Upper Tribunal
(Immigration and Asylum Chamber)

Baihinga (r. 22; human rights appeal: requirements) [2018] UKUT 00090 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 January 2018	
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Before

THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE LINDSLEY

Between

JULIANA BAIHINGA
(ANONYMITY DIRECTION NOT MADE)

Appellant

- AND -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Haastrup, Solicitor of Nathan Aaron Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

1. The scope for issuing a notice under rule 22 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (circumstances in which the Tribunal may not accept a notice of appeal) is limited. A rule 22 notice may be issued at the stage where the First-tier Tribunal scrutinises a notice of appeal as soon as practicable after it has been given. Where no rule 22 notice is issued at that stage and the matter proceeds to a hearing, the resulting decision of the First-tier Tribunal may be challenged on appeal to the Upper Tribunal, rather than by judicial review (JH (Zimbabwe) v Secretary of State for the Home Department [2009] EWCA Civ 78; Practice Statement 3).

2. An application for leave or entry clearance may constitute a human rights claim, even if the applicant does not, in terms, raise human rights. In cases not covered by the respondent's guidance (whereby certain applications under the immigration rules will be treated as human rights claims), the application will constitute a human rights claim if, on the totality of the information supplied, the applicant is advancing a case which requires the caseworker to consider whether a discretionary decision under the rules needs to be taken by reference to ECHR issues (eg Article 8) or requires the caseworker to look beyond the rules and decide, if they are not satisfied, whether an Article 8 case is nevertheless being advanced.

3. The issue of whether a human rights claim has been refused must be judged by reference to the decision said to constitute the refusal. An entry clearance manager's decision, in response to a notice of appeal, cannot, for this purpose, be part of the decision of the entry clearance officer.

4. A person who has not made an application which constitutes a human rights claim cannot re-characterise that application by raising human rights issues in her grounds of appeal to the First-tier Tribunal.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sierra Leone, who was born in July 1986. She was granted indefinite leave to remain in the United Kingdom on 10 September 2003.

2. On 21 June 2004, the appellant left the United Kingdom, returning to Sierra Leone. In June 2015, the appellant applied for entry clearance as a returning resident, pursuant to paragraph 18 of the Immigration Rules.

3. On 26 June 2015, an entry clearance officer refused the appellant's application. The notice of decision stated that the appellant had arrived in the United Kingdom in February 2001 and left in 2004. That was, accordingly, a period of absence of more than 2 years (indeed, over eleven years at the date of refusal).

4. Paragraph 19 of the immigration rules provides that a person who does not benefit from paragraph 18 (which enables a person to obtain entry clearance provided that, inter alia, they have not been away from the United Kingdom for more than two years) may nevertheless be admitted as a returning resident "if, for example, he has lived here most of his life". There is, thus, a discretion that may be exercised in favour of the person.

5. Accordingly, the entry clearance officer considered the matter and concluded as follows:-

> " . . .
>
> - Given that you have not been in the UK since 2004 and the amount of time you have spent there since obtaining your indefinite leave to remain, I am not satisfied that you have demonstrated a strong connection with the UK. To be considered as a returning resident you

need to show that you are habitually resident in the UK and that any absences have been of a temporary or occasional nature, however I do not consider an absence of over eleven years to be temporary and it appears that you are settled in Sierra Leone.

- I have considered the compassionate circumstances of your application. You have stated in your visa application form that you left the UK in 2004 because your grandmother in Sierra Leone was seriously ill. However, you have stated that you lived with her until 21 September 2013. In his letter of support submitted with your application your father confirms that you were living with your grandmother until 2013 and that since returning to Sierra Leone you have completed a college course. He states that you cannot find employment in Sierra Leone and that you have no close relatives in Sierra Leone to support. I have considered that you are 28 years old and that you have submitted evidence that you have received an education. It is not clear why you are unable to find employment. You have submitted a limited amount of money transfer slips as evidence that you are financially dependent on your father. However, these have been submitted in isolation and I am not satisfied that alone they demonstrate a dependence.

I am… satisfied my decision to refuse your application is proportionate under the Immigration Rules.

Given all of the above, I am not satisfied that you qualify for entry as a returning resident because you do meet (sic) [presumably, do not meet] the requirements of paragraph 18"

6. Underneath these passages, the notice of decision stated: "You are entitled to appeal against this decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002". An appeal form was provided for this purpose. It was also stated: "If you decide to appeal against a refusal of this application, the decision will be reviewed, with your grounds of appeal and the supporting documents you provide".

The appellant attempts to appeal

7. The appellant filed a notice of appeal to the First-tier tribunal against the entry clearance officer's decision. As promised in that decision, an entry clearance manager reviewed the grounds of appeal and supporting documents. Having done so, the entry clearance manager, in a decision dated 13 November 2015, concluded that the decision of the entry clearance officer was correct. It was in accordance with the law and the immigration rules; and the entry clearance manager was not prepared to exercise discretion in the appellant's favour.

8. The entry clearance manager then said:-

> "I have considered the appellant's rights under Article 8 of ECHR. Article 8 of the ECHR is a qualified right, proportionate with the need to maintain an effective immigration and border control and decisions under the Immigration Rules are deemed to be compliant with human rights legislation. Although the appellant may have a family life with relatives resident in the UK, I am satisfied that the decision is proportionate under Article 8(2). I note that no satisfactory reason has been put forward as to why the appellant's family in the UK are unable to travel to Sierra Leone to be with the appellant. I am therefore satisfied that the decision is justified by the need to maintain an effective immigration and border control.
>
> I have also considered whether the particular circumstances set out in the appeal constitute exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8 of the European Convention on Human Rights, might warrant a grant of entry clearance to the United Kingdom outside the requirements of the Immigration Rules. Following a thorough assessment of the appeal I am satisfied that there is no basis for such a claim.
>
> Given all of the above, I do not consider that the evidential balance has been tipped in the appellant's favour, as I maintain the decision to refuse entry clearance ".

9. At some later point, the appellant travelled to the United Kingdom and was granted temporary admission. She made an asylum claim, which has subsequently been withdrawn.

Proceedings in the First-tier Tribunal

10. On 22 December 2016, the appellant's appeal came before First-tier Tribunal Judge Eldridge, sitting at Harmondsworth. The presenting officer submitted to the judge as a "preliminary issue" that the appellant had no right of appeal "because of the changes in appeal rights brought about by the Immigration Act 2014" (paragraph 4 of the judge's decision). Mr Haastrup, who appeared on behalf of the appellant, sought an adjournment of an hour to consider the matter "which had been raised only at the hearing". Judge Eldridge, accordingly, granted a short adjournment, following which the presenting officer renewed her submissions and Mr Haastrup addressed the judge on the issue. Mr Haastrupt sought a further adjournment, which was not opposed by the presenting officer.

11. Judge Eldridge adjourned the matter, which he considered to be "an issue of great importance to the appellant", fixing a new hearing date of 13 January 2017.

12. On that date, Judge Eldridge heard submissions on the issue of whether there was a right of appeal. In a decision promulgated on 25 January 2017, the judge held as follows:-

> "8. The Immigration Act 2014 made considerable changes to the rights of appeal under the Nationality, Immigration and Asylum Act 2002. The changes made by the

> 2014 Act have been brought in effect (sic) in a series of Orders, and the most pertinent are Commencement Order No. 3 made on 15 October 2014 and Commencement Order No. 4 made on 25 February 2015.
>
> 9. My understanding of the legal position is that there is now no right of appeal in respect of applications made after 6 April 2015, unless the decision concerned is a refusal of an asylum, protection of (sic) human rights claim. This was not claim on any of those three bases but as a returning resident. A "human rights claim" is defined in [section] 113 of the 2002 Act, and, whilst it is clear that the appellant mentioned her father living in this country and a sister, her application was put on the basis of her being a returning resident and not otherwise.
>
> 10. I conclude that there was no valid appeal before me because the appellant had no right of appeal".

13. On 18 August 2017, Acting Resident Judge Appleyard (as he then was) refused permission to appeal to the Upper Tribunal. Judge Appleyard referred to a notice, purporting to be made under rule 22 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, which had apparently been sent with Judge Eldridge's decision, stating that "the notice of appeal you have lodged is invalid and the Tribunal will take no further action in relation to it".

14. Judge Appleyard said:-

> "2. That being the position there is accordingly no decision against which the appellant can seek permission to appeal against and in the circumstances her remedy would have been to seek judicial review".

15. With respect, that statement is wrong. Compatibly with the judgments of the Court of Appeal in JH (Zimbabwe) v Secretary of State for the Home Department [2009] EWCA Civ 78, Practice Statement 3 (Where the Tribunal may not accept a notice of appeal) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal makes it plain that the scope for issuing a notice under rule 22 is limited. Rule 22 may be employed where the First-tier Tribunal scrutinises a notice of appeal as soon as practicable after it has been given, and concludes that no right of appeal exists. Where, as in the present case, no rule 22 notice was issued at that stage and the matter proceeded to a hearing, rule 22 can play no further role. Practice Direction 3.4 says:

> "3.4 The fact that the hearing date may have been given to the parties does not mean that the appeal must be treated as valid. Accordingly, if a further hearing (including a CMR hearing), it transpires that the notice of appeal does not relate to a decision against which there is, in the circumstances, an exercisable rights of appeal, the Tribunal must so find; but it will do so in the form of a determination, rather than by means of a notice under First-tier rule 22".

16. In other words, once this point is reached, the decision of the First-tier Tribunal, holding that it lacked jurisdiction to consider the notice of appeal and grounds, may be challenged on appeal to the Upper Tribunal. This was recognised by Upper

Tribunal Judge Allen who, on 20 October 2017, granted permission to appeal on the basis that it was "arguable that a human rights claim was made in this case and that therefore the appellant had a right to appeal".

The appellant's application for entry clearance as a returning resident

17. The entry clearance officer's decision, as we have seen, made reference to information, supplied by the appellant in connection with her application for leave to enter as a returning resident, which concerned family members in Sierra Leone and the United Kingdom. In answer to the question "What have you been doing since you left the UK?", the appellant said "I was living with my grandmother and attending school. After High School I attended the Opportunities Industrial Centre … where I obtained a certificate in Electrical Installation". Asked why she had left the UK, the appellant replied, "I was living with my grandmother who had taken (sic) seriously ill. She sadly passed away on 21 September 2013".

18. In answer to the question "Why do you wish to return to the UK?" the appellant said "To join the rest of my family, and finish education. Since my grandma passed away in 2013, I have felt lonely without [my family] in the United Kingdom I feel guilty for not supporting my grandmother in her last days… living in the same house still makes me feel even worse".

19. A letter from the appellant's father in the UK, sent with the application, referred to the appellant having been "taken back" to Sierra Leone in 2004. Since her grandmother's death, the appellant was said by her father to have

> "been struggling as she has no close relatives to give her the emotional support she needs as she had been practicably raised by her grandmother. She does not have contact with her biological mother. Her biological mother has had another relationship to start a new family. I would appreciate if Juliana could be granted the opportunity to return to the United Kingdom in order for her to reunite with myself and her sister. This will make it easier for me to support her while she is living with me".

The letter went on to state that the appellant's father "would have applied for her very much earlier, but due to the Ebola outbreak in the sub-region, I thought it fit to wait until the epidemic had subsided".

Appeal against refusal of a human rights claim

20. Section 82(1)(b) of the 2002 Act provides that a person may appeal against the refusal of a human rights claim. Section 113 of the Act defines such a claim as:

> "a claim made by a person to the Secretary of State … that to remove the person from or require him to leave the United Kingdom or to refuse him entry into the United Kingdom would be unlawful under section 6 of the Human rights Act 1998 …"

21. The respondent has issued guidance for Home Office staff in a document entitled "Rights of Appeal". The current version is that published on 9 October 2017. The part of the guidance under the heading "What is a human rights claim?" on pages 9 to 15 of the document is set out in the Appendix to this decision.

22. Before us, Mr Deller submitted that the present case may not provide a satisfactory vehicle for examining in detail what constitutes a human rights claim for the purposes of section 82 of the 2002 Act, as amended by the Immigration Act 2014. We do, however, consider that it is possible to say the following.

(a) What is a human rights claim?

23. As regards the guidance found on page 11 of the document, we consider the respondent may in due course need to defend the position taken there, that a person who expressly makes a human rights claim, asserting that it is a breach of their rights under Article 8 not to be granted ILR (or, we would add, entry clearance) is not to be treated as having made a human rights claim under section 113 if "nothing more is provided than a bare statement of this sort".

24. A "bare" or "unsubstantiated" claim is, however, very arguably, still a claim. In such a situation, the appropriate course may be to certify under section 94 of the 2002 Act, on the basis that the claim is clearly unfounded.

25. The guidance is on stronger ground, in our view, in stating that in order for an application properly to raise human rights, and therefore constitute a claim,

> "it is not necessary for the application form to say so. If the application does not state that it is a human rights claim, you will need to consider what the applicant's reasons are for wanting to remain in the UK and decide whether those reasons amount to a human rights claim".

26. We think this must be correct. The examples which the guidance gives, of an application for leave to remain on medical grounds or to remain whilst court proceedings in the United Kingdom are ongoing, are plainly ones where, even if the applicant does not refer expressly to his or her human rights, the applicant, is in fact, making a human rights claim.

27. Other cases, however, may be much less clear-cut. The guidance provides that certain applications under the immigration rules are to be treated by the respondent as constituting, in effect, human rights claims. These include a number of "overseas" applications, including ones made under Part 8 of the Rules where the sponsor is present and settled in the United Kingdom or has certain refugee or

humanitarian protection status. Certain applications made by reference to Appendix FM (family members) also covered by the guidance.

28. What, though, of applications made by reference to other provisions of the immigration rules? In the present case, the appellant completed an application form for entry clearance as a returning resident under paragraphs 18 and 19 of the rules. She did not expressly claim, whether in the application form or the accompanying documentation, that a refusal to grant her re-entry into the United Kingdom would violate her ECHR Article 8 Rights. Nevertheless, compatibly with the guidance, the respondent would need to treat her application as including a human rights claim if it appeared from the totality of the information supplied that the appellant was advancing a case which, on the facts, properly required the caseworker to consider whether a discretionary decision to be made under the relevant immigration rule or rules needed to be taken by reference to Article 8 issues, or to look beyond the provisions of the immigration rules and decide, if those rules were not satisfied, whether an Article 8 case was nevertheless also being advanced.

29. As we have seen, the appellant was putting forward, as reasons for wishing to return, (a) that she had gone to Sierra Leone in 2004 to look after her grandmother; (b) that her grandmother had died, with the result that the appellant was left without any element of family in Sierra Leone; (c) that she was lonely without her relatives in the United Kingdom; and (d) that she wished to rejoin her father and sister in the United Kingdom.

30. The letter from the appellant's father asserted (a) that the appellant, despite her qualification as an electrician, had been unable to obtain a permanent job in Sierra Leone; (b) that she was being supported by the father; (c) that she had no close relatives in Sierra Leone to give her emotional support; and (d) that it would be easier to support the appellant if she were living with the family in the United Kingdom.

31. Having regard to the guidance, which in this respect we consider properly accords with the meaning and scope of section 113 of the 2002 Act, the appellant's application was, we find, a human rights claim.

(b) What is a refusal of a human rights claim?

32. The fact that, as is evident from the entrance clearance officer's decision, that officer did not accept the strength of the asserted family life between the appellant and her relatives in the United Kingdom, including her alleged dependants, does not, of course, cast doubt on whether a human rights claim was being made. On the contrary, these passages of the decision make it plain, in our view, that the entry clearance officer was examining these matters as ECHR Article 8 issues, in order to decide, in all the circumstances, whether the appellant should be re-admitted as a returning resident.

33. As we have seen, paragraph 19 of the immigration rules confers a broad discretion on the entry clearance officer. In the particular circumstances of this case, it accordingly matters not whether the entry clearance officer was considering the human rights claim of the appellant as an aspect of the decision whether to grant entry clearance under the rules or, alternatively, whether to do so outside the rules, expressly by reference to Article 8. The statement in the decision that refusing the application "is proportionate under the immigration rules" probably indicates that the entry clearance officer was taking the former course. In either event, however, the entry clearance officer was refusing the appellant's human rights claim.

34. As we have also seen, the entry clearance manager's review expressly considered the appellant's Article 8 rights. The entry clearance manager was responding to the grounds of appeal. These contended that "refusing appellant to join her family in the UK would violate her human right under Article 8 ECHR", on the basis that the:

> "appellant has strong connections in the UK. All her close relatives live in the UK. Her father and sister (British Citizens) live in the UK" [and] appellant no longer has any close relatives in Sierra Leone".

There were also said to be "exceptional reasons why appellant lived outside the UK for over two years".

35. As a matter of law, the issue of whether a human rights claim has been refused must be judged by reference to the decision which is said to constitute the refusal of such a claim. The entry clearance manager's review cannot, for this purpose, be part of that earlier decision. If a person has not made an application which constitutes, in law, a human rights claim, she cannot change that position by raising human rights issues in her grounds of appeal to the Tribunal. By the same token, the entry clearance manager's review cannot re-characterise a decision of the respondent which was not, in its own terms, the refusal of a human rights claim.

36. That said, however, both the grounds of appeal and, more particularly, the terms of the entrance clearance manager's review, may, depending on the circumstances, shed light on the true nature of the application and its refusal. In the present case, the entry clearance manager's review may, we consider, be seen as casting light on what the entry clearance officer had been doing when she refused the appellant's application.

37. For these reasons, based on the application and its accompanying materials, we find that the appellant made a human rights claim, which was refused by the entry clearance officer on 26 June 2015. The statement in the notice of decision, that the appellant had a right of appeal to the Tribunal, was, accordingly, entirely correct.

38. Although it has played no part in our determination of the jurisdictional issue, we should perhaps mention that matters have moved on, in that witness statements have been filed which assert that the appellant was returned to Sierra Leone by her father in 2004, as some sort of punishment for her unruly behaviour. Whether there

is any truth in this will need to be determined by the First-tier Tribunal. In doing so, that Tribunal will no doubt wish to assess the credibility of the appellant and her witnesses. This will entail consideration of the fact that, after her arrival in the United Kingdom, the appellant claimed asylum on the basis that her grandmother was the head of a secret society and that the appellant was in fear of having to take over the running of that society. This asylum claim was specifically withdrawn by the appellant in September 2016 (see paragraph 9 above).

Decision

39. The decision of the First-tier Tribunal contains an error of law. Contrary to what is said in that decision, the Tribunal had before it a valid appeal, which needed to be decided. We remit the case to the First-tier Tribunal.

The Hon Mr Justice Lane
President
1 February 2018

Appendix

HOME OFFICE

Rights of appeal
Version 6.0

Guidance on where there is a right of appeal against decisions in immigration cases, including mechanisms to prevent repeat rights of appeal and prevent delay from appeals against unfounded claims.

….

What is a human rights claim?

This section explains what amounts to a human rights claim and how you identify and consider such claims.

How to identify a human rights claim

In the UK: application under the Immigration Rules

The applications listed in this section and made under the Immigration Rules are human rights applications and the starting position is that there is a right of appeal against refusal.

Where paragraph 353 (further submissions) applies and the further submissions do not amount to a fresh claim or where the claim is certified under section 96, there will be no right of appeal, and if certified under section 94 or 94B no right of appeal until the person has left the UK.

These applications can be made while the applicant has leave under section 3C of the Immigration Act 1971 as a consequence of an ongoing appeal against the refusal of another application.

No other applications under the rules other than those in this section can be made where the applicant has 3C leave. If the applicant withdraws their appeal, they will no longer be prevented from making any other application under the rules. Alternatively, the applicant may make an application once their appeal rights are exhausted.

The relevant applications are those made under:

• Paragraph 276B (long residence)
• Paragraphs 276ADE(1) or 276DE (private life)
• Paragraphs 276U and 276AA (partner or child of a member of HM Forces)
• Paragraphs 276AD and 276AG (partner or child of a member of HM Forces), where: o the sponsor is a foreign or Commonwealth member of HM Forces and has at least 4 years' reckonable service in HM Forces at the date of application

• Part 8 of these Rules (family members) where: o the sponsor is present and settled in the UK or has refugee or humanitarian protection in the UK**, not** paragraphs 319AA to 319J (points-based system (PBS) dependents), paragraphs 284, 287, 295D or 295G (sponsor granted settlement as a PBS Migrant)
• Part 11 (asylum)
• Part 4 or Part 7 of Appendix Armed Forces (partner or child of a member of HM Forces) where: o the sponsor is a British Citizen or has at least 4 years' reckonable service in HM Forces at the date of application

• Appendix FM (family members), **not**: section BPILR (bereavement) or section DVILR (domestic violence)

Refusal notice to be served: Asylum (except in deportation cases)
• ASL.0015.ACD.IA (refusal of protection with a right of appeal with section 96 option to certify)
• ASL.1000.IA (refusal of protection where the applicant failed to attend the screening interview – decision not certified)
• ASL.1006.IA (protection refusal of dependents with section 96 option)
• ASL.1956 (refusal of protection certified under section 94)
• ASL.2704. (rejection of further submissions under paragraph 353)
Refusal notice to be served: all other human rights applications
• ICD.3050.IA (refusal with a right of appeal)
• ICD.1182.IA (refusal with section 94 certification)
• ICD.3051.IA (refusal with no appeal because not a fresh claim under paragraph Rule 353)
• ICD.3052.IA (refusal with no appeal because of section 96 certification)

In the UK: application outside the Immigration Rules

Applications for leave to remain outside the rules on human rights grounds are made on forms FLR(O) for further leave to remain (LTR) and SET(O) for indefinite leave to remain (ILR).

It is important to note that these forms are only to be used for human rights applications where there is no specific form available. For example, neither the FLR(O) nor the SET(O) should be used for applications under Appendix FM or on the private life route under paragraphs 276ADE and 276DE. Where the applicant uses the wrong form, you must reject the application as invalid under paragraph 34 Immigration Rules.

These forms are multi-purpose and not all applications made on these forms are human rights claims.

The FLR(O) and SET(O) forms require the applicant to tick a box indicating which application they are using the form for. Only one box may be ticked.
It is only where the applicant ticks the box 'Other purposes or reasons not covered by other application forms' that it should be treated as a human rights claim. Though even if this box is ticked, the application may not be a human rights claim.
In order to decide whether the application is one for a human rights claim, you should consider the following questions:

• does the application say that it is a human rights claim?
• does the application raise issues that may amount to a human rights claim even though it does not expressly refer to human rights or a human rights claim?
• are the matters raised capable of engaging human rights?

Determining if a human rights claim has been made

For the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002 (appeals in respect of protection and human rights claims), a human rights claim is defined as a claim made by a person that to remove them from or require them to leave the UK or to refuse him entry into the UK would be unlawful under section 6 of the Human Rights Act 1998.

The form does not ask the applicant to indicate whether the claim being made is a human rights claim. You will need to identify whether a human rights claim is being made so that you know whether to serve a section 120 notice on receipt of the application and whether a refusal will attract a right of appeal.
Does the application say this is a human rights claim? If so, does the application set out why this is a human rights claim? An application may say no more than:

• I am making a human rights claim
• It is a breach of my rights under Article 8 not to grant me ILR

The claim needs to be particularised in order to be considered. If nothing more is provided than a bare statement of this sort, it is not a human rights claim and should be refused with no right of appeal.

In order for an application to raise human rights, it is not necessary for the application form to say so. If the application does not state that it is a human rights claim you will need to consider what the applicant's reasons are for wanting to remain in the UK and decide whether those reasons amount to a human rights claim.

For example, an applicant seeks leave to remain on medical grounds, to receive medical treatment or has a fear of return or of an undignified death because medical facilities in their home country are unavailable, unaffordable, inaccessible or of a lower standard than the UK. This should be considered as an Article 3 and

Article 8 medical claim. For further guidance see related link: Recognising an implied claim.

A further example would be where an applicant states that they are engaged in court proceedings and need to remain in the UK in order to conduct them or to appear as a witness. This should be considered as an Article 6 claim.
It is not possible to give a full list of the facts that may amount to a human rights claim as individuals may raise any facts in any combination. Considering human rights claims provides a list of all human rights.
You should ask yourself whether, having regard to the human rights protected by the European Convention on Human Rights (ECHR), is it obvious that the application relates to one of those rights. If it is obvious that the application relates to one of these rights, a human rights claim may have been made.

Determining if human rights are engaged

If the claim raises human rights, consider whether the claim made is capable of engaging the human right relied on. This will involve examination of the merits of the claim.

You should refer to considering human rights guidance which sets out how to undertake a substantive examination of the merits of human rights claims.
If no human rights claim has been made, the application should be refused with no right of appeal and no right to seek administrative review. You should serve notice ICD.4985.

It is not generally possible to make a human rights claim as part of an application made under the Immigration Rules except where the application is deemed to be a human rights claim, or the claim is made in a section of the application seeking further grounds to enter or remain in UK. See the section on how to identify a human rights claim for more information.

Notices to be served

If the claim made does engage the human right relied upon, a human rights claim has been made. If the claim is refused, the appropriate notice from the following list should be served (except in deportation cases):

• ICD.3050.IA (refusal with a right of appeal)
• ICD.1182.IA (refusal with section 94 certification)
• ICD.3051.IA (refusal with no right of appeal because not a fresh claim under paragraph 353)
• ICD.3052.IA (refusal with no right of appeal because of section 96 certification)

In the UK: applicant is detained

Any human rights claim must be made direct to a prison officer, a prisoner custody officer, a detainee custody officer or a member of Home Office staff at the migrant's place of detention. See paragraph GEN.1.9 Appendix FM, of the Immigration Rules.

There is no requirement to complete a specific form or follow a specific process. Where removal is imminent, it is more likely that the applicant will not be required to follow a formal process to make a claim.

The individual to whom the claim is made should pass the submissions made to a member of Home Office staff to consider the questions in Determining if a human rights claim has been made to establish whether a human rights claim has been made.

Notices to be served

If a human rights claim has been made, its refusal will attract an appeal right. If removal is imminent, consideration should be given to certification of the claim under section 94 (clearly unfounded) or section 96 (late claim). The appropriate notice from the following should be served (except in deportation cases):

• ICD.3050.IA (refusal with a right of appeal)
• ICD.1182.IA (refusal with section 94 certification)
• ICD.3051.IA (refusal with no right of appeal because not a fresh claim under paragraph 353)
• ICD.3052.IA (refusal with no right of appeal because of section 96 certification)

Overseas: applications under the Immigration Rules

The following claims made under the Immigration Rules are human rights applications and attract a right of appeal against refusal:

• Paragraphs 276U and 276AA (partner or child of a member of HM Forces)
• Paragraphs 276AD and 276AG (partner or child of a member of HM Forces) where the sponsor: o is a foreign or Commonwealth member of HM Forces
o has at least 4 years' reckonable service in HM Forces at the date of application
• Part 8 of these Rules (family members) where the sponsor: o is present and settled in the UK
o has refugee or humanitarian protection status in the UK, but not under paragraphs 319AA to 319J (points-based system (PBS) dependents), paragraphs (281-283), (sponsor granted settlement as a PBS Migrant)
• Part 4 or Part 7 of Appendix Armed Forces (partner or child of a member of HM Forces) where: o the sponsor is a British Citizen or has at least 4 years' reckonable service in HM Forces at the date of application
• Appendix FM (family members), but not section BPILR (bereavement) or section DVILR (domestic violence)

Where a human rights claim has been made and there is a right of appeal serve refusal notice GV51 (refusal with right of appeal).

This guidance does not cover decision-making where the application is made under one of these routes. Entry clearance officers (ECO) should refer to Appendix FM guidance, family applications transitional cases (Part 8) guidance or armed forces guidance.

Overseas: applications outside the Immigration Rules

Outside the UK, applications based on a human rights claim outside the Immigration Rules must form part of a valid application for entry clearance.
The list under section overseas: application under the Immigration Rules gives the forms available for human rights applications under the rules. Where applicants cannot find an appropriate form or believe that they cannot meet the requirements of the Immigration Rules, they must contact their local visa application centre.
If the applicant cannot meet the requirements of the rules, the local visa application centre should tell them to complete the visitor form (VAF1 A to K).

Part 9 of a visitor form allows the applicant to set out any other information that should be considered as part of the application. This can include a human rights claim that leave should be granted outside the rules.

Decision making process

When a visitor application is received in which Part 9 has been completed, you must first consider whether a human rights claim has been made. Guidance on identifying whether such a claim has been made is set out in this section.
If a human rights claim has been made, you must go on to consider it substantively and decide whether it is to be refused or granted. The answer to this question will determine whether the application can be dealt with at the visa application centre or whether it must be referred to the Referred Cases Unit (RCU).

Where the application obviously falls for refusal, it can be dealt with at the visa application centre. An Entry Clearance Officer (ECO) can refuse an application outside the Immigration Rules. The refusal of a human rights claim will attract a right of appeal.
Where the application has merit and may be granted, the ECO must refer the application to the Referred Cases Unit (RCU). This is because an ECO cannot grant an application outside the Immigration Rules.

Determining if a human rights claim has been made

The visitor form does not ask the applicant to indicate whether the claim being made is a human rights claim. Therefore the ECO will need to identify whether a human rights claim has been made.
It is important that the ECO gives careful consideration to whether a human rights claim has been made. If no human rights claim has been made, the refusal of the application does not attract a right of appeal.
ECOs should consider the following questions:

- does the application say that it is a human rights claim?
- does the application raise issues that may amount to a human rights claim even though it does not expressly refer to human rights or a human rights claim?
- are the matters raised capable of engaging human rights?
- what are the claim's prospects of success?

Guidance on each stage is set out in the considering human rights claims in visitor applications guidance.
What to do once the claim's prospects of success have been established
If the human rights claim is to be refused, the ECO should issue a refusal by serving notice GV51 (refusal with right of appeal).
If the ECO considers that the claim should be granted, or believes that it may result in a grant, the application should be referred to RCU who will consider the claim. The application will be returned to the ECO for refusal and service of GV51 (ROA).