



information sheet

Article 8

5th August 2008

Article 8 of the European Convention on Human Rights protects the individual's right to respect for his or her private and family life. It is now one of the human rights enshrined in UK law by the Human Rights Act 1998. This information sheet provides general information on Article 8.

The Article 8 right

As indicated, Article 8 protects private and family life. The Article is in two parts. The full text is as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

"2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of crime and disorder, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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The reason the article is in two parts is as follows. The first part sets out the general right. The second part explains the circumstances when a public authority (e.g. the UK Border Agency) may be permitted to interfere with the general right. Article 8 is a qualified right. This relates to the second part. It means that the general right set out in the first part is qualified by (or made subject to) the right of public authorities to interfere in the circumstances set out in the second part.

The general right in the first part

The House of Lords in *Huang & Anor v SSHD* [2007] UKHL 11 provided a helpful explanation of what is meant by private and family life:

"Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant."

This explanation was given in the context of a discussion of family life. However, it makes clear that at the core of Article 8 is the recognition that human beings are social. In other words, private and family life is about the individual's need to develop and maintain relationships and human relations (from close, personal relationships such as with a partner or between parent and child; to the freedom merely to meet and be with people in a social environment). The closer or more important the relationship or freedom to the individual, the greater weight it must carry when the qualification in the second part is considered (see below).

The qualification in the second part

As indicated above, the second part allows a public authority to interfere with the individual's private and family life. However, this right to interfere is itself limited.

Firstly, a public authority may only interfere if the way in which it does so is “*in accordance with law*”. This means that a public authority should only take action against an individual if:

- it is lawful to take that action; and
- the way in which the action is taken is lawful

Secondly, a public authority may only interfere for the purposes (or reasons) set out in the second part. Generally speaking, immigration control is accepted to fall within these purposes. Sometimes it is said to relate to the “*economic well being of the country*” or to the “*prevention of crime and disorder*”. As to which purpose may apply in any particular case, this will depend upon the facts of that case.

Thirdly, a public authority may only interfere if the interference is “*necessary*” in order to achieve the purpose. The interference will not be necessary if the public authority could achieve the purpose in a different way, which avoids the interference.

Proportionality

Even if all the factors explained in the previous section are met, a public authority must not interfere with an individual’s private and family life unless it is proportionate to do so.

This means that the importance of the particular purpose the public authority seeks to achieve must ultimately be more important than the degree of interference caused. To assess this, all the relevant circumstances in the particular case will need to be carefully considered.

Article 8 and immigration

Article 8 is an important consideration in many immigration cases, particularly where:

- an individual has been in the UK for a very long time;
- has formed a family in the UK; or
- is entitled to be in the UK (e.g. the individual is British, or has been granted indefinite leave to remain) and to be joined in the UK by his or her family

The House of Lords has recently given several important judgments relating to Article 8 in certain immigration cases. More information about these is available in the July 2008 “Article 8 judgments” information sheet. That information sheet provides some further general information about Article 8 and the judgment in *Huang* (referred to above).

As indicated above, the strength of an individual’s Article 8 claim will depend on:

- the importance to the individual of the private and family life which be interfered with by removal or refusal of entry to the UK
- the degree of interference that removal or refusal of entry would cause

It follows from this that evidence of the length and strength of relationships will usually be very important in making an Article 8 claim. Also important will be evidence of the consequences for those relationships of removal or refusal of entry. Witness statements from all the key individuals (e.g. close family members) may be necessary. It will often not be enough to merely point to the existence of those relationships; but will be necessary to provide evidence demonstrating why they are so important and how they may be disrupted by removal or refusal of entry. Several other important factors are set out in the extract from *Huang* (which is quoted above). If these are important in the individual case, the evidence will also need to show this.

A copy of the judgment in *Huang & Anor v SSHD* is available at:
<http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd070321/huang.pdf>