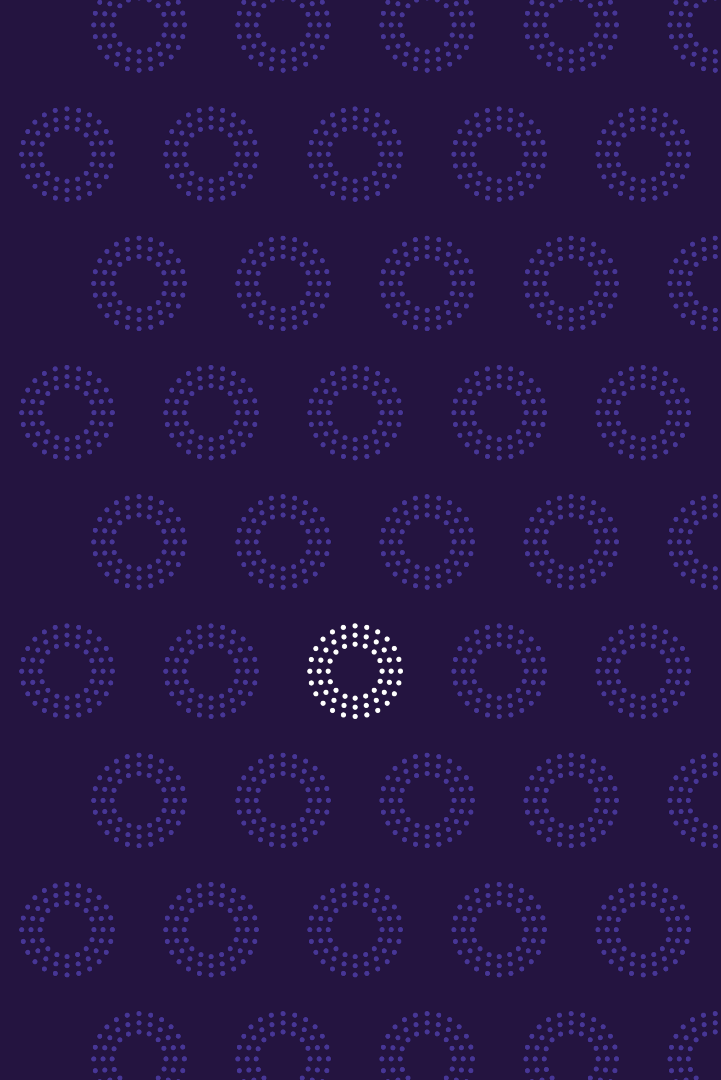


HOWARD KENNEDY

Immigration & Article 8

05 July 2021



Agenda

- House keeping
- Article 8 of the ECHR
- Incorporation of Art. 8 into the Rules
 - 10 year partner visas
 - Parent visas
 - Adult Dependent Relative visas
 - Paragraph 276ADE
- Strategy for preparing Art. 8 cases

House keeping

- Remain on mute
- Raise your hand if you have a question
- Feel free to type questions into the Q&A function

Article 8 of the ECHR

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 wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 8 of the ECHR

- The right to private and family life is not an absolute right
- The Home Office are entitled to infringe on that right so long as it is for a legitimate aim and proportionate to that aim.
- The biggest mistake made by applicants is to confuse Article 8 rights with preference – bear this in mind as we look at the case studies.
- Historically, immigration applications would be considered in accordance with the five stage test however from July 2014 onwards the Rules were changed to incorporate the rules.

Article 8 of the ECHR

- The five stage test came (Razgar test):
 - Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private and/or family life?
 - If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
 - If so, is such an interference in accordance with the law?
 - If so, is such interference 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 disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
 - If so, is such interference proportionate to the legitimate public end sought to be achieved?

Immigration Rules & Article 8

- Family life is now considered under Appendix FM
- Private life is now considered under paragraph 276ADE

Appendix FM

- There are various sub-categories under Appendix FM
 - Partner route (5 year and 10 year route)
 - Parent route
 - Victims of domestic abuse
 - Adult dependent relatives

Partner route – 10 years

- Suitability requirements
- Eligibility requirements
 - Relationship
 - No immigration status requirement
 - No English language requirement
 - No financial requirement
 - Section EX1
- Granted 2.5 years with right to work and no recourse to public funds

EX1

EX.1. This paragraph applies if

(a)

(i) the applicant has a genuine and subsisting parental relationship with a child who-

(aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;

(bb) is in the UK;

(cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application ;and

(ii) taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK; or

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK, or in the UK with refugee leave, or humanitarian protection, in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), or in the UK with limited leave as a worker or business person under Appendix ECAA Extension of Stay in accordance with paragraph GEN.1.3.(e), and there are insurmountable obstacles to family life with that partner continuing outside the UK.

EX.2. For the purposes of paragraph EX.1.(b) “insurmountable obstacles” means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.

Partner Route – Case Study

- Mr A (Mongolian national) is married to a British citizen (Mrs A). Mr A entered the UK as a visitor in 2010 and then overstayed his visa. Mrs A suffers from a very rare genetic disorder which requires constant ongoing treatment.

Parent Route

- Suitability requirements
- Eligibility requirements
 - Child must be under 18 years, in the UK and either British or has lived here for 7 years
 - Sole parental responsibility or joint parental responsibility (but not eligible for partner leave)
 - Evidence of being involved in the child's upbringing
 - No immigration status, financial or English language requirement if EX1 applies

Parent Route – Case Study

Nick is from the USA. He came to the UK on a visit visa. Whilst in the UK, he met a British citizen and they had a child together. Unfortunately the relationship broke down and Nick had completely forgotten to sort out his visa status. He lives on his own but regularly visits his daughter, pays for her school meals. She also lives with him every other weekend. This arrangement is something agreed between Nick and his ex – there is no court order.

Adult Dependent Relative

- Applicant must be a parent, grandparent, adult brother/sister or adult son/daughter
- Sponsor must be British, present and settled or have limited leave under Appendix EU
- The applicant must, as a result of age, illness or disability require long-term personal care to perform everyday tasks
- The applicant must be unable even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living because it is not available or is not affordable
- Adequate accommodation and maintenance

ADR– Case Study

- Mr and Mrs Patel are Indian nationals who have lived in the UK for 20 years. They now hold British citizenship.
- Mrs Patel mother is in India and on her own. She suffers from diabetes, high blood pressure and crippling arthritis
- Mr and Mrs Patel pay for private carers for the mother but on each occasion there have been issues – theft from the property or inadequate care

Paragraph 276ADE – Private Life

- Suitability requirements
- Eligibility requirements
 - Lived continuously in the UK for at least 20 years; or
 - Under the age of 18 years and has lived continuously in the UK for at least 7 years and it would not be reasonable to expect the applicant to leave the UK; or
 - Is aged 18 years or above but under 25 years and has spent at least half their life living in the UK; or
 - Over the age of 18 years, has lived continuously in the UK for less than 20 years but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK

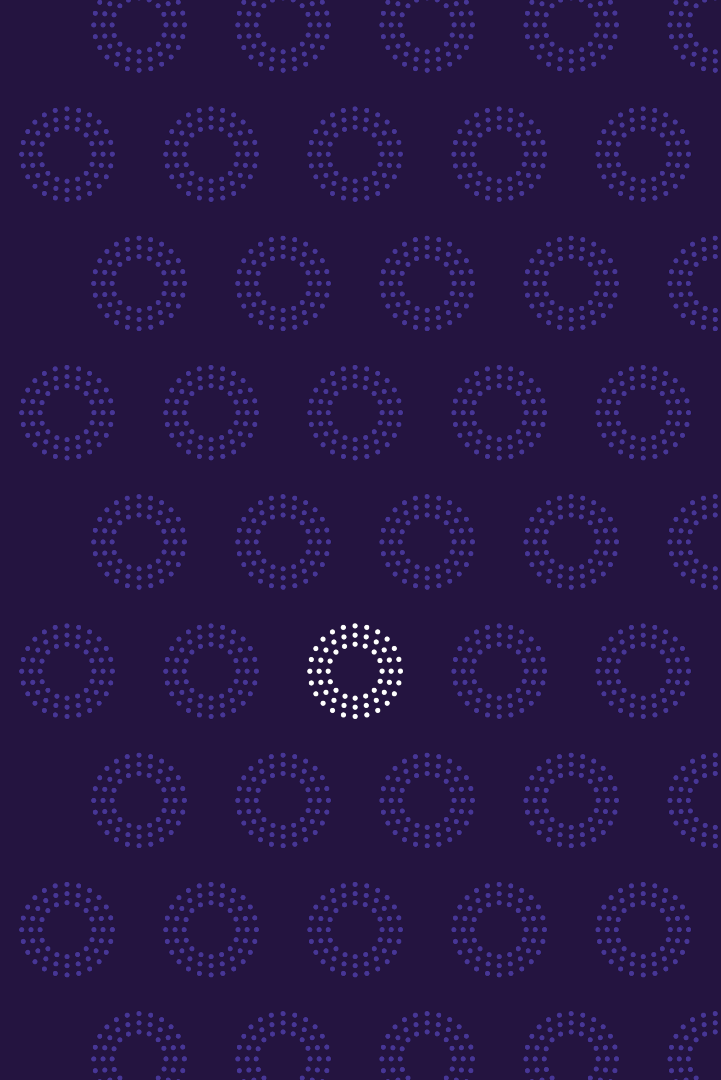
Paragraph 276ADE – Case Study

- Mr Islam is from Bangladesh. He came to the UK on a student visa in 2012. Unfortunately he fell very ill whilst in the UK and it later turned out that he had developed motor neuron disease. He deteriorates quite quickly and in a matter of months he has limited mobility and speech abilities. His family in Bangladesh were not understanding of his disease. Fortunately a new drug is being trialled in the UK and this drug appears to have slowed the spread of the disease. He fell out of status in 2017 as a result of his illness.

Strategy for Article 8 cases

- Read the Rules then the guidance then look at the case law – make sure you look at the most recent case law
- Evidence! Evidence! Evidence!
- Tell the applicant's story
- Remember, argue human rights not preferences
- Assume that the case will end up before a Judge – does it present well?

Questions?



Thank You

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