



Article 8 judgments

23rd July 2008

On 25th June 2008, the House of Lords gave judgment in three important cases raises questions relating to Article 8 and immigration control. Article 8 is the part of the European Convention on Human Rights which protects individuals' rights to private and family life against interference by the State.

This information sheet provides general information about Article 8, particularly about these three judgments and how they may affect individuals in the UK facing removal or deportation.

Article 8

Article 8 is divided into two parts. The first part states that everyone has the right to respect for his or her private and family life. The second part states that public authorities (such as the Home Office) must not interfere with this right unless to do so would be necessary, for specified purposes and in accordance with law. Immigration control is regarded as falling within the specified purposes. Having family or private life in the UK does not, therefore, necessarily entitle someone to come to or remain in the UK. In each case it will need to be decided whether any separation or other interference with that private or family life is proportionate – i.e. does the purpose of immigration control in the individual case outweigh the importance of the private or family life that is interfered with?

Although having private or family life in the UK does not necessarily entitle someone to come to or remain in the UK, in several cases Article 8 has protected an individual against removal from the UK or entitled an individual to come to the UK.

The House of Lords judgments

The three judgments answer important questions that have, at times, caused difficulty for individuals seeking to rely on Article 8 in immigration cases; and provide further clarity of the important House of Lords judgment in *Huang & Anor v SSHD* [2007] UKHL 11. That judgment established that, when considering an appeal on Article 8 grounds, the Asylum and Immigration Tribunal (AIT) must consider for itself whether it is proportionate to require the individual to leave the UK or refuse him or her entry to the UK. In deciding that question, the AIT must not reduce the question to merely whether the case is exceptional as compared to other cases or the Immigration Rules.

A short explanation of what each of the three new judgments means is provided under separate heading below. A short example is also given of the effect of the judgment.

Beoku-Betts v SSHD [2008] UKHL 39

In this case the House of Lords answered the question as to whether the Asylum and Immigration Tribunal (AIT) should consider the family life of all the relevant family members, when considering an appeal that raised Article 8, or whether the AIT should only consider the family life of the individual who had brought the appeal. The House of Lords decided that the family life of all the relevant family members should be considered.

If someone is facing removal from the UK and brings an appeal to the AIT that he should not be removed from the UK because this would separate him from his wife and child, the AIT should consider the circumstances of all three (husband, wife and child) when deciding whether the removal would be contrary to Article 8.

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Steve Symonds

ILPA legal officer

020 7490 1553

steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

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Chikwamba v SSHD [2008] UKHL 40

In this case the House of Lords considered whether someone with family settled in the UK should usually be expected to return to his or her home country to make an entry clearance application rather than being allowed to remain in the UK on the basis of Article 8. The House of Lords decided that, if Article 8 would otherwise entitle someone to remain in the UK, he or she should not ordinarily be required to go home in order to make an application to return to the UK – especially if there are children involved.

If, for example, someone is facing removal from the UK, but her husband and their children are settled here, it would now not normally be appropriate to require her to return to her home country to make an application for permission to return to the UK to join her family here unless there was some other good reason to exclude her from the UK.

EB (Kosovo) v SSHD [2008] UKHL 41

In this case the House of Lords considered the circumstances in which delay on the part of the Home Office in deciding the case of someone in the UK may be relevant when considering Article 8. In *EB(Kosovo) v SSHD* the delay had been in deciding the individual's asylum claim; and he had formed a relationship in the UK while waiting for the case to be decided. The House of Lords decided that delay could be relevant in three ways. Firstly, the longer someone was in the UK, the more likely it was that he or she would develop important social connections in the UK and, therefore, have a significant private or family life here. Secondly, while any close relationship may be precarious (or uncertain) at the beginning (particularly, if there is no good reason for the individual or his or her partner to be confident that the individual will be granted permission to stay in the UK), after a time the relationship is likely to become stronger (or more permanent). Thirdly, if the delay on the part of the Home Office is because its system for dealing with claims is not working properly, consistently and fairly, this may reduce the significance to be given to immigration control when assessing whether a decision to remove the individual is a proportionate interference with any private or family life.

If someone has been in the UK for many years, and has formed a close relationship here, the question of whether he or she should be allowed to stay in the UK may be significantly influenced by any delays on the part of the Home Office in deciding his case.

If you think any of these cases may apply to you

This information sheet does no more than provide a very brief outline of the key parts of the House of Lords' judgments in these three cases.

It will be necessary to obtain legal advice to properly understand whether and how these judgments may apply in any individual case. However, if the circumstances described in this information sheet are in some way similar to the circumstances in another case, this may provide a good reason to obtain legal advice in that case.

Where to find these judgments

Beoku-Betts v SSHD is available at:

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080625/beoku.pdf>

Chikwamba v SSHD is available at:

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080625/chikwa.pdf>

EB (Kosovo) v SSHD is available at:

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080625/kosovo.pdf>