Neutral Citation Number: [2018] EWHC 3475 (Admin)

Case No: CO/5603/2016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 December 2018

Before :

MR JUSTICE MURRAY

- -

Between :

THE QUEEN (on the application of FA (Sudan))	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Mr Ramby de Mello (instructed by **Bhatia Best Limited**) for the **Claimant**
Mr Gwion Lewis (instructed by the **Government Legal Department**) for the **Defendant**

Hearing date: 7 November 2018

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Judgment Approved

Mr Justice Murray :

1. The claimant ("FA") seeks to challenge by way of judicial review the decision dated 9 August 2016 ("the Decision") of the defendant, the Secretary of State for the Home Department, finding FA to be ineligible for the benefit of his policy known as the destitution domestic violence (DDV) concession ("the DDV Concession").

2. Although in her original claim she did not appear to do so, FA apparently now accepts that she is not eligible for the DDV Concession as it was formulated at the time of the Decision. She maintains, however, that she should have been and should be eligible and that the failure of the Secretary of State to extend the DDV Concession to cover her case:

i) contravenes article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") read in conjunction with article 8 of the Convention;

ii) contravenes article 18 of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime [2012] OJ L315/57 ("the EU Victim Rights' Directive") taken together with article 24 (The rights of the child) of the Charter of Fundamental Rights of the European Union [2012] OJ C326/391 ("the EU Charter"); and

iii) contravenes section 55 of the Borders, Citizenship and Immigration Act 2009 ("the 2009 Borders Act"), which requires the Secretary of State to ensure that, in discharging any function in relation to immigration, asylum or nationality, he has regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.

Background

3. FA is a national of Sudan, who was born on 4 November 1994. By her own account, she was married to Mr Ashraf Mohammed Ahmed, who is a British citizen, on 28 October 2011, when she was 16 years old. The marriage took place in Sudan. FA then had a son, who was born in Sudan on 4 August 2012.

4. She applied for a UK entry clearance family visit visa, but this was refused by the Secretary of State on 11 September 2013. I note that the Decision wrongly records that the visa was issued on that date and was valid until 11 March 2014, but evidence subsequently produced by the Secretary of State in June 2017 shows that the visa was, in fact, refused. Nothing turns on this.

5. FA travelled directly from Sudan to the Netherlands on 12 December 2014 on a Schengen visa, which she had obtained with the assistance of her husband while still in Sudan. She lived in a small village in the Netherlands, although she cannot identify it, as the local language was unfamiliar to her when she lived there. Her husband was living then in the UK, but he came to visit her in the Netherlands once a month, each time for a short period of two to four days. When he visited her, he would give her between €100 and €250 in cash. She did not have a credit card, but she did have a card that could be loaded with an amount. The cash she received from her husband was the only money that she had while she was in the Netherlands. She did not receive any state benefits there.

6. On 13 August 2015 Mr Ahmed collected FA and took her to the UK. According to her evidence, she initially thought that he had collected her for a shopping trip, but they eventually boarded a ferry. She said that to get on the ferry, she had to show her Dutch residence card, her Sudanese passport and her marriage certificate. When they arrived in the UK, they were not asked for any papers.

7. Following her arrival in the UK, FA lived with her husband in Birmingham. Her daughter was born there on 21 September 2015. Both of her children are British citizens, and they live with her now.

8. FA fled the family home in January 2016 as a result of domestic violence suffered at the hands of her husband. She sought public assistance. With the help of Birmingham Social Services, on 4 August 2016 she also applied for leave to remain outside the rules ("LOTR") on the basis of the DDV Concession.

9. On 9 August 2016, the Secretary of State made the Decision, rejecting her application on the basis that she was not eligible for the DDV Concession as she had not entered the United Kingdom under one of the routes for which the DDV Concession was established. The letter, which was signed by the Domestic Violence Duty Officer, is quite short. I set out the body of it in full:

> "Our records show you were issued with United Kingdom Entry Clearance family visit visa on 11 September 2013 valid to 11 March 2014.
>
> You have been found not to be eligible under the Domestic Violence Concession (DDV) as you did not enter the United Kingdom or were not given leave to remain in the United Kingdom as a spouse, civil partner, unmarried or same sex partner of a British Citizen or someone present and settled in the UK.
>
> This letter is not an immigration decision for the purpose of section 82(1) of the Nationality, Immigration and Asylum Act 2002. There is no right of appeal against this.
>
> You may wish to seek advice or seek alternative means of support. A list of providers is attached with this letter."

The DDV Concession

10. At the time of the Decision, the DDV Concession was set out in a Home Department policy document entitled "Victims of domestic violence". Version 13 of that document, which was published on 29 May 2015, was the relevant version at the time of the Decision and remained in effect until 4 February 2018. The DDV Concession was set out at pages 44 to 48 of that document, where it is referred to as the "destitution domestic violence (DDV) concession".

11. The current version of the policy is now published by the Home Office, separately from its other guidance on victims of domestic violence, in a document entitled "Destitute [sic] domestic violence (DDV) concession – version 1.0", which was published for Home Office staff on 5 February 2018. The key provisions remain essentially the same.

12. The DDV Concession is a policy operated by the Home Office outside of the Immigration Rules to allow eligible applicants, who intend to make an application for settlement under the domestic violence rules, to be granted LOTR and permitting them to access public funds and vital services. This gives the applicant access to temporary accommodation such as a refuge in order to leave her or his abusive partner and to submit a settlement application under the domestic violence rules. A successful applicant for LOTR under the DDV Concession does not have to meet the habitual

residence test she or he would otherwise have to meet with other types of leave under criteria set by the Department of Work and Pensions.

13. If a successful applicant for LOTR under the DDV Concession fails to submit her or his application for settlement under the domestic violence rules within three months of the grant of LOTR under the DDV Concession, then the applicant becomes an overstayer and becomes subject to removal from the United Kingdom. The DDV Concession stipulates that within 28 days of an applicant's LOTR lapsing the applicant's case should be referred for enforcement action.

14. In order to be eligible for the DDV Concession, the applicant must satisfy all of the following conditions:

    i) the applicant must previously have been granted leave to enter or remain as the spouse, civil partner or unmarried or same-sex partner of a British citizen, a settled person or a member of HM Forces who has served for at least four years;

    ii) the applicant's relationship with her (or his) spouse, civil partner, unmarried or same-sex partner must have broken down as a result of domestic violence;

    iii) the applicant must claim to be destitute and not to have access to funds; and

    iv) the applicant must intend to apply for indefinite leave to remain as a victim of domestic violence under one of the following provisions of the Immigration Rules:

        a) paragraph 289A;

        b) paragraph 40 of Appendix Armed Forces; or

        c) section DVILR of Appendix FM (Family Members).

15. Paragraph 289A sets out requirements that must be met by a person who is a victim of domestic violence and who is seeking indefinite leave to remain in the UK. It forms part of part 8 of the Immigration Rules, which is concerned with family members. Section DVILR of Appendix FM (Family Members) provides an alternative set of requirements to be met by a person who is a victim of domestic violence and who is seeking indefinite leave to remain in the UK.

16. It is common ground that FA satisfies criteria (ii) and (iii) set out at [14] above, but not criteria (i) or (iv). In relation to criterion (iv), she cannot have the requisite intention, because she does not satisfy the pre-conditions to applying under any of the routes mentioned in (iv). It follows, therefore, that FA is ineligible for the DDV Concession on its terms.

17. FA's case, set out in the Amended Grounds of Review, appears to be that it should be sufficient for purposes of the DDV Concession that she entered the UK lawfully as the spouse of a British citizen and that she suffered domestic violence at his hands. She argues, in the alternative, that the Decision should be quashed on the human rights grounds to which I have already referred.

Procedural history

18. The procedural history of this claim is relevant. On or about 2 November 2016 FA issued her application for permission to apply for judicial review of the Decision. On the basis of her initial grounds and statement of facts in support of her application for judicial review ("the Grounds of Review"), Timothy Brennan QC, sitting as a Deputy High Court Judge, granted permission by order dated 3 March 2017.

19. The substantive hearing was listed to be heard on 11 July 2017. Before it was held, the Secretary of State applied for a preliminary hearing to be held on that date instead, in order to consider three questions of fact relating to FA's immigration history, which the Secretary of State submitted needed to be answered before proceeding to a substantive hearing. His view was that FA's Grounds of Review were unclear and internally inconsistent as to relevant key facts and that FA had failed to demonstrate that her husband had exercised his rights under Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L158/77 ("the Citizens' Rights Directive") to reside as a worker or self-employed person in the Netherlands (his "EEA rights"), as she had claimed.

20. By order dated 3 July 2017 Judge Peter Lane (as he then was), sitting as a Deputy High Court Judge, granted the Secretary of State's application to hold a preliminary hearing on 11 July 2017 instead of a substantive hearing to consider the following three questions of fact:

    i) Did FA enter and then reside in the Netherlands, as she claims, in or around 2014-2015?

    ii) Did FA enter the United Kingdom lawfully in 2015 as the "family member" of a returning British citizen, as she claims?

    iii) Did FA reside with her husband for 5 years, as she claims?

21. Jefford J presided over the preliminary hearing on 11 July 2017 to consider these questions. FA provided a third witness statement, served in draft on 23 June 2017 and signed at the hearing. She then gave oral evidence at the hearing through an interpreter and was cross-examined on her evidence. Jefford J found her to be a "thoroughly credible witness". FA frankly admitted that some of the evidence in her original statement of facts was incorrect, which she suggested was due to language problems. Jefford J accepted that inaccuracies and inconsistencies in the way she had initially put her case seemed to have arisen out of either confusion or miscommunication.

22. On 13 December 2017 Jefford J handed down her judgment setting out her answers to the three preliminary questions and her related findings of fact: *R (FA (Sudan)) v Secretary of State for the Home Department* [2017] EWHC 3194 (Admin). I will summarise those findings in a moment.

23. On 16 January 2018 the Government Legal Department wrote to FA's solicitors, Bhatia Best Solicitors, noting that:

> "As a result of the findings of Jefford J, it seems clear that your client was not residing in the Netherlands under the Free Movement directive [EU Directive 2004/38/EC] or that she has any lawful basis of stay in the United Kingdom. With that in mind, we repeat that it is open for your client to apply for leave to remain as a parent at any time. If granted, such an application would place her on the ten-year route to settlement."

24. In the same letter, the Secretary of State noted that if FA wished to continue her claim, she would need to apply for permission to amend the Grounds of Review in light of Jefford J's findings. The Secretary of State enclosed a proposed consent order to make provisions for directions to that effect, which was signed by the parties on 5 February 2018. FA prepared amended Grounds of Review ("the Amended Grounds of Review"), which she signed on 13 February 2018. A consent order with further directions was signed by the parties on 19 March 2018 and approved by the court on 20 March 2018. Mostyn J reviewed the application to amend on the papers and made an order dated 24 July 2018 granting FA permission to rely on the Amended Grounds of Review.

Summary of relevant facts found by Jefford J

25. I have already set out at [20] the three questions that Jefford J was asked to determine. At [11] of her judgment, she made comments on each of the questions, noting in relation to the second question, in particular, that it appeared, as framed, to invite her to answer questions of law as to FA's status as a family member and the lawfulness of her entry into the UK. Jefford J discussed and agreed with counsel for both parties that her task was limited to factual questions. So, by way of further example, she was not required to determine whether FA, in law, had "resided" with her husband for five years, but merely whether they lived "under the same roof".

26. Jefford J also made it clear that she was not making findings of fact on certain issues, but either making an assumption or simply recording the evidence of FA on the point. For example, she made no finding that Mr Ahmed was FA's husband and that they had been lawfully married in Sudan. She assumed that to be the case, as do I.

27. In the transcript of Jefford J's judgment that was in the hearing bundle, there were two minor typographical errors that I correct for the record. At [3] of the judgment, Jefford J mentions that FA was 17 at the time of her marriage to Mr Ahmed, however on the basis of her date of birth given in the Amended Grounds of Review, she would have been 16 at that time. At [4] of Jefford J's judgment, the reference to "December 2012" should read "December 2014", as is made clear at [22] and [32] of her judgment.

28. I set out below Jefford J's findings.

    i) "Did the Claimant enter and then reside in the Netherlands, as she claims, in or around 2014-2015?"

       Jefford J found that FA did enter and reside in the Netherlands in 2014-2015. She also found that:

a) FA went directly to the Netherlands from Sudan on 12 December 2014 and did not enter the UK before she entered with her husband on 13 August 2015.

b) She entered the Netherlands on a Schengen visa obtained while she was in Sudan. Following that, her husband arranged for her visa to be renewed periodically until she received a document that was variously referred to in her evidence as her "Dutch ID card" and her "EU residence card".

ii) "Did the Claimant enter the United Kingdom lawfully in 2015 as the 'family member' of a returning British citizen, as she claims?"

Jefford J declined to answer this question as framed because, as she had explained earlier in her judgment, it involves questions of law as well as fact. She dealt, however, with the evidence relevant to this question in some detail, and made the following findings of fact:

a) Mr Ahmed visited FA from the UK once a month and stayed each time for a very short period, two to four days according to FA's evidence.

b) Mr Ahmed was not working or studying in the Netherlands during the period FA lived there.

c) FA did not work in the Netherlands. She relied entirely on cash given to her by her husband, which varied from €100 to €250 per month. He also paid her rent. Jefford J recorded FA's evidence that she received no state benefits in the Netherlands. and that she had no other potential avenues of funding.

d) FA at some point obtained a residence card, namely, the "EU residence card" or "Dutch ID card", to which I have already referred. Her husband assisted her in obtaining it, acting as her interpreter when she attended at a "government type building", where she was asked for personal details (including her full name, date of birth and address) and had her fingerprints and photographs taken. Jefford J was satisfied that the residence card was obtained from a government building and was "not a black-market fake of some description".

e) When Mr Ahmed was in the Netherlands, he focussed on FA and spent his time with her. He would also attend to any paperwork or post and help her out if she had any medical or other appointments. He did not have a job in the Netherlands, and, as already noted, he did not work or study there.

f) The circumstances in which FA entered the UK were unclear. She appears to have travelled to the UK from a European port, probably in France, by ferry. Jefford J accepted that FA had not known that she was leaving the Netherlands when her husband first collected her and that she did not know where she was when she boarded the ferry. Jefford J also accepted that FA did not conceal herself and that her credentials

were checked in the manner she had described in her evidence (which I summarised at [6] above), namely, by one officer when she boarded the ferry and not on arrival in the UK.

iii) "Did the Claimant reside with her husband for 5 years, as she claims?"

Jefford J found that FA did not live together under the same roof with Mr Ahmed until August 2015, when she went to live with him in Birmingham, and therefore she did not reside with him for 5 years.

Did FA enter the UK as the spouse of a British citizen exercising EEA Rights?

29. As a preliminary matter before considering each of the three bases on which FA now challenges the Decision, I need to consider the question of the basis on which she entered the United Kingdom. In paragraph 4 of the Amended Grounds of Review, she maintained that she entered the UK on 13 August 2015 as the spouse of a returning British citizen who had been exercising his EEA Rights in another Member State over a period of 9 months and that therefore her entry was lawful under regulation 9 of the Immigration (European Economic Area) Regulations 2006 SI 2006/1003 ("the 2006 Regulations") as in effect at the time of her entry.

30. Regulation 9 only applies if the returning British citizen was residing in an EEA State as a worker or self-employed person before returning to the United Kingdom. It is clear, on the basis of the facts found by Jefford J, that Mr Ahmed was not residing in the Netherlands. He was neither employed in the Netherlands nor was he working in the Netherlands as a self-employed person. Regulation 9 therefore did not apply. In other words, he was not exercising EEA Rights in the Netherlands.

31. It is not sufficient for the purposes of regulation 9 that FA had a validly issued Dutch residence card and that it was checked by an immigration officer on her entry to the UK.

32. Mr Ramby de Mello of counsel, representing FA, submitted in the alternative that Mr Ahmed had been exercising EEA Rights in the Netherlands because he had "sufficient resources" for FA and himself to live there without becoming a burden on the social assistance system of [the Netherlands] during their period of residence. But that argument falls on the basis that Mr Ahmed did not live in the Netherlands during the period that FA was resident there. He was resident in the UK, visiting FA once a month for a short period of between two and four days. It is not sufficient for this purpose that FA lived in the Netherlands for nine months. Jefford J found that Mr Ahmed and FA did not live together under the same roof until they entered the UK together in August 2015 and took up residence in Birmingham.

33. I note that, in any event, regulation 9 of the 2006 Regulations as in effect at the time of FA's entry into the UK in August 2015 did not include self-sufficiency as a basis on which a British citizen could be said to be exercising EEA Rights in another EU member state. Given Mr Ahmed's lack of residence in the Netherlands during the period FA lived there, it is a purely academic point whether self-sufficiency would have been sufficient at the time on broader EU law principles. Regulation 9 was amended to include self-sufficiency with effect from 25 November 2016. It has since

been replaced by regulation 9 of Immigration (European Economic Area) Regulations 2016 SI 2016/1052.

34. Accordingly, it is clear that FA did not enter the UK as the spouse of a British citizen exercising EEA Rights. Even had she done so, she would not be eligible for the DDV Concession on that basis, as is made clear by the form that FA would have been required to complete when she applied for the DDV Concession in August 2016. The form says in bold letters on the first page "Do not complete this form if you are on the EEA route". I have already described the conditions of eligibility for the DDV Concession, none of which apply to FA. I can dismiss FA's argument that she should have been eligible for the DDV Concession based on her alleged lawful entry on the EEA route on the basis that she did not, in fact, enter on the EEA route.

35. I can also dismiss FA's more general argument that, in order for her to be eligible for the DDV Concession, it should be sufficient simply that she entered the UK lawfully on a Dutch residence card. For the reasons I have already given, it is clear from the terms of the DDV Concession, as in effect at the time of the Decision, that more is required. FA must satisfy all of the conditions set out at [14] above. In this regard, see the case of *R (T) v Secretary of State for the Home Department* [2016] EWCA Civ 801, where at [11] Moore-Bick LJ held as follows:

> "In my view when considering an application under the DDV Concession for temporary relief the Secretary of State must ask herself whether, as things stand at the date of the application, the applicant would on the face of it be able to meet the requirements of section DVILR. If it is clear that she would not, the Secretary of State is entitled to refuse relief. That does not involve construing section E-DVILR by reference to the concession; it simply involves asking oneself whether, if the applicant were to make an application for indefinite leave to remain, she could satisfy the terms of the section. In the present case it was clear that she could not do so and for that reason alone she cannot succeed in this case."

36. As in the case of *T*, FA cannot satisfy the terms of section DVILR. For that reason alone, she cannot succeed in this challenge simply on the basis (if accepted) that she entered the UK lawfully. She has no form of leave to remain that would qualify her for the DDV Concession.

37. I now turn to consider FA's principal grounds, which are as I have set them out at [2] above.

Article 14 of the Convention read with article 8

38. FA argues that the Secretary of State in his decision has unlawfully discriminated against her on the basis of her immigration status in breach of article 14 of the Convention read in conjunction with article 8 of the Convention. This is because she, as a third country national ("TCN") married to a British citizen who lawfully entered the UK with a Dutch residence card accompanying her spouse, is treated differently from a TCN who has been granted leave to enter or remain as the spouse of a British

citizen and who would, therefore, by virtue of that fact, be eligible for the DDV Concession.

39. Article 14 of the Convention is headed "Prohibition of discrimination" and provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

40. Article 14 was considered by the Supreme Court recently in the case of *Re McLaughlin* [2018] UKSC 48, a case that concerned the alleged incompatibility of legislation in Northern Ireland providing for a widowed parent's allowance with an unmarried mother's rights under article 14 of the Convention, read with article 8 of, or article I of the First Protocol to, the Convention. She was denied the allowance as she had never married the deceased father of her children. The judge at first instance in Northern Ireland had made a declaration of incompatibility and had been reversed by the Court of Appeal in Northern Ireland. The Supreme Court allowed the appeal (Lord Hodge dissenting), with Baroness Hale of Richmond PSC giving the leading judgment. At [15], Baroness Hale noted that article 14:

> "[a]s is now well known … raises four questions, although these are not rigidly compartmentalised:
>
> (1) Do the circumstances 'fall within the ambit' of one or more of the Convention rights?
>
> (2) Has there been a difference of treatment between two persons who are in an analogous situation?
>
> (3) Is that difference of treatment on the ground of one of the characteristics listed or 'other status'?
>
> (4) Is there an objective justification for that difference in treatment?"

41. Baroness Hale's approach is based on that taken by Lord Justice Brooke in *Wandsworth London Borough Council v Michalak* [2002] EWCA Civ 271, [2003] 1 WLR 617 (CA) at [20], where he formulated a similar list of questions as an approach to analysing an article 14 claim in relation to succession to a secure tenancy under section 87 of the Housing Act 1985. In an earlier case dealing with article 14, Baroness Hale had expanded on the proper use of the foregoing test and the importance of the questions not being rigidly compartmentalised. In *Ghaidan v Godin-Mendoza* [2004] UKHL 30, [2004] 3 WLR 113 (HL(E)) at [134], she said:

> "In my view, the *Michalak* questions are a useful tool of analysis but there is a considerable overlap between them: in particular between whether the situations to be compared were truly analogous, whether the difference in treatment was based on a proscribed ground and whether it had an objective

> justification. If the situations were not truly analogous it may be easier to conclude that the difference was based on something other than a proscribed ground. The reasons why their situations are analogous but their treatment different will be relevant to whether the treatment is objectively justified. A rigidly formulaic approach is to be avoided."

42. Mr Gwion Lewis of counsel for the Secretary of State submitted that the proper approach to the question of discrimination under article 14 is that taken by Lord Hoffmann in *R (Carson) v Secretary of State for Work and Pensions* [2006] 1 AC 173, where he found it better not to use the *Michalak* framework but instead said at [31]:

> "There is a single question: is there enough of a relevant difference between X and Y to justify different treatment?"

43. Lord Nicholls, after briefly discussing the *Michalak* framework at [2] in *Carson*, set out at [3] a similar approach to that taken by Lord Hoffmann:

> "For my part, in company with all your Lordships, I prefer to keep formulation of the relevant issues in these cases as simple and non-technical as possible. Article 14 does not apply unless the alleged discrimination is in connection with a Convention right and on a ground stated in article 14. If this prerequisite is satisfied, the essential question for the court is whether the alleged discrimination, that is, the difference in treatment of which complaint is made, can withstand scrutiny. Sometimes the answer to this question will be plain. There may be such an obvious, relevant difference between the claimant and those with whom he seeks to compare himself that their situations cannot be regarded as analogous. Sometimes, where the position is not so clear, a different approach is called for. Then the court's scrutiny may be best directed at considering whether the differentiation has a legitimate aim and whether the means chosen to achieve the aim is appropriate and not disproportionate in its adverse impact."

44. This passage from Lord Nicholls supports the view that different approaches may be called for in different cases. In a sufficiently clear case, the single question posed by Lord Hoffmann in *Carson* may suffice. In other cases, the approach taken by Baroness Hale in *Re McLaughlin* may more helpful in setting out the analysis. I think that this is a sufficiently clear case, and I therefore take the approach preferred by Lord Hoffmann, although the same result is reached following the approach taken by Baroness Hale in *Re McLaughlin*.

45. In this case, FA says that her relevant "rights and freedoms" under the Convention that have been affected are her rights under article 8 of the Convention, which is headed "Right to respect for private and family life". Article 8 provides:

> "(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 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."

46. It is clear from the terms of the DDV Concession that it is not intended to address the position of all victims of domestic violence, regardless of their immigration status. It is intended to provide a temporary respite of three months for a victim of domestic violence who has some form of leave to remain and is therefore on a potential route to settlement. The evils that the DDV Concession is intended to avoid are that the victim will fear to leave her abusive partner for fear of the loss of this potential route and that the abusive partner will use that fear as a further coercive tool. A victim, such as FA, who is not on a route to settlement, does not have that incentive to stay in an abusive relationship, and the perpetrator of violence does not have the threat of the loss of the potential route to settlement as a coercive tool. See *R (T) v Secretary of State for the Home Department* [2016] EWCA Civ 801 at [2] (per Moore-Bick LJ).

47. There is therefore a clear rationale for giving the benefit of the DDV Concession only to those on a route to settlement. There is enough of a relevant difference between a victim of domestic violence with leave to remain and one, such as FA, who is without it to justify the different treatment. The rationale for the distinction holds true whether or not the victim has children. A parent is just as qualified to benefit from the DDV Concession, when she has a relevant form of leave to remain, as a non-parent.

48. Accordingly, I find that FA has not been unlawfully discriminated against in contravention of article 14 of the Convention read in conjunction with article 8.

49. To support his submissions in relation to article 14 of the Convention, Mr de Mello for FA referred me to the Scottish case of *A v Secretary of State for the Home Department* [2016] CSIH 38, [2016] SC 776. It is sufficient for present purposes to say that it is distinguishable on its facts.

Article 18 of the EU Victim Rights' Directive and article 24 of the EU Charter

50. FA also argues that the failure of the Secretary of State to extend the DDV Concession to cover her case contravenes article 18 of the EU Victim Rights' Directive, taken together with article 24 of the EU Charter. Article 18 of the EU Victim Rights' Directive is headed "Right to protection" and provides:

> "Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members."

51. Article 24 of the EU Charter is headed "The rights of the child" and provides:

> "1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
>
> 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
>
> 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests."

52. Article 1(1) of the EU Victim Rights' Directive provides as follows:

> "The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings."

53. It is clear from this, as well as the recitals to the Directive, that it is principally concerned with the protection of the rights of victims in the context of criminal proceedings. This is particularly clear looking at chapter 4 of the Directive, within which article 18 falls. I note also that article 18 itself begins with the words "Without prejudice to the rights of the defence" and refers, among other things, to protecting "the dignity of victims during questioning and when testifying". Neither article 18 nor the Directive more generally has any specific application to the immigration rights of a victim. The fact that the DDV Concession is not available to a person in FA's position does not mean that the UK has failed to protect FA and her children from:

> "… secondary or repeat victimisation, from intimidation or retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying."

54. In relation to article 24 of the EU Charter, as I have already noted, the availability of the DDV Concession does not depend on whether the victim has children, but whether the victim has leave to remain and is therefore on a route to settlement. Accordingly, there is no violation of article 24 of the EU Charter, whether "taken together" with article 18 of the EU Victim Rights' Directive or looked at separately.

Section 55 of the 2009 Borders Act

55. For the same reason, section 55 of the 2009 Borders Act, which is concerned with ensuring that the Secretary of State, in discharging any function in relation to immigration, asylum or nationality, has regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, is not relevant to FA's case. The DDV Concession is merely a policy concession designed to protect against

particular evils to which I have already referred. It is reasonable and proportionate for its purpose. It is available to a victim with children, provided that she or he has leave to remain.

Other considerations

56. FA's case is based on a misconception of the nature and purpose of the DDV Concession. It was never designed or intended to provide a general protection for victims of domestic violence. There is therefore no question of FA having been irrationally, unfairly or arbitrarily excluded from it.

57. FA left her abusive husband almost three years ago. The DDV Concession was only ever intended to provide a temporary respite, limited to three months, granting LOTR in order to allow an eligible victim to make an application for settlement in the UK, which she or he needs to do within eight weeks of the initial grant of LOTR under the DDV Concession. In his letter dated 16 January 2018 to FA's solicitors, the Secretary of State noted that FA has another option, namely, to apply for leave to remain as a parent of British citizen children, which, if granted, would place her on the ten-year route to settlement.

Conclusion

58. In light of the foregoing, I must dismiss FA's claim for judicial review.