

Right to Respect for Family Life Encompasses Respect for Life of Partner and Children

Beoku-Betts (FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2008] UKHL 39 (25 June 2008)

The House of Lords held that the right to family life should be interpreted broadly, and encompass consideration of the rights of other family members, when determining an appeal against the Secretary of State's refusal of leave to remain under s 65 of the *Immigration and Asylum Act 1999* (UK).

Facts

Beoku-Betts was a 29-year-old man from Sierra Leone. He fled to the UK via Senegal in 1997 at 19 following a violent military coup, which ousted President Kabbah's government. The belief that his family was at risk prompted the move; they were Creole, wealthy and prominent, and had a long history of involvement in Sierra Leonean political life. He and his brother were exposed to a terrifying mock execution following the coup.

His mother, father, and younger sister Candace followed Beoku-Betts to the UK. An older sister, Josepha, already lived there and held citizenship. His father died shortly after becoming a citizen. The immigration policy then in force granted his mother and younger sister indefinite leave to remain in the UK. However, Beoku-Betts was unable to benefit from the policy.

His initial grant of leave to stay in the UK had been for 12 months as a student. After he completed his A-levels, he went on to university. He obtained all the necessary extensions of leave to continue his education until 31 December 2000, when his final leave expired. Beoku-Betts mistakenly believed that his leave would continue until he completed his degree.

On 1 June 2001, he sought asylum and the right to remain in the UK under art 3 (protection from cruel treatment or punishment) and art 8 (respect for private and family life) of the *European Convention on Human Rights*.

On 27 February 2002, the Secretary of State refused both claims. Beoku-Betts appealed to an adjudicator under s 65 of the *Immigration and Asylum Act 1999* (now ss 82 and 84 of the *Nationality, Immigration and Asylum Act 2002*). He claimed that interference with his art 8 right to respect for family life was not justified in the interest of controlling immigration.

Decision

Adjudicator's Decision

The adjudicator held that the interference with Beoku-Betts' art 8 rights was not justified in the interest of controlling immigration. Reasons included the fact that the family was close-knit and interacted on a regular basis. Beoku-Betts travelled home most weekends during the term and lived with his mother and sister when he was not studying. He had several cousins and uncles in the UK. His mother relied on him for emotional support since leaving Sierra Leone and continued to do so following the death of her husband. The family had strong connections in the UK, which they were unlikely to give up to follow Beoku-Betts back to Sierra Leone if he left the UK.

Josepha worked at a local law firm, his mother worked as a study supervisor and Candace was in a local school. Therefore, if his art 8 claim failed, Beoku-Betts would inevitably be separated from his family.

Immigration Appeal Tribunal and Court of Appeal

The Immigration Appeal Tribunal overturned the adjudicator's decision because it placed too much importance on Beoku-Betts' mother and siblings. However, the Tribunal gave leave to appeal to the Court of Appeal on the extent of consideration that should be given to the claimant's family members in determining appeals under s 65.

On 6 June 2005, the Court of Appeal dismissed the appeal, holding that the right of appeal on human rights grounds under section 65 of the 1999 Act only requires consideration of the alleged breach of *the appellant's* human rights and not the art 8 rights of his family.

House of Lords

Lord Brown of Eaton-Under-Heywood, in delivering the unanimously supported judgment, canvassed domestic cases as well as the Strasbourg case law before rejecting the narrow interpretation of family under the 1999 Act.

In his judgment, he noted the UKHL decision in *Huang v Secretary of State for the Home Department* [2007] 2 AC 167, which says the core value which art 8 seeks to protect is the family unit. Human beings are social animals who depend heavily on their families for social, emotional, and financial support. Prolonged separation seriously inhibits their ability to live full and fulfilling lives. The age, health, and vulnerability of the applicant, closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, and the prevailing cultural tradition and conditions in the country of origin are all relevant considerations in making a determination in relation to article 8.

Relevance to the Victorian Charter

Section 17 of the Victorian *Charter* provides that families are the 'fundamental group unit of society', and as such, are entitled to protection by society and the state.

According to the Explanatory Memorandum, 'family' is intended to be interpreted broadly, to recognise the diversity of families living in Victoria.

This view is consistent with that of the UN Human Rights Committee; which says that the concept of family should be extended to protect any group regarded within a particular country or region as a family. The Committee also considers that one of the principal ways in which the family is to be protected is through the promotion of family unity.

Louise Fahy is a lawyer with DLA Phillips Fox