



Case No: C6/2016/3199

**Neutral Citation Number: [2018] EWCA Civ 714**  
**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE UPPER TRIBUNAL**  
**(IMMIGRATION AND ASYLUM CHAMBER)**

The Royal Courts of Justice  
Strand, London, WC2A 2LL

Tuesday, 27 February 2018

**Before:**

**LORD JUSTICE LONGMORE**

**Between:**

**THE QUEEN ON THE APPLICATION OF  
ARAFAT**

**Applicant**

**- and -**

**SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

**Respondent**

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The **Applicant** did not appear and was not represented

The **Respondent** did not appear and was not represented

**Judgment**  
**(Approved)**  
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**LORD JUSTICE LONGMORE:**

1. This is an application on which, despite the fact that the court has been asked to organise and did organise a video link, nobody has turned up to present the application.
  
2. In circumstances which I shall mention in due course, the applicant is a Mr Arafat, who was born in Pakistan on 3 August 1984. He applied for Tier 4 (General) student leave to enter the United Kingdom on 15 July 2010, and such leave was granted until 8 June 2011. He arrived in the United Kingdom in August 2010, and he married a lady to whom I will refer as LN on 4 June 2011. She was and is a British citizen. On 7 June 2011 Mr Arafat applied for leave to remain as a Tier 4 (General) student. That application was refused, and his appeal against that decision was dismissed on 24 August 2011, and on 13 November 2011 he left the United Kingdom. On 30 March 2012 he applied outside the United Kingdom for entry clearance as a spouse of a United Kingdom citizen. On 4 June he was granted entry clearance and leave to enter for 27 months until 4 September 2015. On 13 June 2013 he arrived in the United Kingdom and thereafter lived for a while with his wife. It was not a happy cohabitation, and on 15 February 2014 his belongings were thrown out of the house and he moved elsewhere, where occasionally his wife visited him. The wife's father sought to mediate between the couple, and Mr Arafat decided, as he put it, to give his wife another chance, and he moved into a house provided by his father in law. But his wife refused to move in with him, and in due course Mr Arafat moved to live with his own sister.
  
3. On 3 May 2015 Mr Arafat told Dr JaJawi that he had broken up with his wife several months ago. He did not know why, but he thought his wife was listening to her parents' advice. On 25 June 2015, however, he applied for indefinite leave to remain as a victim

of domestic violence, and he also relied on what he conceived to be his rights under Article 8. On 6 December 2015 his application was refused on the basis that he had not shown that he was a victim of domestic violence or that the marriage had broken down as a result of domestic violence as the Regulations required. He applied to have that decision reviewed, but the Secretary of State on 19 January 2016 maintained her decision. In the light of that, he issued judicial review proceedings on 3 February 2016, and while those were pending and before the application came to the court on the papers, the Secretary of State dismissed his claim for relief under Article 8, which he had maintained in his application of 25 June of the previous year, and she dismissed that claim as being clearly unfounded.

4. The matter came before Mr Ockelton on the papers and he refused permission for judicial review, and Mr Arafat then orally renewed his application, in the course of which he sought to amend the application for judicial review in order to include a request for permission for judicial review on his Article 8 claim. The matter came before HHJ Gosnell in Leeds, and HHJ Gosnell refused permission on the basis that any domestic abuse was not the cause of the breakdown of the marriage, and he also refused Mr Arafat permission to amend at that late stage to rely on his Article 8 claim. Mr Arafat sought to appeal that decision of HHJ Gosnell. That came before Sir Wyn Williams on the papers, who initially refused but without having been able to read the skeleton argument provided on behalf of the applicant. He reconsidered the matter in the light of the skeleton argument and said that HHJ Gosnell was fully entitled to conclude that the Secretary of State had correctly found that the domestic abuse was not the cause of the breakdown of the marriage. Accordingly, the decision to refuse the application for indefinite leave to remain was neither unreasonable nor irrational. Sir

Wyn continued that the judge was entitled to refuse permission to challenge the decision of 1 March 2016 in relation to the Article 8 claim, because that decision was not the subject matter of the claim for judicial review. He accepted that it sometimes occurs that subsequent decisions were considered within the confines of a proceeding, but he said that was not inevitably the case and the judge had a discretion in every case whether to entertain such an amendment or not. Of course the case was then already 18 months old, and one can well understand that an extremely dubious claim for Article 8 leave was not something that HHJ Gosnell was as a matter of his discretion prepared to entertain.

5. The applicant sought to renew his application orally as he was entitled to do since the notice of appeal was issued before 3 October 2016, and the court was asked, as I say, to make arrangements for a video link. Yesterday, however, 26 February of this year, the court was informed by the solicitors that they could not contact their client and they would not therefore be attending but not withdrawing the application. The court pointed out that that was not a permissible way to proceed. In the absence of any request for an adjournment, the matter would have to proceed. No adjournment was requested, and this extremely old matter must now be laid to rest.
6. For the same reasons as given by Judge Gosnell and Sir Wyn Williams, I refuse permission in this case, and that will have to be the end of the matter.

**Order:** Application refused