JR-2023-LON-001773

In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

In the matter of an application for Judicial Review

THE KING
(on the application of
SHIJIE SONG)

Applicant

- and -

ENTRY CLEARANCE OFFICER

Respondent

ORDER

BEFORE Upper Tribunal Judges Keith and Hoffman

UPON hearing counsel for the applicant and counsel for the respondent at the hearing on 18 November 2024.

AND UPON the Tribunal having decided on 26 July 2024 to consider only issues concerning whether the respondent's decision of 6 October 2022 had engaged and breached the applicant's claimed right to respect for private life protected by article 8 of the ECHR in the light of the respondent having decided on 18 April 2024 to withdraw the decisions dated 6 October 2022, refusing the applicant's application for entry clearance as a representative of an overseas business, and 19 May 2023, refusing the application for administrative review of the 6 October 2022 decision, and having agreed to make a new decision on the application for leave to enter as a representative of an overseas business.

AND UPON the 6 October 2022 and 19 May 2023 decisions having been withdrawn.

IT IS ORDERED THAT:-

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

3. Permission to appeal is refused because the grounds (a) amount to little more than a disagreement with the Tribunal's findings in relation to the engagement of Article 8(1) ECHR and, moreover, (b) fail to engage with the Tribunal's findings about the applicant's failure to provide any evidence to substantiate the purported interference with his claimed private life. The applicant has

therefore failed to identify a ground of appeal with a realistic prospect of success, and there are no compelling reasons justifying an appeal.

Signed M R Hoffman

Upper Tribunal Judge Hoffman

Dated: **13th December 2024**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 17/12/2024

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

Case No: JR-2023-LON-001773

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

13th December 2024

Before:

UPPER TRIBUNAL JUDGE KEITH
UPPER TRIBUNAL JUDGE HOFFMAN

- -

Between:

THE KING
on the application of
SHIJIE SONG

Applicant

- and -

ENTRY CLEARANCE OFFICER

Respondent

- -

Mr B Bedford, Counsel
(instructed on a direct access basis by the applicant)

Mr M Biggs, Counsel
(instructed by the Government Legal Department) for the respondent

Hearing date: 18th November 2024

- -

J U D G M E N T

- -

Judge Hoffman:

1. The applicant is a national of St Kitts & Nevis as well as Vanuatu, and he very likely retains the Chinese citizenship of his birth. He seeks by way of judicial review to challenge the decision of the respondent dated 6 October 2022, upheld following an administrative review dated 19 May 2023, refusing his application dated 31 March 2022 for entry clearance. He currently resides in the Republic of Ireland.

2. The question that we must determine in this case is whether the applicant is entitled to a declaration that the respondent's decisions have breached his right to a private life under Article 8 of the European Convention on Human Rights ("ECHR") on the basis that it has caused serious damage to his reputation.

Background

3. The applicant first entered the UK with a visit visa valid for six months on 16 June 2021. On 9 December 2021, he made an application for leave to remain as a highly skilled investor. On 16 December 2021, the applicant applied for a short-term exceptional extension of stay on account of the coronavirus pandemic. In a decision dated 5 January 2022, the respondent refused the applicant's application for leave to remain as a highly skilled investor on the basis that he was not allowed to switch his status from a visitor. However, on 21 January 2022, the applicant was granted a short-term exceptional assurance until 4 February 2022 giving him temporary protection from any adverse consequences following the expiry of his visit visa.

4. It appears that on 27 January 2022 the applicant made a second application for leave to remain as a highly skilled investor. It is unclear why he did so before his first application had been decided. In any event, his second application was refused on 15 February 2022, again on the basis that he could not switch from visitor status to a Tier 1 investor. The applicant submitted a request for an administrative review of that decision on 1 March 2022. While we do not have a copy of the outcome of that review before us, it inevitably was refused because, on an unknown date, the applicant left the UK and on 15 April 2022 he made an application from Dublin for entry clearance.

The decisions under challenge

5. The applicant's application for entry clearance dated 15 April 2022 was made on the basis that he was the representative of an overseas business, Wealth Wise Capital Investment Ltd, who wished to open a subsidiary in the UK.

6. In her decision dated 6 October 2022, the respondent refused the application on the basis that she was not satisfied that the applicant would not undertake any business of his own in the UK. This was because checks made with Companies House revealed that the applicant was already the director of two UK-based companies. The respondent said that she therefore had

> "reasonable grounds to believe the business is being established in the UK by the overseas business, or that you have been appointed as a representative of the overseas business, mainly so you can apply for entry clearance."

7. The applicant's application was therefore refused under paragraph ROB.4.3 of the Immigration Rules, which says

> "The applicant must intend to work full-time as the representative of the overseas business…and must not intend to undertake work for any other business or engage in any business of their own."

8. As explained above, that decision was subsequently upheld on administrative review on 19 May 2023.

Application for a freezing order

9. On or around 19 April 2023, the National Crime Agency ("NCA") made an application to Westminster Magistrates' Court for a freezing order in relation to two UK bank accounts held by the applicant. The basis of the application was that the NCA believed there to be reasonable grounds to suspect that the money held in those accounts had been acquired from criminal conduct in China. This arose from information provided by the Economic Investigation Department of the Shanghai Public Security Bureau that the applicant was wanted for operating an unlicensed securities trading business and had laundered the proceeds in the UK. In support of that application, the NCA relied upon two witness statements. One was prepared by an NCA enforcement officer, Mr George Johnston, and the other by a Home Office executive officer. Both statements referred to the applicant's three applications for visas and mentioned the reasons why his third application had been refused.

10. On 27 April 2023, Westminster Magistrates' Court issued two freezing orders in relation to the applicant's bank accounts.

The application for judicial review

11. On 18 August 2023, the applicant lodged an application for judicial review challenging the respondent's decisions of 6 October 2022 and 19 May 2023**.** He relied upon three grounds:

    - Ground 1: The decision contained an imputation of dishonesty and was procedurally unfair at common law because the respondent failed to provide the applicant with an opportunity to rebut the accusation before the decision was taken. It was further argued that the decision constituted a significant interference with the applicant's Article 8 ECHR right to protection of his reputation.
    - Ground 2: The respondent failed to make adequate checks which rendered her decision irrational. The interference caused to his Article 8 rights was therefore said to be disproportionate.
    - Ground 3: The administrative review of the decision was irrational for the same reasons given in Grounds 1 and 2 and also because there was no evidence to support the respondent's finding that the applicant lacked the knowledge and skills to set up a subsidiary of Wealth Wise Capital in the UK.

12. Permission to apply for judicial review was granted by Upper Tribunal Judge Sheridan on 8 March 2024. Following the grant of permission, the respondent offered to settle the claim on the basis that she would withdraw the decision of 6 October 2022; permit the applicant to submit further representations in support of his application; and pay the applicant's reasonable costs of the judicial review proceedings. However, the applicant

rejected the offer of settlement on the basis that the proposed consent order did not engage with the applicant's claim that his rights under Article 8 had been violated. Specifically, the applicant asserted that the imputation of dishonesty made by the respondent had had severe consequences for his reputation.

13. As the parties were unable to agree on settlement, the case was listed for a substantive hearing before the Upper Tribunal on 26 July 2024. At that hearing, we heard arguments from the parties about whether the respondent's offer to withdraw the impugned decision rendered the proceedings academic, which we dealt with as a preliminary issue. In our judgment promulgated on 6 August 2024, we found that the applicant's Article 8 claim was not rendered academic by the offer to settle the case. In doing so, we expressed no opinion on whether the applicant's circumstances did engage Article 8(1) or whether any such rights had been interfered with by the respondent's decisions. We therefore adjourned the hearing so that we could hear substantive arguments at a later date on the following issues:

    - First, whether the applicant had, at the time of the impugned decisions, a private life for the purposes of Article 8 ECHR;
    - Second, whether the impugned decisions interfered with such private life to the extent that it engaged the applicant's right to respect for such private life; and
    - Third, whether the impugned decisions breached the applicant's right to respect for his private life, so as to entitle him to a declaration. (The applicant has confirmed that he is not seeking damages.)

14. At the same hearing, we rejected Mr Bedford's submission that we must decide, as a fact, whether the applicant had been dishonest, for the reasons we gave at [11] of that judgment.

The resumed hearing

15. The substantive hearing was relisted before us on 18 November 2024, where we heard submissions from Mr Bedford, on behalf of the applicant, and Mr Biggs, on behalf of the respondent. At the end of the hearing, we reserved our judgment.

Discussion

Jurisdiction to hear the claim

16. We begin by considering whether we have jurisdiction to hear the applicant's claim now that his public law challenge to the respondent's decisions has been rendered academic by her offer to withdraw it. As explained above, the sole remaining issue for us to determine is whether the respondent's decisions have breached the applicant's right to a private life as protected by Article 8 ECHR.

17. Mr Biggs submitted that the applicant was no longer seeking to challenge the respondent's decision of 6 October 2022 but, in effect, the respondent's communication of that decision to the NCA. In addition to this not being the

decision challenged in the claim form, it would be outside of the Upper Tribunal's jurisdiction, which is limited to challenges to decisions taken under the Immigration Acts and decisions of the First-tier Tribunal from which no appeal lies to the Upper Tribunal of which this would be neither.

18. Mr Bedford rejected that proposition. He submitted that if what Mr Biggs said was right, the applicant in SW v United Kingdom (87/18) [2021] 6 WLUK 605 would have needed to challenge the judge's decision to share his judgment with others, but that is not what happened. Instead, SW had challenged the judge's findings of fact: see [41] and [44].

19. On careful consideration, we agree with Mr Bedford that the challenge is not to the decision to share the information with the NCA, which is the interference with the claimed private life, but arises from the 6 October 2022 decision itself. As Mr Bedford points out, in SW the applicant sought to challenge the judge's accusations against her: see [1] and [41]. The judge's decision to share his judgment with her employer and professional bodies amounted to the interference with her right to a private life: see [47] and [48]. We therefore have jurisdiction to hear the application.

Applicability of the Gillberg exclusion

20. Mr Biggs also argued that the principle set out in the case of Gillberg v Sweden (41723/06) [2012] 4 WLUK 70 applied to the applicant. The Gillberg exclusionary principle holds that a person cannot rely on Article 8 ECHR in circumstances where the negative effects of the act complained of arise from that person's unlawful conduct. In response, Mr Bedford argued that the Gillberg principle does not apply in the present case because the applicant denies any unlawful conduct. On this point, we also agree with Mr Bedford: see Denisov v Ukraine (76639/11) [2018] 9 WLUK 528, at [121].

Whether the applicant has a private life in the UK

21. It is not in dispute that private life can encompass the protection of a person's reputation as part of their personal identity: see SW at [45] to [46]. Instead, the parties disagree on whether Article 8(1) ECHR is engaged in circumstances where the applicant is outside the jurisdiction of the UK.

22. There is no positive obligation under Article 8 to grant entry clearance to a person so that they can develop their private life in the UK: see Abbas v Secretary of State for the Home Department [2017] EWCA Civ 1393. Consequently, the general position is that outside of family life cases, a refusal of entry clearance is very unlikely to engage Article 8. Nevertheless, Mr Bedford argued that the applicant could engage Article 8(1) on the basis that the respondent had made a serious allegation of bad faith or deception against him that had damaged his reputation.

23. In support of his argument, Mr Bedford sought to rely on the case of Wieder and Guarnieri v United Kingdom (64371/16) (2024) 78 E.H.R.R. 8 in which the European Court of Human Rights ("ECtHR") found that the two applicants, who were resident in the USA and Italy respectively, did have a protected private life in the UK notwithstanding the fact that they were outside of the jurisdiction. In making its findings, at [93] the ECtHR had

regard to the decisions in Hannover v Germany (59320/00) [2005] 7 WLUK 866 and Arlewin v Sweden (22302/10) [2016] 3 WLUK 36.

24. We find that none of these cases are directly analogous to the applicant's. Wieder and Guarnieri was concerned with the interception and processing of the applicants' electronic communications in the UK by the country's intelligence agencies, which the ECtHR compared to the authorities searching a person's possessions while they were abroad: see [93]. It was the applicants' personal communications that brought them within the ambit of Article 8(1).

25. Mr Bedford also sought to rely on Shehabi v Kingdom of Bahrain [2024] EWCA Civ 1158 in which the Court of Appeal relied upon Wieder and Guarnieri to find that "the remote manipulation from abroad of a computer located in the United Kingdom is an act within the United Kingdon": see [34] and [41]. We are not, however, satisfied that this case adds much to the applicant's argument, especially given that the claimants were living in the UK at the time of the computer hacking.

26. In Arlewin v Sweden, the ECtHR rejected the argument of the Swedish government that the applicant's defamation claim against the makers of a TV documentary that had accused him of criminal activities could not be pursued before its domestic courts because the broadcast was made via a satellite uplink in the UK. The ECtHR took into account factors including that the programme as well as its implications had very strong connections to Sweden and had been produced for Swedish audiences, and that the show's anchorman was domiciled in Sweden: see [72]. Importantly, the applicant himself was also a Swedish national resident in Sweden.

27. Hannover v Germany was concerned with the applicant's right to privacy arising from photographs of her and her children published in German magazines. The ECtHR did not give any express consideration to how the applicant had established Article 8(1) rights in Germany given that she was a Monegasque living in France, however, it appears that regard was likely given to the fact that, as a princess, she was a public figure with an undisputed profile in Germany (hence the press interest in her).

28. What we take from these authorities is that a person does not always need to be physically present within the borders of a signatory state to the ECHR in order to establish a protected private life. Nevertheless, before any interference can be considered, it must first be recognised that an applicant has an established private life of sufficient substance to engage Article 8(1).

29. On the question of whether the applicant comes within Article 8(1), we find that Mr Bedford's submissions avoided the question of what established private life rights the applicant had in the UK and tended to conflate engagement with interference. His position before us was that by making a serious allegation about the applicant's character in the decision of 6 October 2022, the respondent's actions were sufficient to engage Article 8(1). However, that is a clear case of putting the cart before the horse. A claim that person A has impugned person B's reputation is an interference with person B's protected private life. We are not satisfied that it can be both an act that establishes private life where otherwise no private life

exists and an interference with that private life. None of the authorities that Mr Bedford pointed us to support such a proposition.

30. For example, in SW it was not in dispute that the applicant enjoyed a private life in the UK given that she lived and worked in this country. Instead, the question for the ECtHR was whether the Family Court judge's decision criticising the applicant had attained a certain level of seriousness and had been carried out in a manner causing prejudice to her personal enjoyment of that right: see [46]. The ECtHR concluded that the judge's decision to share his judgment with the applicant's employer and professional bodies had, at least in part, adversely affected the applicant's employment prospects and personal life and that this interference reached a sufficient level of seriousness to engage Article 8: see [47] and [48]. Importantly, it was not the interference that gave rise to the existence of private life: the applicant's private life in the UK already existed.

31. We note that unlike the applicant in Hannover, there is no suggestion that the applicant in the present case has a public profile in the UK sufficient to engage Article 8(1). As his immigration history shows, in the past he has only been resident in the country for a short period of time during the pandemic as a visitor. In fact, there is no evidence before us to demonstrate how and to what extent the applicant has developed a private life in the UK.

32. It was not suggested by Mr Bedford that absent the respondent's communication of her decision to a third party (i.e. the NCA and, through them, Westminster Magistrates' Court), the refusal of entry clearance would have engaged Article 8(1) or that the applicant otherwise enjoyed any degree of private life in the UK. If the decision had not been communicated to a third party, the only people who would have been aware of the reasons for refusal would be the respondent, the applicant and possibly Wealth Wise Capital (although they would be well aware whether the applicant was seeking entry for a genuine purpose or not). Therefore, it is the sharing of that information and the consequent impact on the applicant's reputation that, according to Mr Bedford, would give rise to the existence of a protected private life. Accordingly, by the applicant's own case, the engagement of Article 8(1) cannot exist absent the interference. But, as we say above, such a proposition is not supported by the caselaw before us.

33. Ultimately, we find that reputation is a facet of an established private life, which, on the evidence before us, the applicant does not have in the UK.

34. For these reasons, we are not satisfied that the applicant does enjoy any private life rights in the UK for the purposes of Article 8(1). His Article 8 claim therefore falls to be dismissed.

Whether the impugned decisions interfered with such private life to the extent that it engaged the applicant's right to respect for such private life

35. While it is not necessary to do so given our finding that Article 8(1) ECHR is not engaged, for completeness we intend to consider whether the respondent's decisions are in any event capable of interfering with the applicant's claimed private life.

36. In considering this aspect of the applicant's case, we have decided to take at its highest the applicant's claim that the decision of 6 October 2022 implied that he was dishonest in making his application for entry clearance. That does not, however, mean that we accept that it did.

37. We are satisfied that it is not necessary for an allegation to be communicated to a large number of people for any interference to arise. What is important is the effect on the person's private life caused by whatever communication has taken place: see SW, at [47].

38. The guiding principle is that an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to the personal enjoyment of their right to respect for a private life: see, for example, SW, at [46]; and Denisov, at [112]. Furthermore, the ECtHR said the following at [114] of Denisov:

> "It is thus an intrinsic feature of the consequence-based approach within Article 8 that convincing evidence showing that the threshold of severity was attained has to be submitted by the applicant. As the Grand Chamber has held, applicants are obliged to identify and explain the concrete repercussions on their private life and the nature and extent of their suffering, and to substantiate such allegations in a proper way (see *Gillberg*, cited above, §§ 70-73). According to the requirement of exhaustion of domestic remedies, such allegations have to be sufficiently raised at the domestic level." [Underlining added]

39. Mr Bedford highlighted four repercussions for the applicant's private life that he claimed arose from the respondent's decisions:

    a. the damage to the applicant's reputation;
    b. the damage to his business dealings with others;
    c. the reliance placed on the refusal by the NCA in applying for the freezing orders; and
    d. the making of the freezing orders themselves.

40. However, the applicant has provided no evidence, convincing or otherwise, to prove that the purported interference with his claimed private life meets the required threshold of severity.

41. Instead, Mr Bedford submitted that the imputation of bad faith made by the respondent in her decision of 6 October 2022 was, by itself, very significant in terms of the damage caused to the applicant's reputation. He therefore argued that this on its own was sufficient to cross the threshold of severity and it was unnecessary for the applicant to provide any corroborative evidence.

42. In support of his submission that the applicant was not required to provide any evidence demonstrating the consequences of the respondent's decision, Mr Bedford sought to rely on a number of ECtHR judgments in which a consequence-based approach was taken to employment cases: Budimir v Croatia (44691/14); Gashi and Gina v Albania (29943/18); Ovcharenko and Kolos v Ukraine (2023) (27276/15); Sevdari v Albania

(2022) (40662/19); Guiliano Germano v Italy (2023) (10794/12); Bagirov v Azerbaijan (2020) (81024/24 and 28198/15); Pişkin v Turkey (2020) (33399/18); and Juszczyszyn v Poland (2022) (35599/20). Mr Bedford argued that in none of those cases did the ECtHR require evidence to be satisfied that the applicants had faced serious repercussions as a result of losing their jobs.

43. Having read those cases, we reject the propositions that the imputation of bad faith alone is sufficient to cross the threshold and that we should simply accept without evidence that the decisions have had sufficiently serious adverse consequences for the applicant. None of the judgments Mr Bedford referred us to say that. Moreover, to the extent that the ECtHR accepted that those applicants had faced serious repercussions for their private lives, that is unsurprising. In each of those cases the applicants were living and working in states in which they had an established private life. Therefore, the consequences of them losing their jobs would have been obvious and possibly not even contested by their respective governments. We also do not know what evidence those applicants provided to their domestic courts before their cases reached Strasbourg. In any event, their circumstances are very different to that of the applicant before us, where (a) the applicant does not live or work in the UK and the effects of the impugned decisions are far from obvious; and (b) the respondent disputes the claimed interference.

44. Moreover, Mr Bedford's claim that no evidence is required is quite evidently contrary to the express findings in Denisov that applicants are required to provide "convincing evidence" and "are obliged to identify and explain the concrete repercussions on their private life and the nature and extent of their suffering": see [114]. Furthermore, "it is for the applicant to show convincingly that the threshold was attained in his or her case; and the applicant therefore has to present evidence substantiating consequences of the impugned decision": see [116].

45. We find that, in the present case, it is not possible to assume that the decisions have had serious consequences for the applicant's private life. The applicant is something of an enigma. We know very little about his personal circumstances. We simply have no way of knowing what impact the decisions have had on him personally, his inner circle or his business dealings. For example, we have no way of knowing whether he is still working for Wealth Wise Capital Investment Ltd, whether he has lost any money from employment as a result of the impugned decisions or whether he has any alternative sources of income. We are in no position to know whether the refusal of entry clearance has affected his private life to a significant degree.

46. The absence of evidence to demonstrate how the decisions have damaged the applicant's reputation is, we find, fatal to his claim that the interference caused has reached the required threshold. As explained above, to the extent that Wealth Wise Capital might be aware of the decisions, they will be best placed to know whether the applicant was seeking entry for a genuine purpose and we are therefore satisfied that it is unlikely the decisions have damaged the applicant's reputation with them. Furthermore, as Mr Biggs argued, a suggestion that a person has applied for entry clearance to work for one company when they might want to work for their

own company is unlikely to be seen as a particularly serious allegation by the average person.

47. To the extent that the decision of 6 October 2022 was communicated to the NCA, we find it unlikely that this would have caused any particular damage to the applicant's reputation with them given that the NCA had already been notified by the Chinese authorities that the applicant was wanted for the far more serious crimes of illegally trading in securities and money laundering. Mr Bedford argued that a distinction could be drawn between the allegations made by the respondent and the allegations made by the Chinese authorities because the applicant had not been convicted of the alleged criminal offences, but we find that to be an unrealistic proposition. Furthermore, we take into account that in preparing his witness statement accompanying the NCA's application for the freezing orders, Mr Johnston relied not just on the decision of 6 October 2022 but also the two previous refusals of the applicant's leave to remain applications, neither of which have been challenged by the applicant.

48. As can be seen from Mr Johnston's witness statement, paragraphs 2.3 to 2.13 were concerned with the applicant's first application for leave. Mr Johnston referred to various points arising out of it, including (but not limited to) the applicant: stating, contrary to information the NCA had received from the Chinese authorities, that his Chinese passport had expired (paragraph 2.8); denying that he had ever been arrested or charged with an offence or was currently on, or awaiting trial (paragraph 2.9); and failing to disclose a bank account (paragraph 2.10). Paragraphs 2.14 to 2.17 are concerned with his second application, of which little is said, and paragraphs 2.18 to 2.21 are concerned with the application that led to the decision of 6 October 2022. In particular, paragraph 2.21 sets out the reasons for refusal given in that decision. Finally, at paragraph 2.22, Mr Johnston summarises the position in relation to the applicant's immigration history:

> "Song has been refused a UK visa on three separate occasions for reasons of eligibility. However, as detailed above, he has either withheld or provided false information including passport details, details of assets held in the UK and business interests as well as failing to mention his arrest in China. This indicates that Song lied in an attempt to circumvent UK law and regulations."

49. Mr Bedford sought to argue that the final sentence of paragraph 2.22 was an unambiguous reference to the refusal of the applicant's third application. We disagree. It is obvious that the reference to withholding or providing false information, including passport details and details of assets held in the UK, and failing to mention his arrest in China, stem from the first application for leave to remain, as set out at paragraphs 2.8 to 2.10 of Mr Johnston's statement. While the reference to the applicant's failure to mention business interests is likely a reference to his third application, that is not the sole basis for what is said in the final sentence of paragraph 2.22. We therefore reject Mr Bedford's suggestion that the communication of the 6 October 2022 decision to the NCA and its inclusion in Mr Johnston's witness statement was essential or even determinative of either the decision to seek the freezing orders or the Magistrates' Court's decision to make the orders. The purpose of the NCA's application was clearly a direct response

to the criminal offences the applicant had been accused of by the Chinese authorities.

50. When considered in the light of the NCA's concerns arising from the applicant's first application for a visa and the serious crimes that the applicant has been accused of in China, we are not satisfied that the reasons for refusal given in the decision of 6 October 2022 are likely to have had any sufficiently serious consequences for the applicant's reputation with the NCA. Neither are we satisfied on the balance of probabilities that the NCA would not have made the application for the freezing orders, or that the Magistrates' Court would not have issued the orders, absent the information about the decision of 6 October 2022.

51. In the absence of any convincing evidence to support the claimed interference, we find that the applicant has failed to demonstrate the sufficiently serious consequences for his reputation sufficient to engage Article 8.

Whether the impugned decisions breached the applicant's right to respect for his private life, so as to entitle him to a declaration

52. For the reasons given above, because we are satisfied that the applicant has been unable to establish that Article 8(1) is engaged or, in the alternative, that the claimed interference has reached the threshold to establish a sufficient level of seriousness to cause sufficient prejudice the applicant's enjoyment of his private life, the applicant is not entitled to a declaration.

Conclusion

53. The application for judicial review is accordingly dismissed.

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