



**OUTER HOUSE, COURT OF SESSION**

**[2011] CSOH 6**

P810/10

OPINION OF LORD MALCOLM

in the petition of

R S (AP)

Petitioner :

against

THE SECRETARY OF STATE FOR  
THE HOME DEPARTMENT

Respondent:

For

Judicial Review of decisions by the  
Secretary of State for the Home  
Department dated 22 and 26 July 2010

---

**Petitioner: Forrest, Advocate; Drummond Miller LLP**  
**Respondent: Webster, QC; Office of the Solicitor to the Advocate General for Scotland**

19 January 2011

[1] In this application for judicial review the petitioner asks the court to quash decisions of the Secretary of State for the Home Department (the Secretary of State) dated 22 and 26 July 2010. The petitioner is a national of India who has applied for asylum in the United Kingdom. He has also claimed that removal from the United Kingdom to India would involve a breach of article 3 of the European Convention on Human Rights (ECHR). Having rejected those claims, and certain related claims, an

official acting on behalf of the Secretary of State certified the claims as "clearly unfounded" under and in terms of sections 94(2) and (3) of the Nationality, Immigration and Asylum Act 2002. On 26 July 2010 the Secretary of State ordered the removal of the petitioner from the UK to India. The certification means that the petitioner has no right of appeal to an immigration judge prior to his removal. The petitioner asks the court to quash the certification and the decision to remove him from the UK, thereby allowing him an in country appeal. Although the petition for judicial review was more broadly based, at a first hearing counsel for the petitioner, namely Mr Forrest, explained that the challenge was being presented only in respect of the decision on article 3 and the certification under section 94 of the Act.

### **The petitioner's claim**

[2] The background circumstances are as follows. The petitioner was born in India on 7 September 1979. His parents are resident in India. He is educated to degree level and was employed in India by a British company in the role of a strategic and planning officer. He had no problems in India prior to his arranged marriage held in India in April 2006. His wife travelled to the United Kingdom while he waited for a visa. He entered the UK on 1 June 2008 on a spouse visa granting leave to remain for a period of two years. He claims that problems began within ten to fifteen days of his arrival. His wife and her parents began pressurising him to stop him standing up to them by not talking to him and being abusive. His wife and her parents swore at him and informed him that he was not sufficiently educated. His wife would not share a bed with him. He believes that the family of his wife were hungry for money and married him to their daughter in order to extract money from his family. They were able to carry out this plan as they were politically powerful and wealthy. On

25 August 2008 he was beaten up and thrown out of his wife's home. He went to live with a friend in Leicester. Thereafter his father-in-law telephoned him and threatened to break his legs. He regularly received threats that he would be killed or that one of his relatives would be killed since they would not pay the dowry demand. His parents had also been threatened by his wife's family in India. Nonetheless his family have never been harmed.

[3] He last saw his wife in September 2008. In April 2009 the petitioner began making complaints about the behaviour of his wife and her family to the police and other organisations in India from the United Kingdom. In August 2009 his parents began complaining to the police in India about his wife and her family. The Punjab Government Women's Commission investigated and ordered his wife and her family to attend at Chandigarh to explain their actions. They stated that they were trying to settle the issue amicably. No further action was taken by the Commission. His wife's grandfather was a politician in Congress (now retired). He is politically powerful and has many connections in India.

[4] The petitioner met his current girlfriend in early 2010 after contact on the internet. They are planning to live together. The petitioner has no children from this relationship nor was any evidence presented that the relationship is subsisting. The petitioner did not claim asylum straight away in the UK but submitted an application for leave on the basis of being a victim of domestic violence. He states that he cannot return to India because of a fear that his in-laws are threatening to kill him following the breakdown of the marriage. His parents have been threatened and money is being demanded from them. Furthermore it is feared that the authorities will put him in prison under the remit of the Indian Dowry Act.

### **The decision letter of 22 July 2010**

[5] The petitioner's application was considered by an official acting on behalf of the Secretary of State. The decision letter was issued on 22 July 2010. It was considered that the reasons given for claiming a well-founded fear of persecution under the terms of the 1951 United Nations Convention relating to the status of refugees did not engage the United Kingdom's obligations under the Convention. Therefore he did not qualify for asylum. There is no challenge to that decision. The official then gave consideration to whether, if the persecution was for a Convention reason, the petitioner would be able to obtain sufficiency of protection and/or internally relocate in India should he encounter problems from his wife or her family upon his return. Detailed reference was made to documentary information concerning the current situation in India. It was considered that there are laws in place to protect citizens from abuses connected to dowry related issues. It was noted that the petitioner and his family had made representations to the police and other non-governmental organisations to highlight the mistreatment that his wife and her family had directed towards him. Although the authorities in India did not take any action, this was on account of the explanation provided by his wife's family at Chandigarh, and it was noted that further representations had then been made to a higher authority. For the reasons given in the decision letter it was considered that there is a sufficiency of protection available to the petitioner in India should he encounter any threats on his return. On the basis of the findings made in paragraphs 8-31 of the decision letter, it was decided that there was a sufficiency of protection that he could employ from the authorities in India before seeking international protection in the UK.

[6] In any event it was considered that he could relocate within India to escape the localised nature of his problems from his wife and her family. India is of a sufficient

size and population density to allow his relocation within the country away from his home area in Punjab in order to escape from his wife and her family. While it was noted that his wife's family in India had been threatening his family, they had never physically harmed his parents nor succeeded in obtaining money by way of their financial demands for dowry. It was considered that the political influence and connections of the family of his wife were not sufficient to track him throughout India since they had not been able to carry out their threats against his family. The petitioner is a healthy young man who had been educated to degree level, had a responsible job when he was in India, and was willing and resourceful enough to travel to the UK. As such it was considered that he had the resourcefulness and transferable skills that would allow him to relocate successfully within India.

[7] It was considered whether, if returned to India, the petitioner would face mistreatment contrary to article 2 of ECHR - the right to life. This was answered in the negative. There is no challenge to that decision. In addition it was considered whether, if returned to India he would face mistreatment contrary to article 3 of ECHR - the right not to suffer torture, inhuman or degrading treatment or punishment. For the reasons set out earlier in the decision letter in the context of the asylum claim, it was considered that the claimant did not meet the threshold for article 3. His removal to India was not considered to be an infringement of the UK's obligations under article 3. As a result he did not qualify for humanitarian protection. The legality of this decision is challenged in these proceedings.

[8] Consideration was then given to the Home Office's policy on discretionary leave under article 8 of ECHR in order to consider whether the claimant had established some form of private and/or family life in the UK. For the reasons given in paragraphs 42/4 it was decided that removal would not be an infringement of any

rights under article 8 of ECHR, therefore the claimant did not qualify for discretionary leave. Counsel for the petitioner withdrew the claim in the petition that this decision was unlawful.

[9] Thereafter the official certified the claims as "clearly unfounded" under and in terms of sections 94(2) and (3) of the Nationality, Immigration and Asylum Act 2002. As a result the petitioner may not appeal while in the United Kingdom. It was decided that his removal from the United Kingdom was appropriate. Thereafter the petitioner lodged the current application for judicial review.

### **The petition for judicial review**

[10] So far as relevant to the challenge as now maintained, the petition avers that the certification of the article 3 claim as clearly unfounded was irrational and unlawful. A claim must be certified as clearly unfounded only if the Secretary of State is "reasonably and conscientiously satisfied that the claim must fail or if the claim cannot on any legitimate view succeed." The petitioner states that he will be subjected to inhuman and degrading treatment by his wife's family if he is returned to India. In addition he will not receive sufficient protection from the authorities in India because they have ignored his family's requests for assistance. The petitioner also avers that the influence of his wife's family is so extensive that he will be unable to avoid them by moving to another part of India. The petition states that the Secretary of State "cannot be reasonably and conscientiously satisfied that... the claim is bound to fail." In these circumstances the certification is "irrational and unreasonable", and should be quashed along with the subsequent decision to remove. The short response in the pleadings on behalf of the Secretary of State is that, in all the circumstances, the petitioner's claim of an infringement of his rights under article 3 of ECHR is clearly

unfounded, therefore certification was wholly appropriate. The result is that the petitioner has no further rights of appeal in this country and the decision to remove him to India should be confirmed.

### **The submissions at the first hearing**

[11] On behalf of the petitioner Mr Forrest submitted that because of "inadequate consideration of all the relevant facts and circumstances" the Secretary of State had erred in certifying the article 3 claim as clearly unfounded. He referred the court to various authorities which demonstrate that certification should occur only if the claim is so clearly without substance that an appeal would be bound to fail. As to infringement of article 3, the test is whether there are substantial grounds for believing that there is a real risk that the petitioner would be exposed on return to India to treatment contrary to article 3. The petitioner was beaten up and thrown out of his house in the UK and he believes that the same would happen to him in India. The basis of this belief is information which he has regarding what has happened to his family in India. In particular Mr Forrest stated that the petitioner "understands that his family has been threatened with harm." Thus there is a risk that if the petitioner is returned to India he will be threatened with harm and the state authorities will be unable to protect him.

[12] It was stressed that the Secretary of State required to consider the factual substance and details of the claim. It was submitted that this had not been done. In particular there was no comment as to whether the claim of threats of harm in India was believed. Anxious scrutiny was required and the respondent had not taken everything into account that could be taken into account in the petitioner's favour. Furthermore the findings in the decision letter did not justify the conclusion that there

was a sufficiency of protection in India nor that internal relocation was a realistic option, given the powerful and influential position of the petitioner's wife's family. In short, the Secretary of State could not be reasonably satisfied that the petitioner was bound to fail in an appeal to an immigration judge in respect of the article 3 claim.

## **Decision**

[13] As a matter of general impression the decision letter of 22 July 2010 strikes me as a comprehensive, well structured and entirely persuasive document. Furthermore, to my mind, and even with the most liberal interpretation of article 3, one would be hard pressed to extend it to cover the petitioner's concerns. In any event, in so far as those concerns might be categorised as infringing ill treatment, they are unsubstantiated, and at best vague and lacking in specification. Despite being afforded opportunities to do so, Mr Forrest was unable to put any flesh on the bones. As to why, standing the detailed findings in the decision letter, it was claimed that the petitioner could not expect protection in India nor seek refuge in other parts of the country, this was addressed only by ill-defined and unsubstantiated assertions about a now retired politician's power and influence. On the face of the petitioner's case, he is in danger from his parents-in-law in the UK. There requires to be some demonstrable and sufficient basis for his increased concerns should he be returned to India.

Furthermore, in my view the criticisms of the decision letter in the petition and in Mr Forrest's submissions were at best tenuous, and based more on assertion than on any underlying validity.

[14] In the present context the question is whether substantial grounds have been shown for believing that the petitioner, if removed to India, would face a real risk of being subjected to treatment contrary to article 3. The Secretary of State has decided



that the answer to this question is clearly no. I agree with that conclusion. In all the circumstances I consider that the certification under the 2002 Act was justified. I have identified no sound basis for interfering with the Secretary of State's decision on article 3 and certification. Before reaching that conclusion, and in accordance with the requirement for anxious scrutiny, I asked for and have reviewed the underlying documentation which was before the Secretary of State. This application for judicial review is refused. I shall sustain the respondent's third plea-in-law, and meantime reserve the question of expenses.