CO/9172/2005

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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 26th October 2007

B e f o r e:

MR JUSTICE DAVIS

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Between:
THE QUEEN ON THE APPLICATION OF JENEBA BOIMA
Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant

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Mr David Medhurst (instructed by Messrs J Bon Solicitors, London) appeared on behalf of the **Claimant**
Mr A Payne (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

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J U D G M E N T

1. MR JUSTICE DAVIS: This is a judicial review claim brought by a lady called Jeneba Boima, who is a citizen of Sierra Leone. The claim form in this case was issued on 9th November 2005 and it sought to challenge a decision on the part of the Secretary of State for the Home Department refusing to consider the claimant's claim as a fresh claim in accordance with the rules and policy.

2. Permission to pursue this claim as a judicial review claim was granted by the Single Judge (without any reasons expressly being given) on 6th June 2006. It is a lamentable fact that this claim only comes on for determination by me today in October 2007, that is to say nearly two years after the claim form was issued. It is particularly lamentable given the underlying nature of the claim in question. On the position taken by the Secretary of State for the Home Department, the claimant is someone who should long since have been removed to Sierra Leone. On the position advanced by the claimant, she has had the threat of removal hanging over her head without her knowing whether or not she in fact was entitled to mount a substantive appeal to an immigration judge on the decision made. I enquired of counsel appearing before me if they could assist me as to the reasons behind the delay. They could not, save that they both told me that their respective solicitors had written letters from time to time seeking a hearing of the matter. Apart from my saying that it is a matter of the greatest regret that such a delay has occurred within the court system, I will also say that I propose to make enquiries as to how this has come about, in the hope, perhaps the vain hope, that a delay of this kind will not hereafter happen in a case of this kind.

3. It should also be noted that, in significant part by reason of the delay which has occurred since the inception of these proceedings, things have in some respects moved on. There are in fact a number of decision letters which have been issued by the Secretary of State from time to time with regard to this case and at least two of such letters postdate the issue of these proceedings, the most recent being dated 23rd October 2007. Mr Medhurst, on behalf of the claimant, very realistically accepts that his challenge should be treated as a challenge to all the relevant decision letters, including the most recent one; and correspondingly, of course, he must have leave to amend his claim and grounds to include those as being the subject of challenge.

4. The background is this, taken from the very helpful chronology provided by Mr Medhurst. The claimant was born in Sierra Leone on 22nd December 1979. Thereafter, events occurred in Sierra Leone and members of her family either disappeared or died or both. Various other well-known events occurred in Sierra Leone at the end of the 1990s and the beginning of 2000. At all events, it was the position of the claimant that she had been abducted and seriously mistreated by rebels but she managed to escape in October 2001 and returned to Freetown. During 2002, as she said, she fled to Gambia and thence made her way to the United Kingdom, arriving on 22nd April 2002 and claiming asylum. By a decision letter dated 17th June 2002, her asylum application was refused. During that year the civil war in Sierra Leone officially ended.

5. The claimant, as was her right, challenged the decision letter refusing her asylum claim. Her appeal was heard by an adjudicator on 1st October 2004. I will have to come on to the terms of aspects of that determination but suffice it to say for the moment that her

appeal was dismissed. The claimant then sought to appeal that dismissal by the Adjudicator. Permission to appeal was refused by the IAT on 7th March 2005. Very shortly thereafter, on the materials before me, and as has not been disputed before me, the claimant began living with a man called Henry Alpha who also was from Sierra Leone. At that time the claimant also instructed new solicitors and letters were then written by those solicitors to the Home Office in the context of removal directions being mooted. A letter making further representations was put in on behalf of the claimant on 11th April 2005 and ultimately, on 11th May 2005, a decision letter was sent refusing to treat those further submissions as a fresh claim. Further removal directions were set. On 17th May 2005 a request was made that the defendant reconsider that decision and further submissions were made. On 18th May 2005, the Home Office replied, saying that those further submissions also would not be treated as a fresh claim.

6. A further letter was written in response to a letter from the claimant's solicitors dated 25th May 2005, that letter being sent on 12th July; and the claimant was detained at some stage thereafter, with removal directions being set. Shortly before removal was due to take effect the claimant issued these proceedings for judicial review and, in consequence of her issuing a claim for judicial review, she was released from detention. Then, as I have indicated, on 6th January 2006 permission to apply for judicial review was granted. On 10th February 2006, what was called a "composite letter" was sent by the defendant to the claimant's solicitors, maintaining the original decision to refuse to treat her various representations as a fresh claim.

7. In the meantime, Mr Henry Alpha had himself been making his way through the system, if I may put it that way. He appealed against a decision of the Secretary of State refusing to accept his claim to remain in the country. His appeal was allowed on human rights grounds by Immigration Judge Peart on 26th September 2006. Again, I will in due course have to come to aspects of that determination. At all events, the Secretary of State for the Home Department sought reconsideration of that particular determination. Reconsideration was ordered on 19th October 2006 and in the event, on 18th June 2007, the reconsideration, effectively an appeal, as sought by the Home Office failed and thus Mr Alpha's application had succeeded.

8. In the meantime, on 9th January 2007 yet further representations had been made on behalf of the claimant to the defendant in the light of the initial determination in favour of Mr Alpha. A response to that was given on 13th March 2007 from the Secretary of State to the claimant maintaining the original decision; and ultimately a further and detailed letter taking the same stance was sent by the Secretary of State to the claimant's solicitors on 23rd October 2007.

9. The rule relating to the position of fresh claims is governed, as is common ground before me, by paragraph 353 of the Immigration Rules. That, in the relevant respects, is as follows:

> "When a human rights or asylum claim has been refused and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine

whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

(i) had not already been considered; and

(ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

This paragraph does not apply to claims made overseas."

10. A number of authorities have been cited to me in this regard, although it is not necessary, I think, for me to refer to all of them. In the by now well-known case of Huang [2007] UKHL 11, a decision of the House of Lords, this was said at paragraph 20:

> "20. In an article 8 case where this question is reached, the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by article 8. If the answer to this question is affirmative, the refusal is unlawful and the authority must so decide. It is not necessary that the appellate immigration authority, directing itself along the lines indicated in this opinion, need ask in addition whether the case meets a test of exceptionality. The suggestion that it should is based on an observation of Lord Bingham in *Razgar* above, para 20. He was there expressing an expectation, shared with the Immigration Appeal Tribunal, that the number of claimants not covered by the Rules and supplementary directions but entitled to succeed under article 8 would be a very small minority. That is still his expectation. But he was not purporting to lay down a legal test."

Since that decision in Huang, the position has further been commented upon and, if I may say so, very helpfully so, by the Court of Appeal in the case of WM(DRC) v Secretary of State for the Home Department [2006] EWCA Civ 1495. The perhaps particularly important aspects of that decision for present purposes are to be set out in paragraphs 6 to 12 of the judgment of Buxton LJ. In paragraph 7 he said this, referring to rule 353:

> "The rule only imposes a somewhat modest test that the application has to meet before it becomes a fresh claim. First, the question is whether there is a realistic prospect of success in an application before an adjudicator, but not more than that. Second, as Mr Nicol QC pertinently pointed out, the adjudicator himself does not have to achieve certainty, but only to think that there is a real risk of the applicant being persecuted on return.

> Third, and importantly, since asylum is in issue the consideration of all the decision-makers, the Secretary of State, the adjudicator and the court, must be informed by the anxious scrutiny of the material that is axiomatic in decisions that if made incorrectly may lead to the applicant's exposure to persecution."

Those remarks, of course, make clear that Buxton LJ was speaking in the particular context of an asylum claim.

11. A little further on in that judgment, at paragraph 10, Buxton LJ indicated that the determination of the Secretary of State was capable of being impugned on Wednesbury grounds but that was by no means the end of the matter because anxious scrutiny must enter the equation in an asylum case and he then said this:

> "Whilst, therefore, the decision remains that of the Secretary of State, and the test is one of irrationality, a decision will be irrational if it is not taken on the basis of anxious scrutiny. Accordingly, a court when reviewing a decision of the Secretary of State as to whether a fresh claim exists must address the following matters."

Buxton LJ then identified those matters as had the Secretary of State asked himself the correct question: the question not being whether the Secretary of State himself or herself thought that the new claim was a good one or should succeed but whether there was a realistic prospect of an adjudicator, applying the rule of anxious scrutiny, thinking that the applicant would be exposed to a real risk of persecution on return. Second, in addressing that question, both in respect of the evaluation of the facts and in respect of the legal conclusion to be drawn from those facts, had the Secretary of State satisfied the requirement of anxious scrutiny, and he commented that, if the court could not be satisfied that the answer to both of those questions is in the affirmative, it would have to grant an application for review of the Secretary of State's decision.

12. I was also referred to some observations made in the case of KR (Iraq) v Secretary of State for the Home Department [2007] EWCA Civ 514 and in particular to the remarks made by Auld LJ in his judgment at paragraphs 41 and 42.

13. So far as the background facts are concerned, those necessarily had to be explored in some detail before the Adjudicator on the claimant's own appeal. At the hearing on 1st October 2004 the claimant was legally represented. The Adjudicator, in his determination promulgated on 22nd October 2004, summarised the background facts, the burden and standard of proof and the nature of the appellant's claim and submissions and the nature of the respondent's case. It was noted that the respondent was submitting that the respondent, that is to say the Home Office, did not consider there was a real risk that the appellant would be arrested and imprisoned if returned to Freetown and that large numbers of persons were abducted by rebels and there was no objective evidence to show that those abductees had been prosecuted or persecuted.

14. The Adjudicator then went on to deal with the evidence. He expressly accepted the appellant's evidence of her abduction and maltreatment, which included rape, at the

hands of the RUF. However, the Adjudicator then went on to reject as not credible a number of other assertions made by the claimant and gave reasons for doing that. In particular, he rejected certain assertions she made about her escape and whether she had had certain experiences in Gambia as she claimed.

15. At paragraph 20, the Adjudicator then said this:

> "The Appellant's representative did not point to any objective evidence which showed that the government was arresting and putting on trial persons who had been abducted by the rebels during the civil war. Nor was objective evidence identified which showed that persons who had been so abducted were being persecuted by the general population. The objective evidence shows that Freetown is presently under government control and is generally considered safe. I do not find that there is a real risk that the Appellant will be persecuted by the government or by the general population as a result of being abducted by the rebels."

Having made the various findings, the judge concluded that the appellant had not shown that she had a well-founded fear of persecution for a Convention reason. In dealing with rights under the 1950 Convention, the Adjudicator said this at paragraph 23:

> "The Appellant's representative has submitted that the Appellant's rights under Articles 2 & 3 of the 1950 Convention are engaged. The Appellant's representative submitted that the Appellant as a single woman will be in danger of rape. However, the evidence was that she has a good friend in Freetown who was the friend of her uncle and who arranged and paid for her passage to the UK. There is no reason to suspect that he would not continue to offer her accommodation and protection".

In the result, the appeal under both the 1951 Convention and under Articles 2 and 3 of the 1950 Convention were dismissed. It is to be noted that at that stage the claimant had not asserted any Article 8 claim.

16. As I have indicated, the claimant sought to appeal from that determination. By the decision made on 7th March 2005, the Vice President of the Immigration Appeal Tribunal said this in refusing permission to appeal:

> "There is no merit in this application which fails to identify any error of law on the part of the Adjudicator..."

Then, referring to the findings:

> "They were findings which he was entitled to reach."

Then the Vice President rejected a challenge to the reasons given with regard to the objective evidence and then said this:

> "The third challenge is based on the suggestion that a single [the word

"disabled", perhaps by mistake, appears] woman, the claimant would be at risk of rape. That however is nothing more than pure speculation. Again this fails to identify any error of law on the adjudicator's part."

The Vice President went on to state:

"An appeal would have no prospect of success."

It was but a few days after that, on the evidence, that the claimant commenced living with Mr Henry Alpha.

17. So far as Mr Alpha was concerned, his claim, as I have indicated, was heard during 2006. By the determination promulgated in his case on 22nd September 2006, the Immigration Judge set out the background in detail. He, in terms, at paragraph 14 said this:

"I do not accept there is anything before me to suggest that the high Article 3 threshold would be breached on the appellant's return to Kailahun."

The Immigration Judge then went on to deal with the claim by reference to Article 8 being mounted by Mr Alpha. At paragraph 20 he said this:

"I found the witnesses credible with regard to the appellant's claimed relationship with Jeneba Boima. I accept that they knew each other from 1996 in Sierra Leone and have been living together since March 2005 at Flat 11, 95-97 High Street, Chatham, Kent ME4 4DL. In that sense, I accept that the couples are genuinely living together as common law man and wife, that the appellant enjoys private and family life in the UK and that returning him to Sierra Leone would interfere with the same."

The judge then went on to refer to the appellant being close to his sister and her partner. He went on to say:

"Nevertheless, I find in terms of Razgar that the respondent would interfere with the appellant's private and family life lawfully in the legitimate pursuit and implementation of an orderly immigration policy. In the circumstances therefore the issue with regard to this particular appellant is whether the decision to remove him is proportionate to the legitimate aim pursued and with regard to the assessment of proportionality, the striking of a fair balance between the rights of the individual and the interests of the community."

18. What was a particular feature of Mr Alpha's case is that no decision letter had been issued, it would appear, as long as some six years after his original claim was made. In that time the terms of the policy applicable to a man in Sierra Leone have changed; and indeed it seems that his brother, who had applied at the same time, had been dealt with far more speedily and had been granted leave to remain. The immigration judge dealt with that issue and said this at paragraph 22:

> "The appellant is close to his sister and her family although I do not accept that there is anything over and above normal emotional ties in terms of Salad [2002] UKIAT 06698. He lives with his partner and his brother. I accept that his partner was aware of his precarious immigration status when their relationship resumed on meeting in the United Kingdom. His partner is also from Sierra Leone.

Then he said this:

> "No evidence was put before me as to any unsurmountable obstacles preventing the appellant's return alone or the family accompanying him to Sierra Leone."

19. There is nothing expressed in that paragraph to indicate that the Immigration Judge had been made aware that the claimant, that is to say Ms Boima's, own status was entirely precarious, indeed that her own proceedings had conclusively failed, although it might be said there is nothing to indicate either to the contrary. The immigration judge then went on to deal with the question of the delay and concluded that, on the evidence before him, an exceptional case had been made out by the appellant, Mr Alpha, and he found that the delay on the part of the Home Office prejudiced Mr Alpha's position vis a vis these others in the same situation and in particular his brother. He concluded in this way:

> "27. I find the delay on the part of the respondent, coupled with the appellant's own personal circumstances, that is his family life with his partner in the home they share with his brother, his relationship with his sister, her husband and children and the activities he is involved in with them, his working life and his life generally in the United Kingdom demand an outcome in his favour in terms of Huang, notwithstanding that he cannot otherwise succeed."

20. As I have said, the Home Office was dissatisfied with that result but it is sufficient to repeat that the appeal by the Home Office failed by determination promulgated on 18th June 2007. It is quite clear from the text of the decision that it was the delay which was regarded as the crucial point determinative of the outcome in favour of Mr Alpha; and it was concluded that the judge's findings on the Article 8 appeal were in accordance with the approach laid down in Huang and was within the range of decisions properly and reasonably open to him on the basis of the findings of fact. Whether Mr Alpha was fortunate in his findings of fact, as Mr Payne asserted to me, is not a matter on which it is necessary for me to comment. It has, however, been necessary to set out in some detail what has happened to Mr Alpha because Mr Medhurst, on behalf of the claimant Ms Boima, has placed considerable reliance on it.

21. It is not, I think, necessary for me to refer to the texts of all the various decision letters which have been issued by the Secretary of State: indeed Mr Medhurst did not seek himself to do so. It might be said that initially the Secretary of State was posing the wrong question and in effect the Secretary of State was asking a question whether the Secretary of State considered whether or not Mr Boima's claim was a good one rather

than asking the first question in terms as posed by Buxton LJ. But it is sufficient to say that the carefully prepared ultimate decision letter, and indeed previous decision letters, did proceed on the correct approach. Again, I do not think it is necessary for me here to set out the full text of that decision letter or any previous decision letters. I have had full regard to the contents of the letters and the reasoning on behalf of the Secretary of State. I should also add that Mr Medhurst has not sought to assert to me that the Secretary of State has failed to consider all the representations properly or has overlooked any evidence or other argument deployed before her. His objection is, quite simply, as to the conclusion that was in fact reached by the Secretary of State, which he categorises as unreasonable and not one that can be sustained.

22. The first point which was sought to be advanced on behalf of Ms Boima in the fresh representations asserted on her behalf in the course of correspondence, and as reiterated by Mr Medhurst in argument, was by reference to certain materials by way of objective evidence which has arisen since the original determination. Mr Medhurst took me through a selection of those. Mr Medhurst also sought to rely on the decision in Fatmata Sumah (FS) v Secretary of State for the Home Department [2002] UKIAT 05588 (a decision, I note, which in fact preceded the determination of the Adjudicator in this case). Overall, Mr Medhurst's submission was that the position in Sierra Leone now, or at least arguably now, was such that it could be said that the claimant was at risk of mistreatment for the purposes of Article 3 if returned to Sierra Leone and at all events there was a real prospect, anxious scrutiny being applied, of an adjudicator so finding and the Secretary of State should have so accepted.

23. In my view, there is no substance in that particular submission at all. At the original determination the Adjudicator had considered the objective evidence before him and had made a finding with regard to that objective evidence which was properly open to the Adjudicator and, indeed, was upheld on the application for permission to appeal. I need not go through all the details of the fresh objective evidence which Mr Medhurst has deployed for me. In fact, if one simply takes aspects of the country of origin information report, one can see, as pointed out by Mr Payne on behalf of the Secretary of State, that the general emphasis is that since 2004 the position in Sierra Leone, although of course in no way to be presented as ideal, has improved. A number of reports are cited in the COI Report in that regard. Mr Medhurst latched on to certain aspects of the fresh objective evidence to indicate that women, especially single women, can have a very hard time of it in Sierra Leone and that some may be exposed to the risk of rape or the need to rely on prostitution: although he expressly disclaimed an argument that the claimant here might be exposed to a risk of FGM if returned. But that was all highly generalised evidence. It was by no means specific to the position of this particular claimant; and overall the objective evidence as deployed before me which has arisen since the determination of the Adjudicator, so far as arguably undermining that determination, in fact simply reinforces it.

24. Mr Medhurst in this context also emphasised that in reaching his conclusion the Adjudicator had been influenced by the fact, as the Adjudicator found, that the claimant had in Freetown a friend or relative who had proved willing to support her and there was no reason to think that that person would not be available to her to act as her protector. On 13th May 2005, the applicant sent a letter to her own solicitors, saying

that she had written several letters to her uncle's friend when she had arrived in the United Kingdom but had never received any reply from him. That is all there is to suggest that that person is no longer now available to her in Sierra Leone. It seems to me that that can properly be regarded as of no weight. Indeed, it is of some comment that the claimant herself has put in no witness statement at all in respect of this particular claim with regard to matters such as that. But, in any event, it seems to me that there simply was no realistic prospect, even on the anxious scrutiny approach, which of course was appropriate, that an Adjudicator might reach a different view on this issue and it seems to me the Secretary of State was fully justified in rejecting that point as she did.

25. The second ground advanced, and really I think this was at the heart of Mr Medhurst's argument, is by reference to Article 8. With all respect to Mr Medhurst, it was rather difficult, both with regard to the representations made in the correspondence with the Secretary of State and in respect to his own submissions, to get a precise purchase on what was sought to be said. But ultimately the position really was that she did now live with Mr Henry Alpha and his family, that a family and a private life had been established and, given that Mr Alpha had now succeeded in his own appeal proceedings, it would be unreasonable and disproportionate and, in Mr Medhurst's word, "unfair" for the claimant now herself to be removed. That in summary is the essence of what the submission came to.

26. That approach and the various ways of formulating it were rejected by the Secretary of State in correspondence. In my view, what is absolutely crucial here (and as the Secretary of State considered) is that at the time this relationship started the position of both the claimant and of Mr Alpha was precarious and known by each to be precarious. Indeed, the claimant herself, her appeal having failed, was liable to imminent removal. It is very difficult indeed in such circumstances to see how it could be said that family life had been established such that prospective removal would justify an interference with it so as to be a breach of Article 8. In my view, notwithstanding all the points sought to be made, that really is the complete answer to the point sought to be made. I do not think that Mr Medhurst can simply, as it were, on behalf of his client ride behind the success that ultimately has fallen to Mr Alpha. Indeed, it has expressly been found that there is no obstacle to Mr Alpha returning to Sierra Leone and certainly there is no finding that is he did so he would be himself at risk under Article 3. If Ms Boima, the claimant here, were to be removed, it would be open to Mr Alpha, assuming the relationship is as loving and as genuine as Mr Medhurst assures me it is, to go with her. Further, having, as he presumably will be in the light of his success, granted leave to remain, he can then, if he goes to Sierra Leone, return to the United Kingdom if he so chooses. It is true that the claimant would not herself, if removed from the United Kingdom, have an entitlement to come back to the United Kingdom to be with Mr Alpha; but at least she would have the entitlement to apply to do so. In that regard Mr Payne referred me to the Court of Appeal decision in Ekinci v Secretary of State for the Home Department [2003] EWCA Civ 765.

27. It seems to me that all the points made on behalf of the claimant really do not displace the proper entitlement of the Secretary of State to reject the representations in this regard put forward on behalf of the claimant as a fresh claim. In my view, the decision

reached in that context was a reasonable one, was answered by posing the right question and anxious scrutiny had been given to the matter.

28. But then Mr Medhurst relies on the API policy which he says is in point in this case. Mr Medhurst was pressed to identify the precise part of the policy which he says applied to his client. He referred me to a paragraph coming under the heading "Family: Marriage Applications" and in particular to this paragraph:

> "If the sponsor has been granted Humanitarian Protectional or Discretionary Leave, but has not yet completed three or six years in that capacity, a marriage application from a spouse currently outside the UK seeking entry clearance will normally be refused. Refusal will be on the grounds that the sponsor is not settled, unless there are truly compelling compassionate circumstances. However, if the applicant (i.e. the spouse) is already in the UK leave may be granted on a discretionary basis."

He also relied on this further passage:

> "In the event that an illegal entrant or overstayer makes representations to remain as the spouse of a refugee or of a person with exceptional leave to remain, the representations would not automatically be refused. Any compelling compassionate circumstances should be taken into account."

29. Now it is self evident that the claimant is not within the ambit of those provisions, if only on the basis that she is not a spouse. Mr Medhurst told me, although there is no actual evidence of this in the form of a witness statement or affidavit, that Mrs Boima and Mr Alpha do indeed wish to marry. However, there are, it is said, certain obstacles in their way, partly because of Ms Boima's current status and partly, as I was told, that there would be a significant financial cost involved. Well, I have no evidence as such about that but the point is she is not a spouse and she is not within the terms of the policy. Of course, the policy does permit a discretionary basis of grant even if the actual terms of the policy are not explicitly in point. Suffice it to say that residual discretion has expressly been considered by the Secretary of State and the Secretary of State has indicated that she is not prepared to exercise discretion in favour of the claimant. No, it seems to me, compelling, compassionate or other circumstances were shown to me which could indicate that the Secretary of State's exercise of the direction was not one which could reasonably be made. It seems to me therefore that, whether one looks at it in terms of the API policy or whether one looks at it in terms of the residual discretion, there is no basis for impeaching the Secretary of State's decision in this regard.

30. I should add two other points. First, Mr Medhurst asserted that the API policy could of itself inform any decision under Article 8, he rather hopefully relying on what he said was the "rationale" underneath the policy. Well, whether the rationale, as he asserts, underneath the policy can extend to making the claimant someone who is, as it were, a quasi spouse with the "spirit" of the policy I very much venture to doubt; but in any event there can be no basis for thinking that a conclusion under Article 8 could be any

different simply by consideration of the terms of the policy having regards to the facts of this particular case.

31. The other point I should mention in the context of the Article 3 argument is the argument by reference to the case of FS. It seems to me that decision (made in 2002) does not assist the claimant at all. It was made quite clear that the decision there was on the facts of the particular case and, as Mr Payne pointed out, there was this wider observation:

> "Nor do we think this evidence establishes that for single women returnees who become IDPs there is in general a real risk that their return to Sierra Leone would amount to a disproportionate interference with her right to respect for physical and moral integrity."

32. In the result, and when one analyses the position, it does seem to me that this claim is without any solid foundation at all and therefore I dismiss this claim for judicial review.

33. MR PAYNE: My Lord, there is an application for costs, the Secretary of State's costs, in this case.

34. MR JUSTICE DAVIS: Is that going to be of any practical use?

35. MR PAYNE: My Lord, my understanding is that the claimant is privately funded so --

36. MR JUSTICE DAVIS: Privately funded? I was led to believe she cannot afford £200 for the --

37. MR PAYNE: Those are my instructions.

38. MR JUSTICE DAVIS: Right. What is the position then? Is your client privately funded?

39. MR MEDHURST: She is privately funded. Such money as she has saved has gone towards this appeal.

40. MR JUSTICE DAVIS: Why was it said or implied to me that £200 could not be found for a marriage application?

41. MR MEDHURST: Well, it cannot be.

42. THE MR JUSTICE DAVIS: But money can be found to fund the cost of this?

43. MR MEDHURST: Well, you have a choice. I can say I discussed it over lunch and the position is that that very point had been discussed with her solicitors as to how best to spend her money. One way was a marriage application, £400, as I said. Another way is to --

44. MR JUSTICE DAVIS: Fine.

45. MR MEDHURST: So it is a limited amount of money --

46. MR JUSTICE DAVIS: Can you resist in principle the application?

47. MR MEDHURST: In principle I cannot but in practical terms she has no money. She is not working and there is no money there. That is the practical situation.

48. MR JUSTICE DAVIS: Presumably she is not entitled to work.

49. MR MEDHURST: She is not entitled to work and there is nothing --

50. MR JUSTICE DAVIS: Mr Payne, I think you are entitled to an order for costs, since you have succeeded on this. It is for you to decide whether it is worth enforcing, which is a different point.

51. MR PAYNE: That is all I ask for.

52. MR JUSTICE DAVIS: But I will make a standard basis of costs. And legal aid funding order in respect of -- no.

53. MR MEDHURST: I am not on legal aid.

54. MR JUSTICE DAVIS: Of course, you just told me.

55. MR MEDHURST: May I ask: if I wanted to appeal, I would have to ask permission to do so?

56. MR JUSTICE DAVIS: Can you identify a ground on which it has a realistic prospect of success?

57. MR MEDHURST: My Lord, what I say is that there is a point on which the Court of Appeal might be persuaded on Article 8, on whether I would be right in saying one could take into account the position of Mr Alpha's appeal and the delay which he --

58. MR JUSTICE DAVIS: The Secretary of State did take it into account.

59. MR MEDHURST: My Lord, I have made the points to your Lordship but I would hope perhaps I could improve on them before the Court of Appeal and, my Lord, there is the other question as to how much one might be informed by the API. Although it does not specifically mention non-married partners, my submission would be there is a question there as to the extent to which it may inform --

60. MR JUSTICE DAVIS: But how in this particular case could it be said that a different conclusion could have been reached? In this particular case?

61. MR MEDHURST: In this particular case, I would say that if it can be formed then of course it would have been something which one could --

62. MR JUSTICE DAVIS: Well, I do not want to debate it again. If they had been living together for a seeming amount, say 18 years or whatever --

63. MR MEDHURST: They have been living together for a considerable amount of time.

64. MR JUSTICE DAVIS: I am sorry Mr Medhurst, I do not think there are realistic prospects of success, that is my own opinion, and so I refuse permission to appeal. It would also seem, I have to say, from the judgment I have given, that I can see no bar now to removal of the claimant.

65. MR PAYNE: My Lord, yes.

66. MR JUSTICE DAVIS: Thank you both very much indeed for your submissions.