circumstances. (Rule 56, HC 251) In operating the concession the Home Office could have been magnanimous and offered admission to all those wrongly excluded as minors. By granting admission to a few while refusing the majority the Home Office has effectively retained control, while claiming to be operating a concessionary policy. It has obliged all applicants to assume a powerless and supplicatory role. It has also divided the aggrieved group of families, separating those granted the concession from those refused, thereby weakening their collective power in resistance campaigns.

The number of family members, wrongly excluded on relationship grounds in the past and still seeking admission, is dwindling. In September 1989, the 'reapplicant' queue in Dhaka numbered only 1400 persons, many of whom are overage children who now have DNA evidence supporting their application. A real concession on the part of the Government, offering admission without conditions to those who can prove they were wrongfully excluded in the past, would be a positive move in terms 'race relations', a gesture of humanity from a Government which has undertaken to support human rights including the right to family life, and the minimum reparation for past injustices.

Notes

1. Earlier legislative measures had been taken to control the entry of British subjects, for example the Lascars Act of 1823 prohibited the landing of destitute lascars, seamen of Indian origin. (Plender, 1987, 70)

2. Immigration controls have been relaxed or lifted altogether for Commonwealth citizens of British ancestry, and for citizens of the European Economic Community, who are, of course, white.

3. Memorandum submitted by JCWI to Home Affairs sub-committee, Immigration from the Indian Sub-continent.

4. See Memorandum submitted by CRE to Home Affairs Committee, HC 96-III, Session 1986-87.

5. Ibid.

6. According to the 1981 census, 25215 adult males and 12671 adult females were born in Bangladesh. (See HC96-III, 1986-87, p.11)

7. HC 96, Session 1986-87.

8. The Aliens Act of 1905 was introduced to control the influx of poor Jewish migrants from Eastern Europe.

9. British subjecthood did not provide similar exemption from control to other Commonwealth countries, such as Australia and Canada, which formulated their own immigration restrictions on racial lines.

10. They had not been affected by the 1962 Act as their British passports had been issued by the British High Commission in Kenya on behalf of the British Government.

11. This provision was slipped into the Immigration Appeals Act of 1969 at a late stage to minimise debate and to prevent a rush of entrants attempting to avoid the new requirement. (Bevan (1986) p.165 and p.180, note 4.)

12. Patriality became, with a few exceptions, equivalent to British citizenship under the Nationality Act of 1981.

13. The British Medical Association and World Health Organisation have condemned the use of x-rays for administrative purposes because it exposes people to unnecessary radiation, with associated risks. (See Manchester Law Centre, 1982)

14. It could be argued that the virginity testing of Asian women was analogous to the rape of women who were slaves. The rape oppressed not only the women but also their men who were powerless to stop the practice.

15. Immigration Act, 1971, S 3(2).

16. This rule provides that the ECO must be satisfied that the primary purpose of the marriage is not to obtain admission to the UK . The rule was first introduced in 1983 (HC 169) and replaced the former 'marriage of convenience' restriction.

17. See for example CRE, 1985.

18. Quoted in CRE, 1985, p.9.

19. See Sondhi, 1987, p 21; and Memorandum by JCWI, 2nd Report from Home Affairs Committee, Immigration from the Indian Subcontinent, 1985-86, Vol 2, p.88.

20. Critical accounts of the procedures involved in entry clearance applications can be found in, for example, CRE (1985), Sondhi (1987) and Lal and Wilson (1986).

21. For detailed statistics see Home Office, 1989, (Cm 1124).

22. CRE, 1985; HC 67-II, pp102-3 and pp237-8. See also David Rose, 'Tangled Tales from the plains of Sylhet' in The Guardian, 25.2.86.

23. See Jeffreys, Wilson and Thein (1985).

24. A more detailed but comprehensible account of the technique can be found in Kelly, Rankin and Wink, 1987, pp.105-108.

25. Tim Renton, answering a question in the House of Commons, confirmed that DNA evidence had been successfully used in homicide cases.

26. Amiruzzaman had previously failed to prove his relationship despite 'several applications, appeals, village visits, and a traditional blood test'. (Fransman and Davidson, 1988, p.57)

27. This Act effectively made airlines and other transporters responsible for checking that 'visa nationals' held valid immigration papers by imposing heavy penalties on the carrier of any person attempting to enter Britain without appropriate authorisation.

28. The announcement of the scheme in 1986 by Tim Renton, resulted in angry protests from the Government of Bangladesh over lack of consultation and for the way Bangladesh was singled out for the Pilot Scheme.

29. DNA testing had become commercially available at the Cellmark laboratory in July 1987.

30. See Home Office (1988) Annex A; Family 12.

31. Ibid, Annex A; Family 16.

32. Ibid, Annex A; Family 27.

33. The Times, 11 January 1986.

34. For families of 5 and over there is a reduced charge of œ115.90 per sample, (œ133.30 including VAT.) for the fifth and subsequent samples. (Personal communication)

35. Quoted in JCWI Annual Report, 1988-89.

36. In 1984/5, the cost of village visits in the Sylhet Region was estimated at œ279.60 per case investigated. (Home Affairs Committee, 1986, Appendix 6, p.193)

37. The cost to the Exchequer of each officer in the Indian Sub-Continent was estimated at approximately œ50,000 per annum in 1985. (Home Affairs Committee, 1986, Evidence, p.150)

38. Writing in the Guardian, 8 September 1986, Anne Owers suggested that the cost of introducing the visa scheme was œ14 million. In the following year, Max Madden reported the scheme cost œ30 million annually. (The Morning Star, 5 June 1987)

39. A Tribunal decision in the case of Kessori Khatun (4272) confirmed that the standard of proof for certificate of entitlement was the ordinary balance of probabilities and no higher. (JCWI Bulletin, Vol 2 no 8, January 1986).

40. Quoted in JCWI Briefing Paper: 'DNA Fingerprint Testing: What is proposed and what is needed', 30 June 1989

41. Source of figures is a letter emanating from the Immigration and Nationality Department, Home Office.

42. Ibid

43. Quoted in UKIAS Annual Report, 1988/89, p.18.

44. Ibid

45. 'Public funds' are currently defined as homeless persons' housing, income support, family credit and housing benefit. (HC 251 para 1)

46. Reported: The Times 18 October 1989; The Independent 24 October 1989.

47. After talking to Mr Hakim I had cause to believe that his third son had a claim to British citizenship. If in fact he was born in 1963 after his father became a British citizen by registration, he would have acquired British citizenship by descent. I discussed this point with Mr Hakim's solicitor who said there was uncertainty as to the date of birth of the son, as Mr Hakim had at some stage stated the son had been born in 1960. If this were the case he would not have a claim to British citizenship. This is an interesting example of how an issue, in this case date of birth, may be of crucial importance in terms of legal niceties, but may seem to be a trivial and even arbitrary detail from the viewpoint of the family. Although the family can now establish the genuine relationship of this young man, there is no means by which his age can be determined.

48. Momotaj Begum, 1985.

49. In fact both Shorif and Mozir, being born prior to their father's registration as a British citizen were not eligible to claim the right of abode in Britain.

50. See Birmingham Evening Mail, 31.5.88

51. The initial rate of refusal is the rate of refusal by the ECO. Some applications, refused initially, succeeded on appeal.

52. HC 319, Session 1989-90.

53. Ibid, p.41.

54. See para 20 of the current rules, HC 251, 1990.