Althea Radford



Call: 2009
Specialist in:

- Personal Immigration
- Business Immigration
- Civil Law
- Modern Slavery & Trafficking Team

Experience

Althea has wide ranging experience in immigration and asylum law. She regularly represents clients in the First Tier Tribunal and Upper Tribunal in immigration, asylum and criminal deportation appeals. She appears in the Upper Tribunal and the High Court in claims for judicial review of decisions relating to immigration, nationality, modern slavery and trafficking, unlawful detention and asylum.

Althea represents businesses and individuals in immigration appeals and challenges concerning sponsorship licenses, civil penalties and rights of residence in European Union law. She can advise on rights under the Immigration (EEA) Regulations, the European treaties and the Ankara Agreement.

Her expertise in asylum law includes applications by refugees who are stateless or whose nationality is disputed, claims involving decisions to cease or revoke refugee status and subsidiary protection, and issues relating to exclusion from international protection.

Althea has represented and advised victims of modern slavery and human trafficking at each stage of the National Referral Mechanism. She also has experience in related asylum appeals and applications for residence permits for victims of trafficking.

Althea is happy to advise on the preparation of appeals at an early stage. She has experience working with vulnerable and traumatised appellants.

Althea regularly provides training through chambers seminars.

Education

MA (Cantab) History, Trinity College, University of Cambridge
MPhil Early Modern History, Trinity College, University of Cambridge
Graduate Diploma in Law, City University
Bar Vocational Course, Inns of Court School of Law

Memberships

Immigration Law Practitioners' Association.

Languages

English

Awards

Lord Denning Scholarship at Lincoln's Inn, 2007-2008
Lord Bowen Scholarship at Lincoln's Inn, 2006-2007

Althea Radford's privacy policy

Cases

R (on the application of Hassan and Another) v Secretary of State for the Home Department (Dublin – Malta; Charter Art 18) IJR

[2016] UKUT 452 (IAC)

The Upper Tribunal considered the lawfulness of returning two asylum-seekers to Malta, where they claimed their fresh asylum claims would not be fairly determined, thus breaching their rights under Articles 4 and 18 of the Charter of Fundamental Rights of the European Union. The Respondent Secretary of State argued that there was no such risk, per Hagos v Secretary of State for the Home Department (Dublin returns – Malta) IJR [2015] UKUT 271 (IAC); that Article 18 could not form the basis of a legal challenge to removal under the Dublin III Regulation; and that if it could, the Applicants would need to demonstrate a 'flagrant breach' of Article 18.

The Panel held:

(i) There have been significant developments in Malta during recent years. While there may be imperfections in the Maltese asylum decision making processes, these are not sufficient to preclude returns under the Dublin Regulation and, in particular, do not amount to a breach of Article 18 of the EU Charter.

(ii) While Article 18 of the EU Charter confers rights of a procedural nature, the evidence does not establish that these will be infringed in the event of either of the Applicants pursuing a fresh asylum claim in Malta.

(iii) The limitations of the mechanisms available under Maltese law for challenging refusal of asylum decisions do not infringe Article 18 of the EU Charter.

(iv) In judicial review, decisions of the Administrative Court are not binding on the Upper Tribunal: Secretary of State for Justice v RB [2010] UKUT 454 (AAC) applied.

(v) Per curiam: Article 18 of the EU Charter provides an avenue for challenging transfer decisions under the Dublin Regulation.

(vi) Per curiam: Where a Dublin Regulation transfer decision is challenged under Article 18 of the EU Charter, the ECHR “flagrant breach” standard does not apply. Rather, the test is whether there is a real risk of a breach of Article 18.

Sheidu (Further submissions; appealable decision: Sudan)

[2016] UKUT 412 (IAC)

The Appellant successfully appealed a determination of the First-Tier Tribunal declining jurisdiction to hear an appeal against a refusal of further human rights submissions, where the SSHD had concluded that those further submissions did not amount to a “fresh claim”. The Upper Tribunal held that if the SSHD makes a decision that is one of those specified in s 82(1) Nationality, Immigration and Asylum Act 2002, it carries a right of appeal even if the intention was not to treat the submissions as a fresh claim.

The SSHD refused the Appellant’s further human rights submissions and decided that those submissions did not amount to a “fresh claim” under paragraph 353 of the Immigration Rules. The Appellant lodged an appeal against refusal of a human rights claim (s.82 NIAA 2002, as amended by the Immigration Act 2014). SSHD argued before the First-Tier Tribunal that there

was no jurisdiction to hear the appeal because a “human right claim” under s.82 meant a first human rights claim or a later claim only if SSHD had accepted that it amounted to a “fresh claim”, applying R (Waqar) V SSHD [2015] UKUT 169. The First-Tier Tribunal issued a decision to the effect that it had no jurisdiction. The Appellant appealed.

The Upper Tribunal accepted that it had jurisdiction to hear an appeal from the First-Tier Tribunal where the latter had rejected jurisdiction after a hearing. Furthermore, there had been a valid appeal before the First-Tier Tribunal. The SSHD had refused a human rights claim. SSHD’s decision under paragraph 353 could not have the effect of removing a right of appeal once she had refused a human rights claim, even if that was her intention. The judgment in R (Hussein) v FTT (para 353: present scope and effect) (IJR) [2016] UKUT 409 (IAC) did not alter the Tribunal’s conclusions.

R (on the application of Kigen) v Secretary of State for the Home Department

C2/2015/0695 Court of Appeal

A successful appeal of the refusal of an extension of time to renew an application for permission for judicial review. The case is important for the guidance given on such applications in the light of R (Hysaj) v Secretary of State for the Home Department [2014] EWCA Civ 1633.

The Court applied the three stages set out in Hysaj. In the instant case, the delay was significant in view of the tight timetable for renewing a permission application. The reason for the delay was that the Appellant’s certificate for legal aid had not been extended by the Legal Aid Agency in time. This was not considered a good reason in this case because the Appellant could have submitted his renewal application as a litigant in person without the need for further submissions, and he could have applied for a fee waiver. However, when one looked at all the circumstances in the third stage of the analysis, it was in the interests of justice to extend time.

It should be noted that the Court did not hold that delays relating to public funding could never be a good reason for extending time, but it was not a good reason where the assisted party could reasonably take the required step without funding in place.

R (on the application of K) v Secretary of State for the Home Department

CO/5225/2015 Administrative Court

The court granted an injunction restraining removal of the applicant pending his claim for judicial review. The Secretary of State had arguably misdirected herself as to the significance of an order of the Family Court for contact between the applicant and his son.

Further information

Lawtel document no AC9800754

R (on the application of F) v Upper Tribunal

[2014] EWHC 675 (Admin)

Judicial review of a decision of the Upper Tribunal (IAC) refusing permission to appeal a determination of the First Tier Tribunal dismissing his asylum appeal. The Claimant had been refused injunctive relief but subsequently succeeded in his claim for judicial review. He sought an order for his return to the United Kingdom.

R (on the application of Y) v Secretary of State for the Home Department

[2012] EWHC 1075 (Admin) (20 April 2012) and [2013] EWHC 62 (Admin) (25 January 2013)

Judicial review of a decision of the Secretary of State that Y was not a victim of trafficking under the Council of Europe Convention, resting on the interpretation of a ‘victim’ under Article 4 of the Convention, and on the meaning of actions being ‘for the purpose of’ exploitation. The Court was satisfied that Y had been trafficked and that the purposes of the Convention require identification of ‘past victims’ as well as recent ones.

Y was a Chinese national who claimed to have been trafficked into the UK and then within the UK for the purpose of sexual exploitation. The Secretary of State had decided that there were no ‘reasonable grounds’ to believe that Y was a victim of human trafficking under the 2005 Council of Europe Trafficking Convention because her trafficker’s intention to exploit her had

not been present until she had failed to pay for her passage to the UK. Further, the Secretary of State argued that even if Y had been a ‘victim of trafficking’ under Article 4 of the Trafficking Convention, the passage of time meant that she was not a ‘victim of trafficking’ any more.

The court held that whatever the intentions of Y’s traffickers on her way to the UK, they had intended to exploit her while she was harboured within the UK. The court also held that the identification of victims of trafficking under the Convention required the Secretary of State to identify people who may have been trafficked in the past.