



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/14463/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 17 November 2014**

**Determination**

**Promulgated**

**On 5 January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**The Secretary of State for the Home Department**

**and**

**MR N M**

**(ANONYMITY DIRECTION MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr P Tapfumaneyi instructed by PT Law & Associates

**DECISION AND REASONS**

1. The Secretary of State made the application for permission to appeal, nevertheless I shall refer to the parties as they were described before the First-tier Tribunal, that is Mr N M as the appellant and the Secretary of State as the respondent.

2. The appellant is a national of Zimbabwe born on 19<sup>th</sup> April 1957. He appealed against the decision of the respondent dated 16<sup>th</sup> April 2013 to refuse to vary his leave to remain in the United Kingdom, as a victim of domestic violence and against the decision to remove him from the United Kingdom by way of directions under Section 47 of the Immigration Asylum and Nationality Act 2006.
3. The appellant had met his spouse L Z in Zimbabwe in July 2003 and they became engaged in July 2007, married in August 2009 and the appellant entered the UK in January 2011 on a two year visa. He became ill two weeks after his arrival and was hospitalised. This caused him sexual problems and the marriage broke down.
4. First Tier Tribunal Judge Callow heard the appellant's appeal on 10<sup>th</sup> December 2013 and allowed the appeal on 7<sup>th</sup> January 2013. An application for permission to appeal was filed by the respondent on the basis that the 'Judge did not enter into any discussion regarding the contradictory accounts given by the appellant's wife in the e-mails' and thus the Judge had not taken into account relevant evidence in reaching his positive credibility findings. Further the Judge gave inadequate reasons for his decision. Permission to appeal was granted by First Tier Tribunal Judge Nicholson who noted that the ex-wife's email indicated that his erectile problems commenced prior to their marriage and the emails did not show an abusive relationship. The judge failed to address the contradictory accounts given in the emails or why they were rejected.
5. The refusal letter of the respondent set out that at the beginning of his stay in the UK the appellant claimed he was hospitalised with a pulmonary embolism. As a result he suffered from psychogenic impotence and premature ejaculation. Because of his impotence his wife emotionally and sexually abused him calling him names and regretted marrying him. He stated that he attempted to use counselling and mediation but his wife refused and removed him from the matrimonial bed, refused him financial assistance and eventually ordered him to leave the home, which he did in May 2011, before notifying his employer that he no longer lived with her. He submitted emails dated 15<sup>th</sup> June onwards although he claimed to have left the home earlier on 19<sup>th</sup> May 2011. His email of 18<sup>th</sup> June 2011 indicated that 'I [the appellant] decided to move out to give you time and space to get over it' and thus he had not been ordered to leave and an email dated 13<sup>th</sup> August 2011 stated that 'our problems actually started when I was still in Zimbabwe. It started with your nagging and faultfinding'. The email from his wife dated 25<sup>th</sup> June 2011 did not threaten harass or mock and that the erectile dysfunction was a long term problem which started before the marriage and that she offered mediation but he refused.
6. The refusal letter from the respondent claimed the emails did not show an abusive relationship, the marital problems began before his arrival in the UK and his wife asked him to get help for his penile problems. He had submitted no corroborative evidence such as medical reports. His

application was refused with reference to Paragraph 289 C with reference to paragraph 289A and (iv). The application was also refused with reference to Paragraph 276ADE. He was aged 56 years and entered the UK in 2011. He had not lived in the UK for 20 years and had not severed ties with Zimbabwe.

7. At the hearing, Mr Tufan submitted that there was no evidence of how the marriage ended and the medical report did not corroborate domestic violence. The judge referred to the emails at paragraph 4 of his decision and noted there had been previous problems but the judge did not deal with the emails. This was countered by Mr Tapfumaneyi who stated that the judge looked at the medical evidence and the emails and based his decision on the extensive cross-examination of the appellant. A single email would not undermine the remaining evidence. The grounds for appeal were simply a disagreement.

### **Conclusions**

8. The judge, I find noted at paragraph 8 the legal test which needed to be established with reference to Paragraph 289(iv) namely that the appellant was able to

*(iv) produced such evidence as may be required by the Secretary of State to establish that the relationship was caused to permanently break down before the end of that period [two years] as a result of domestic violence’.*

9. The judge also recorded at [9] the respondent’s Modernised Guidance – Victims of Domestic Violence, which defined domestic violence with effect from 31<sup>st</sup> March 2013 and that the definition of domestic violence and abuse included psychological and emotional abuse. The judge noted the difficulties with the production of evidence but was clear that the domestic violence needed to be shown by cogent relevant evidence, not necessarily that *prescribed* by the Secretary of State, and that the domestic abuse must be the cause of the breakdown [11].

10. At [6] the judge recorded the oral evidence and in particular the judge noted the appellant’s evidence and that of the expert. The judge noted that it was only

*‘after his arrival in the UK that the issue of gratification between the parties arose. It was as a result of this issue that the relationship deteriorated wherein the appellant was the victim of abuse and humiliation by his wife. The fact that his wife refused to sleep with him despite the fact that he had overcome the issue that had undermined the relationship, upset him greatly’.*

11. The judge assessed the evidence in the round [12]. The judge noted that domestic abuse could involve psychological and emotional abuse. He acknowledged that the problem of sexual dysfunction had occurred

beforehand but this is not inconsistent with it causing permanent problems in the marriage at a later date even though known about beforehand. The judge described that *'the fact that his wife refused to sleep with him, despite the fact that he had overcome the issue that had undermined the relationship, upset him greatly'*. The judge at [12] clearly accepted the appellant's evidence, following cross-examination. The Home Office was represented at the hearing and the judge noted [6] that *'with tact and sensitivity Mr Bose questioned the appellant about the complaints made by his wife'*. This could only have been from the emails and it would appear from the decision that the judge preferred the evidence of the appellant to that of the wife which included the emails. The appellant impressed the judge, who having heard the oral evidence, accepted the appellant as a *'credible witness'* [12]. The judge set out at [3] that the appellant's case was that the wife was unsympathetic and spoke of him in derogatory terms and that he failed to report the abuse because he wanted to save the marriage and that *'his wife refused to assist and to accompany him to his GP to obtain advice. It was in all of these circumstances that the wife asked the appellant to leave the matrimonial home and reported the fact of separation to the appellant's employers resulting in his dismissal from employment'*.

12. The judge also accepted [12] that *'undoubtedly the appellant was abused and humiliated in public as stated by him in his evidence'*.
13. The judge referred at [12] to the hospital report which was set out in more detail at [3(b)] from Dr Onuorah of Addison House Surgery which confirmed that the appellant was hospitalised with a pulmonary embolism and pneumonia in February 2011 and that at a follow up clinic appointment held on 21<sup>st</sup> April 2011 psychogenic impotence was discussed. Furthermore the appellant was seen on 6<sup>th</sup> June 2011 with marital stress-related problems and that a Viagra prescription was issued in May 2011. Thus the appellant was without doubt hospitalised and that sexual problems were associated with this medical issue. Mr Tufan stated that this did not refer to domestic abuse but the lack of reference does not exclude domestic violence and the appellant's account was that he wished to attempt to save his marriage.
14. Although the judge asserts *'for the first time in his relationship [following entry to the UK] with his wife he suffered from psychogenic impotence and premature ejaculation resulting in domestic abuse'* even if the appellant had sexual problems previously this had not resulted in domestic abuse as the parties had indeed married.
15. The judge also stated at [12] with reference to Kudakwashe Nyakudya's report *'the evidence of the expert was furnished in an objective manner. It is supportive of the appellant's claim'*.
16. Although the reference to the medical expert report is short it is nonetheless contained at [12] of the decision and adopted by the judge. The report was given by a qualified mental health nurse who had training

in Domestic Violence and Abuse for Professionals and she gave her qualifications at the hearing and which the judge recorded [3c]. She noted that DVA was not isolated to the physical. She recorded in the report that between 2004 and 2009 the couple had a satisfactory sexual relationship. The appellant's case was that, *contrary to the emails* the couple had a good sexual relationship, albeit that he had suffered problems previously, when he came to the United Kingdom but was in February 2011 he was admitted to hospital and this caused on-going sexual dysfunction which the ex wife could not accept. The report notes that the GP advised the appellant that the psychogenic impotence was caused by the pulmonary embolism.

17. Essentially the judge set out the evidence and set out the law and although his findings at [12] are pithy they do make reference to and encompass the evidence overall. Even if the judge made no specific reference to the emails which may have been an error, the version of events of the appellant, through his oral evidence and statements, and which differed from that put forward by the wife was clearly preferred, and further the wife did not give evidence and could not be cross examined. The appellant was clear in his email of 18<sup>th</sup> June 2011 that despite stating "I decided to move out to give you time and space" he also stated 'in the first place it's you who asked me to leave your house and kept on insisting that I should let you know when I was moving out' and in 'the last weeks you kept isolating me'.
18. The judge accepted that the real sexual problems started after the appellant's arrival in the UK and in two of her emails the wife acknowledged that they did have 'normal sexual contact during the first week' of the appellant's arrival in the UK despite stating that the problems had been long term. Indeed in her email of 1<sup>st</sup> February 2012 she disclosed that the appellant had prostrate problems and frequency of urination but also stated 'we only had *normal sexual contact* on less than 5 occasions during the first week of your arrival in UK, subsequent to which the problem gradually became worse to the point of you losing your erection each time we tried to make contact'. As the appellant went into hospital two weeks after his arrival and no doubt was ill beforehand I consider that reference to the emails, much of which are sadly symptomatic of a marriage breakdown, would not have materially altered the judge's decision. The email of the ex-wife acknowledges in her email that he did claim he was being ill treated by his wife and that he did feel unwelcome. The reason for the appellant's departure was not inconsistent with feeling forced to depart as a result of domestic 'violence'. Although the email of 25<sup>th</sup> June 2011 from his ex wife stated that she had no legal authority to prevent him from being employed the suggestion was that she had contacted the employer to advise that he was no longer living with her and the visa was not valid. The expert report to which the judge made reference to the fear of unemployment.
19. Although Mr Tufan submitted that the medical report did not corroborate domestic violence the expert report did set out the background, the

statistics in relation to domestic violence and analysed and found the appellant's account consistent with the extent of domestic violence against men. She acknowledged that the appellant did not experience physical abuse but found his account consistent with sexual abuse through sexually degrading language, verbal abuse and emotional and psychological abuse through being insulted and experiencing the 'silent treatment' and being ignored and which in turn could have exacerbated his psychogenic impotence.

20. I therefore find that although the reasoning is brief at [12] it does make reference to and bring in the evidence overall. The judge gave very brief but adequate reasoning and there is no error which would make a material difference. The decision of Judge Callow shall stand.

**Direction regarding anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

Signed

Date 31<sup>st</sup> December 2014

Deputy Upper Tribunal Judge Rimington