OUTER HOUSE, COURT OF SESSION

[2024] CSOH 31

P472/23

OPINION OF LORD RICHARDSON

In the cause

AB (FE/LA)

Petitioner

against

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Petitioner: Halliday; Drummond Miller
Respondent: Maciver; Office of the Advocate General

13 March 2024

Introduction

[1] The petitioner is a citizen of Malawi. She is married. She arrived in the UK on 7 December 2019 and was granted entry as the partner of a tier 2 migrant. The petitioner's husband was her "sponsor" and her immigration status was dependent on her relationship with him.

[2] The petitioner has now separated from her husband.

[3] The petitioner alleges that in February 2020 she began to suffer domestic abuse at the hands of her husband. She alleges that this took the form of coercive and controlling

behaviour by him. According to the petitioner, her husband would threaten to withdraw her sponsorship in order to get his way. This included forcing the petitioner to have sexual intercourse with him against her will.

[4] On 30 April 2021, the petitioner applied for further leave as her husband's dependant. At that time, the petitioner's husband held leave as a tier 2 (General) migrant. On the same day, the petitioner's husband applied for Indefinite Leave to Remain. That application was granted on 4 June 2021. On 22 June 2021, the petitioner's application was varied to an application for leave to remain as the spouse of a settled person.

[5] On 11 August 2021 the respondent advised the petitioner that her husband had withdrawn his sponsorship of her application. The petitioner says that she left the matrimonial home shortly thereafter. She was initially destitute but was provided with hotel accommodation by the Glasgow Health and Social Care Partnership.

[6] On 25 August 2021, the petitioner applied to vary her outstanding application to a human rights claim based on her private life. On 3 November 2021, the petitioner lodged an online application seeking leave to remain.

[7] On 9 March 2023, the respondent refused the petitioner's human rights claim and certified it as clearly unfounded in terms of section 94(1) of the Nationality, Immigration and Asylum Act 2002. The respondent set out the following reasons for that decision:

> "Reasons why your human rights claim is clearly unfounded
>
> Your human rights claim is considered to be one which is bound to fail. To reach this decision, consideration was paid to the decision of the Court of Appeal in *FR & Anor (Albania), R (On the Application Of)* v Secretary of State for the Home Department [2016] EWCA Civ 605.
>
> We have reached this decision as your claim, in terms of private life, is a significant period of time from qualifying under the provisions of 276ADE (iii) and there are no exceptional circumstances noted. There are no medical conditions to consider and no children effected by this outcome.

> Although the previous relationship has obviously broken down you did not enter the UK in a category which would enable leave under Domestic Violence concessions. To grant leave outside of the immigration rules for this puporse [sic] would undermine the exisiting [sic] immigration rules relating to Domestic Violence.
>
> It cannot be said that your removal would represent a disproportionate interference with your right to respect to family or private life under Article 8 of the ECHR. Even after taking your case at its highest it is clear that you had no entitlement to leave to remain, whether that assessment was performed within or outside the Immigration Rules. Any reasonable immigration judge, properly directing him or herself and applying the law to the facts and the same evidence, would inevitably conclude that the requirements of the Immigration Rules had not been met and that it would not otherwise be disproportionate to return you to your country of origin.
>
> For these reasons it is considered that your claim cannot succeed on any legitimate view and any immigration judge, properly directing him or herself and applying the law to the facts and the same evidence, would inevitably conclude the same.
>
> Therefore, your claim that your removal from the UK would be unlawful under section 6 of the Human Rights Act 1998 is wholly lacking in substance and any appeal would be bound to fail."

[8] In the present proceedings, the petitioner seeks reduction of the respondent's decision that her claim is clearly unfounded. The effect of that certification decision is that the petitioner has no right of appeal to the First-tier Tribunal against the refusal of her claim.

The petitioner's argument

[9] The petitioner advances two interrelated claims.

[10] First, the petitioner argues that, although not meeting the requirements of the rules dealing with cases of domestic violence contained in section E-DVILR of Appendix FM of the Immigration Rules, her removal would be disproportionate in terms of Article 8 of the European Convention on Human Rights (hereafter "ECHR") as it would not achieve the legitimate aim pursued by those rules.

[11] Second, the petitioner argues that she is in an analogous situation to someone with leave to remain as the spouse of a settled migrant and there is no objective and reasonable

justification for treating her differently. Therefore, requiring her to leave the UK would be contrary to Article 14 ECHR read with Article 8.

[12] Counsel for the petitioner accepted that these two claims stood or fell together. The issue to be determined by the court is whether the respondent has erred in law in certifying that the petitioner's claims are bound to fail.

[13] The starting point for both of the petitioner's claims is a recognition of two matters. First, the respondent in its decision letter dated 9 March 2023, assessed that, in terms of paragraph 276ADE(1)(vi) of Part 7 of the Immigration Rules, there were no very significant obstacles to the petitioner's re-integration to Malawi. The petitioner does not challenge that assessment.

[14] Second, the petitioner accepts that she cannot not meet the requirements of section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic abuse and in particular, paragraph E-DVILR 1.2. Section E-DVILR is part of the Immigration Rules Appendix FM: family members. For present purposes, paragraph E-DVILR 1.2 provides as follows:

> "E-DVILR.1.2. The applicant's first grant of limited leave under this Appendix must have been as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen, a person present and settled in the UK, a person with refugee leave, or a person in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), under paragraph D-ECP.1.1., D-LTRP.1.1., or D-LTRP.1.2. of this Appendix, or as a partner of a refugee granted under Appendix Family Reunion (Protection), and any subsequent grant of limited leave must have been:
>
> (a) granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen, a person present and settled in the UK, a person with refugee leave, or a person in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix; or
>
> (b) granted to enable access to public funds pending an application under DVILR and the preceding grant of leave was granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen, a person present and settled in the UK, a

> person with refugee leave, or a person in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), under paragraph D-ECP.1.1., DLTRP.1.1. or D-LTRP.1.2. of this Appendix; or (c) granted under paragraph D-DVILR.1.2."

[15] Counsel for the petitioner submitted that the correct approach to be adopted in cases in which certification under section 94(1) of the 2002 Act is challenged had been addressed by the Inner House in *Racheed* v *Secretary of State for the Home Department* 2019 SC 344. Lord Malcolm, with whom Lady Paton and Lady Clark of Calton agreed, noted that if a claim is "clearly unfounded" that should be obvious and capable of determination with a minimum of fuss and deliberation (paragraph 27). His Lordship went on:

> "[33] The effect of a certificate is that the claimant cannot exercise his right of appeal to a tribunal judge until after his return to the country which he contends will violate his Art 3 ECHR rights. That outcome can be understood and justified if and when it is plain that such an appeal could achieve no more than a delay of the inevitable, in that it is clearly without substance and is bound to fail. Assessing whether a claim is bound to fail before an immigration judge is a materially different exercise from a determination of its merits. It requires a distinct and separate process of deliberation and reasoning. It is a necessary consequence of the current system that the Secretary of State's officials have to address the issue after reaching and explaining an adverse decision on the merits of a claim. That necessarily adds to the inherent awkwardness of the exercise, in that one requires to revisit the various building blocks of the decision and ask whether if at any stage an alternative decision could be taken and, if so, the potential impact of such upon the ultimate outcome. However these issues need not be faced by the reviewing judge whose only concern is as to the validity or otherwise of the certificate. To borrow Underhill LJ's phrase [in *NA (Sudan)* v *Secretary of State for the Home Department* [2016] EWCA Civ 1060 at paragraph 242], if the answers are 'less than clear-cut', this in itself suggests a problem with a 'clearly unfounded' certificate."

The petitioner's first claim

[16] The petitioner's first claim is, essentially, that, although she cannot meet the requirements of paragraph E-DVILR 1.2 (above at [14]), the respondent had erred in failing properly to consider whether a grant of leave outside of the Immigration Rules was required and, as a result, the respondent had erred in concluding that this claim was bound to fail.

[17] There was no dispute as to the material facts. For the purposes of these proceedings, the respondent accepted that the petitioner's relationship had broken down as a result of domestic violence.

[18] In developing the first claim, counsel for the petitioner relied upon the analysis of the Upper Tribunal in *Caguitla* v *Secretary of State for the Home Department* [2023] UKUT 00116 (IAC):

> "… [A]n appellant who does not meet the requirements of the rules may be able to show, by relying on the terms of the rules, that it would be disproportionate to exclude an appellant who falls in a very similar category to one who would meet the requirements of the rules. That will not be so if the problem is that the appellant misses (even narrowly misses) a quantitive or numerical requirement of the rules; but an appellant may be able to show that the public interest demonstrated by the rules ought to be read in exactly the same way in relation to the appellant's own circumstances, despite the latter not precisely meeting the terms of the rules."

[19] Counsel was, however, careful to make clear that the petitioner's claim was not a "human rights claim" as defined by section 113(1) of the Nationality, Immigration and Asylum Act 2002. That was so because the petitioner's claim was not that her removal from the United Kingdom constituted a breach of Article 8. Rather, the infringement of her Convention rights arose from the domestic violence to which she was subject (see *MY (Pakistan)* v *Secretary of State for the Home Department* [2022] 1 WLR 238 at 44).

[20] Accordingly, counsel submitted that the key issue was identifying the public interest reflected in the rules dealing with instances of domestic violence – specifically, section E-DVILR. In this regard, counsel made reference to *A* v *Secretary of State for the Home Department* 2016 SC 776 (IH). The facts of *A* were different from the present case because it had dealt with the position of the spouse of a refugee. At that time, the scope of section E-DVILR did not include the spouses of refugees.

[21] In *A,* the Inner House had considered the background to section E-DVILR. It was introduced as a concession. The section removed, for victims of domestic violence, the requirement to have completed the full probationary period of residence before an application for indefinite leave to remain could be made. The section had been introduced to address the situation in which an overseas partner, who was dependent for their immigration status upon their continuing relationship with a person settled in the United Kingdom, became the victim of domestic violence (see paragraphs 11 to 14). The opinion of the Court quoted from an affidavit prepared on behalf of the respondent which set out the rationale for the policy (at paragraph 19) and concluded as follows (at paragraph 66):

> "[66] The aim of the measure in question is said to be that the spouses of those settled in the United Kingdom should be treated differently from the spouses of those without that status. The rationale for doing so is that the former are likely to have a reasonable expectation of settlement in the United Kingdom, and thus to have cut or loosened their ties with their country of origin in that expectation, whereas the spouses of the latter could have no such expectation, and would be less likely to cut or loosen those ties. In asserting that rationale, the respondent equiparates the position of refugees with those granted work or study leave. We do not accept, as a matter of fact, that this is a sound equiparation. A person admitted to the country as a student or for work is very clearly someone admitted on a limited and temporary basis, entirely at the discretion of the state. The status of refugee, as has been pointed out, is declaratory. Once it has been determined to exist the state has no discretion, in terms of its international and humanitarian obligations, but must grant asylum. The worker or student enters the country by choice; the refugee out of necessity. The circumstances in which refugee status may be lost are extremely limited, and can in no reasonable way be compared to the situation applying to a worker or student. Once refugee status is acknowledged, international obligations require the state to facilitate assimilation and naturalisation, again a situation quite different from that of a worker or student."

[22] On this basis, counsel submitted that from 4 June 2021, when her spouse was granted indefinite leave to remain, the petitioner had an equivalent "reasonable expectation of settlement in the United Kingdom". From that date, the petitioner's spouse's leave to remain in the United Kingdom was no longer subject to expiry. It was no longer contingent on sponsorship by his employer (cf *R (SWP)* v *Secretary of State for the Home Department*

[2023] 4 WLR 37 at paragraph 45). Subject to the completion of a 5 year probationary period, the petitioner could reasonably have expected to have been granted indefinite leave to remain. In the absence of section E-DVILR, the petitioner would be compelled to remain in an abusive relationship in order to so qualify *(R (FA(Sudan))* v *Secretary of State for the Home Department* [2021] 4 WLR 22 at paragraphs 46 to 48).

[23] Counsel submitted that the respondent was wrong to focus on the reference to cutting or loosening ties in the passage from *A* (see above at [21]). That was merely the likely consequence of the reasonable expectation. Counsel for the petitioner highlighted the fact that section E-DVILR would apply to a spouse as soon as he or she entered the UK in circumstances in which ties with their country of origin might well not have been either cut or significantly loosened.

[24] The respondent's decision of 9 March 2023 simply did not consider the fact that the petitioner's spouse had been granted indefinite leave to remain. As a result, there had been no consideration of whether the petitioner might be able to show that allowing her to remain might meet the public interest objective underlying section E-DVILR even if not the specific requirements of that section. Counsel submitted that the decision also erred in focussing on the petitioner's entry to the United Kingdom. Contrary to what said in the decision, when the public interest objective of section E-DVILR was considered, it was not obvious that the public interest in the removal of the petitioner was not outweighed by the resulting interference in the petitioner's private life.

The petitioner's second claim

[25] The petitioner's second claim turned on the same issue, namely, that the petitioner's spouse had been granted indefinite leave to remain, but approached it from a different

angle. The second claim proceeded on the basis that the petitioner was in an analogous position to the spouse of a settled migrant with leave under Appendix FM and there was, contrary to Article 14 ECHR, no objective justification for her differential treatment.

[26] Counsel submitted that the argument underlying this claim had not previously been considered by the courts and it was not clear cut. The cases of *R (FA(Sudan))* and *R (SWP)* (see above at [22]) could both be distinguished in their facts. In the former, the claimant spouse's immigration status was not dependent upon her husband. In the latter, the claimant spouse's husband had been a tier 2 migrant without indefinite leave to remain. Counsel also referred to *Guzman Barrios (Domestic Violence: DLR: Article 14 ECHR: Colombia), Re* [2011] UKUT 352 (IAC). This case also was distinguishable in that in the present case, there was no way in which the petitioner could be described as the author of her own misfortune in respect of her immigration status.

[27] Against this background, it could not be said that the petitioner's claim was clearly unfounded. An immigration judge, having considered the existing case law, might legitimately conclude that the petitioner, who had applied for but not obtained leave under Appendix FM, was in a comparable position to the spouse of migrant who had been granted leave under Appendix FM, and, therefore, that the differential treatment of the petitioner could not be justified and was incompatible with Article 14 ECHR, when read with Article 8 ECHR. The Upper Tribunal in *Guzman Barrios* had recognised that being exposed to domestic violence was a relevant factor to be considered in an Article 8 appeal albeit it would not necessarily lead to the appeal being granted (at paragraph 9).

The respondent's argument

The petitioner's challenge

[28] In respect of the correct approach to be taken in relation to challenges to certification in terms of section 94 of the 2002 Act, counsel for the respondent reminded me of what had been said by Lord Hope in respect of the predecessor of that section in *R (Yogathas)* v *Secretary of State for the Home Department* [2003] 1 AC 920 at paragraph 34, namely, that the petitioner's claim was so clearly without substance that it was bound to fail.

[29] Counsel recognised that in the present proceedings the petitioner sought judicial review of the respondent's decision and therefore, the task for the court was to assess that decision rather than to determine for itself whether the respondent had reached the correct decision. However, counsel also accepted that where, as in the present case, there was no dispute of primary fact, the question of whether the petitioner's claims were clearly unfounded may be susceptible to only one rational answer. In such circumstances, the court required to ask itself the same question the respondent had considered. (See *ZT (Kosovo)* v *Secretary of State for the Home Department* 2009 1 WLR 348 at paragraphs 23 and 54.)

The respondent's decision dated 9 March 2023

[30] Counsel for the respondent recognised that the decision dated 9 March 2023 contained an error in that the writer had focussed on the petitioner's entry into the UK. It was not correct to say that

> "…in order to qualify for leave to remain as the victim of domestic abuse you are required <u>to have entered</u> the UK as the spouse of a settled person." (emphasis added)

This was because it was possible, following entry into the United Kingdom, for a spouse to move from being a tier 2 dependant to being a dependant in terms of Appendix FM. Section

E-DVILR was concerned with the first grant of limited leave under that Appendix. However, counsel submitted that this error was immaterial. Although the decision had referred to entry into the United Kingdom, the fact remained that there had never been a grant of leave in respect of the petitioner under Appendix FM.

[31] Counsel for the respondent submitted that the underlying rationale for section E-DVILR was the immigration status of the spouse upon whom the foreign spouse, here the petitioner, was dependent. That had been made clear in the decision letter.

The nature of section E-DVILR

[32] In relation to the rationale underlying section E-DVILR, counsel drew my attention to the affidavit which had been submitted on behalf of the respondent in *A* (above at [20]) at paragraph 19. Counsel stressed that it was not simply about the expectations of the foreign spouse. It was also about the consequences for that spouse of making their permanent home in the United Kingdom. Section E-DVILR recognised that, when the person upon whom the foreign spouse was dependent had indefinite leave to remain, the foreign spouse might well have pulled up their roots from their country of origin in order to make a life in the United Kingdom. That rationale did not apply to the spouses of those granted work or study leave (*A* at paragraph 66). Section E-DVILR sought to achieve that policy rationale by attaching significance to the immigration status of the non-dependent spouse or partner.

The petitioner's first claim

[33] Counsel for respondent submitted that it was conceptually extremely difficult to separate the petitioner's two claims.

[34] In respect of the first claim, the starting point was the petitioner's acceptance that she did not meet the requirements of section E-DVILR. In considering the petitioner's claims the Immigration Rules were relevant, if not determinative. Appropriate weight required to be accorded to the respondent's policy as it was expressed in those rules (*R (Agyarko)* v *Secretary of State for the Home Department* [2017] 1 WLR 823 at paragraph 57).

[35] In the decision dated 9 March 2023, the respondent had considered both whether the petitioner met the requirements of section E-DVILR as well as whether, although not qualifying under the rules, a grant of leave outside of the Immigration Rules was required in terms of Article 8. That was clear from the passage in the letter where, under the heading "Article 8 of the European Convention of Human Rights" the respondent said the following:

> "I have reached this decision because in order to qualify for leave to remain as the victim of domestic abuse you are required to have entered the UK as the spouse of a settled person. Whilst the SSHD is sympathetic to your experiences you entered the UK as a tier 2 dependant and were aware that your immigration status was based on dependency to the main applicant or sponsor. You would not be without support network upon return to Malawi and have previously resided and presumably worked in your country of origin so there is no reason to consider that you would be unable to successfully subsist there once again."

The first sentence demonstrated consideration of the rules provided by section E-DVILR. The remaining sentences went on to address the factors relevant to the question of whether refusing the petitioner's application would be disproportionate in terms of Article 8 ECHR. The respondent had gone on to consider whether there were exceptional circumstances for permission to stay outside the Immigration Rules.

[36] The best that could be said for the petitioner was that, for a period from 22 June 2021, the petitioner had an outstanding application for leave as a settled person which, if granted, would have brought her within the Immigration Rules. However, this was irrelevant. There

was no specified period of time within which an immigration decision must be made (*EB (Kosovo)* v *Secretary of State for the Home Department* [2009] 1 AC 1159 at paragraph 13).

The petitioner's second claim

[37] In respect of the second claim, it was clear from *R (SG)* v *Secretary of State for Work and Pensions* [2015] UKSC 16, that a violation of Article 14 ECHR arose where (1) there is a difference in treatment; (2) of persons in relevantly similar positions, (3) if it does not pursue a legitimate aim; or (4) if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (at paragraph 8 per Lord Reed).

[38] Applying this test, counsel for the respondent submitted that the petitioner's claim was clearly unfounded.

[39] The petitioner was not in a relevantly similar position to someone who fell within the scope of section E-DVILR. The petitioner had never had leave under Appendix FM. In the circumstances, it could not be said that the petitioner had any legitimate expectation of permanence. It could not be said that she had cut or loosened her ties to her country of origin (cf *A* at paragraph 19).

[40] Section E-DVILR did pursue a legitimate aim: namely, to protect the dependent spouses of those who were settled in the United Kingdom. These spouses had a reasonable expectation of permanence and were likely to have cut ties with their countries of origin. Those spouses were in a different position from the petitioner.

[41] Finally, and most fundamentally, the differential treatment of the petitioner was proportionate when both her different position and the rationale of section E-DVILR were considered.

Decision

Approach

[42] As is helpfully summarised by the Inner House in *Racheed* (above at [15]), the task of the court in a judicial review of a decision to certify a claim as clearly unfounded in terms of section 94(1) of the 2002 Act is to review the decision making of the respondent (at paragraphs 17 per Lady Clark of Calton and 33 per Lord Malcolm).

[43] In a case, such as the present, where there is no material dispute of primary fact, the challenge to the respondent's decision is essentially a rationality challenge whereby the court requires to consider whether the respondent's decision was rational by asking itself the same question that the respondent has considered: namely, whether the petitioner's claims are clearly unfounded? (*ZT (Kosovo)* (as above at [29]) at paragraph 23 per Lord Phillips of Worth Matravers). Insofar as the court concludes that the answer to that question is "less than clear cut" (*Racheed* at paragraph 33) or open to reasonable doubt (*ZT (Kosovo)* at paragraph 23), then it necessarily follows that the respondent's decision was irrational.

The petitioner's claims

[44] Although, in the hearing before me, counsel for the petitioner presented her case as two separate claims (see above at [9] to [11]), it became apparent during the course of argument that these claims essentially both arise from the same contention – namely, that, although not fulfilling the requirements of section E-DVILR of Appendix FM, the petitioner's circumstances are such that to remove her would be disproportionate whether in terms of Article 8 or in terms of Article 14 read with Article 8.

[45] The thrust of the petitioner's argument was that, although not fulfilling the requirements of section E-DVILR, her position was very close to and comparable with those who did. She was the partner of a person settled in the UK. From 4 June 2021 she had been eligible to apply for limited leave under Appendix FM. On 22 June 2021 she had so applied. However, thereafter on or about 11 August 2021, she had left the matrimonial home as a result of being the victim of domestic violence, and that leave had not been granted.

The respondent's decision dated 9 March 2023

[46] I do not consider that the petitioner's argument was properly considered by the respondent in the decision dated 9 March 2023, if, indeed, it was considered at all. It is telling that the decision fails to mention the change in the petitioner's spouse's status on 4 June 2021. Furthermore, there is no express consideration within the decision of the petitioner's argument advanced before me which depended upon her spouse's settled status.

[47] The apparent failure of the respondent's decision to deal with the petitioner's argument is consistent with the erroneous reference in the decision to section E-DVILR being restricted to those who had <u>entered</u> the United Kingdom as the spouse of a settled person (see paragraph [30] above). Insofar as the respondent's decision maker wrongly considered that in order to qualify for the domestic violence concession, one required to have entered the United Kingdom as the spouse of a settled person, it would seem unlikely that the decision maker would have been able properly to compare the petitioner's position with someone who, in fact, qualified for that concession.

[48] On this basis, it will be evident that I reject the counsel for the respondent's argument that, despite the absence of any express reference in the decision to the argument

being advanced by the petitioner, that it should be understood to have been properly considered by reference to the petitioner's ability to subsist in her country of origin (see paragraph [35] above).

Clearly unfounded?

[49] I do not consider that the petitioner's argument can be said to be clearly unfounded on either of the two approaches advanced.

[50] First, approaching from the perspective of a claim which falls outwith the rules (cf *Caguitla*, above at [18]) it cannot be said that the petitioner's claim is bound to fail. When one considers the explanation of the rationale for the domestic violence concession set out by the Inner House in *A* (above at [21]) and the Court of Appeal in *FA (Sudan)* (above at [22]), the position of the petitioner is not clear cut. On the face of it, there would seem force in her argument both that she had a reasonable expectation of settlement in the United Kingdom following her spouse being granted settled status and that, in her circumstances, the danger existed of her being compelled to remain in an abusive relationship.

[51] Equally, I recognise that counsel for the respondent sought to place emphasis on what was said in *A* about the rationale of the concession being focussed on those who have cut or loosened ties to their country of origin. However, these competing arguments entirely satisfy me that the argument raised by the petitioner is not one capable of determination "with a minimum of fuss and deliberation" (*Racheed*, above at [15]).

[52] In this regard, I am not persuaded by the respondent's argument that the petitioner's claim, which depends on her having made an application for leave based on the settled status of her spouse, fails because there is no specified time within which an immigration decision must be made (see paragraph [36] above). I do not consider that this produces a

decisive answer in the respondent's favour. This part of the respondent's argument fails to take account of the nature of the petitioner's claim. She does not argue that she satisfies the requirements of section E-DVILR. In fact, the starting point of her claim is a recognition that she does not do so. Her claim proceeds rather on the basis that when her circumstances are considered in light of the underlying public interest rationale for the domestic violence concession, it would be disproportionate in terms of Article 8 to remove her.

[53] Secondly, and for related reasons, viewing the petitioner's position through the prism of Article 14, it cannot be said that her claim is bound to fail.

[54] The respondent submits that the petitioner's argument is hopeless because the petitioner was not in a relevantly similar position to someone who satisfied the requirements of section E-DVILR. The petitioner had never had leave under Appendix FM and so she never had a legitimate expectation of settlement within the United Kingdom.

[55] I do not accept this submission. It seems to me that the respondent fails properly to recognise the relevant features of the petitioner's position. The respondent's submission overlooks the fact that, at the relevant time, the petitioner's spouse had settled status having been granted indefinite leave to remain. As I have explained above (at paragraph [52]), when that fact is taken into account, I do not consider that the petitioner's argument that she did have a reasonable expectation of settlement can be dismissed as being clearly unfounded.

Order

[56] In these circumstances, I will sustain the petitioner's second plea in law and reduce the respondent's decision dated 9 March 2023. I will reserve all questions of expenses in the meantime.