



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/30943/2014

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 30 March 2015

Decision Promulgated  
On 16 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

AZHAR IQBAL  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr I Ali, Counsel instructed by Syeds Solicitors  
For the Respondent: Mr A Mc Vitie, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Pickup promulgated on 18 December 2014 which dismissed the Appellant's appeal

against refusal of leave to remain as a victim of domestic violence under the Rules and on human rights grounds .

### Background

3. The Appellant was born on 1 May 1983 and is a national of Pakistan.
4. On 27 February 2014 the Appellant applied for indefinite leave to remain as a victim of domestic violence.
5. On 11 July 2014 the Secretary of State refused the Appellant's application by reference to paragraph 289A and 322(12) on the basis that the Appellant had failed to establish that his relationship with his wife had been caused to break down permanently as a result of domestic violence or was indeed subsisting at the date of his arrival (289A) and because there was an outstanding debt of £1985.66 to the NHS (322(12) )

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Pickup ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
  - (a) He failed to give a credible explanation as to why he did not petition for divorce for 3 years and 7 months.
  - (b) His marriage broke down on arrival in the United Kingdom and he only lived with his wife for 10 days.
  - (c) There was an inconsistency between his claim in the covering letter with his LTR application that he left the matrimonial home in 2011 and his oral evidence that it was 2010.
  - (d) He did not find his explanation for his failure to complain at the hospital about his alleged treatment was credible changing his account as to why he failed to do so.
  - (e) The hospital notes did not support his claim of domestic violence.
  - (f) He gave limited weight to the Psychiatric report which was based on uncritical acceptance of his factual account.
  - (g) There were inconsistencies between the account recorded in the psychiatric report and the rest of the Appellant's case which the Appellant was unable to satisfactorily explain.
  - (h) The Appellant was a poor witness and repeatedly claimed he was unable to understand questions or directly answer them.
  - (i) He concluded that the marriage was not caused to break down permanently because of domestic violence.

- (j) The Appellant was also refused on the basis of the discretionary ground that he had an outstanding NHS bill. The Judge did not accept that at the time the bill accrued the Appellant was in the United Kingdom lawfully and therefore found that he was not entitled to free treatment as claimed and therefore the discretion to refuse was properly exercised.
7. Grounds of appeal were lodged on the basis that there had been a procedural irregularity in that the court interpreter spoke a different language to the Appellant who stated that he had requested a Mirpuri interpreter and the interpreter at court spoke Punjabi and that the Judge failed to take into account the Respondent's Guidance in relation to refusal based on non payment of NHS charges.
8. Designated First-tier tribunal Judge Baird gave permission to appeal on both grounds stating:
- “Clearly there were problems with the interpreter and it was perhaps not unreasonable for the Judge to proceed with the hearing in the absence of any formal complaint or request for a replacement. It has however come to my attention, in the light of enquiries having been made on receipt of the Appellant's letter, that although the interpreter does speak some Mirpuri and is registered with the tribunal at the necessary level in another language, he is not registered for Mirpuri at the preferred and usual level but at a lower one.”
9. At the hearing I heard submissions from Mr Ali on behalf of the Appellant that:
- (a) A Mirpuri interpreter was requested and not obtained.
- (b) There was no clarification at the start of the hearing as to what lanagauge was used.
- (c) There are a number of dialects of Punjabi and the differences in meaning can be significant.
- (d) The Judge's remarks at paragraph 23 demonstrated that he made adverse findings in circumstances were the Appellant did not understand questions asked.
- (e) The rest of the decision was infected by the problems with the interrupter and the findings in relation to paragraph 322 (12) could not be separated from the rest of the case.
10. On behalf of the Respondent Mr Mc Vitie submitted that :
- (a) He conceded that given what was recorded at paragraph 23 there were obvious problems with the interpreter and the judge concluded that the Appellant was simply a poor witness.
- (b) The refusal in relation to paragraph 322 (12) could stand separately but he conceded that as it was a discretionary ground refusal was not inevitable.

### **Finding on Material Error**

11. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
12. The Appellant in this case made an application for indefinite leave to remain claiming to be a victim of domestic violence.
13. Every Appellant is entitled to a fair hearing and I am satisfied that a fair hearing must include him being given the opportunity to participate in the proceedings by being provided with an interrupter in his chosen language in order that he can properly answer any allegations made against him.
14. The Appellant's account of his marriage and how he claimed it broke down was not found to be credible by the Judge on the basis of inconsistencies in his written and oral evidence which undermined his general credibility. This finding was underpinned by the Judge's belief that he understood what he was being asked in the course of the hearing but simply chose to be evasive or falsely claim he did not understand the questions. The Judge at paragraph 23 summarised his view of the Appellant as a witness in this way:

"I found the appellant to be a very poor witness in his own cause. He appears to have found it difficult to answer straight questions with straight answers. Repeatedly he said he did not understand the questions put to him or did not directly answer them, even though they were put to him again. I also had to ask Mr Ayub not to intervene in the translation of questions or answers to assist the appellant."
15. It now transpires that the Appellant had asked for a Mirpuri interpreter but that Samina Azam who attended on the day of the hearing does speak some Mirpuri and is registered with the tribunal at the necessary level in another language, he is not registered for Mirpuri at the preferred and usual level but at a lower one.
16. It is not recorded in the written decision what checks the Judge made as to whether the Appellant and the interpreter understood each other. Contrary to Mr Ali's claim some checks were clearly made as I note that the language on the record of proceedings was marked as 'Mirpuri' but this was crossed out by the Judge who wrote 'Punjabi.' However given that the Appellant had not been given an interpreter in the language he requested and there were obvious problems in understanding recorded by the Judge at paragraph 23 which included his inability to give 'straight answers' and repeatedly claiming not to understand the questions I am satisfied that the Appellant was not given a fair hearing. This error I consider to be material since had the Appellant been provided with an interpreter who he understood the Judge's conclusion as to the credibility of his evidence could have been different. That in my view is the correct test to apply.
17. I cannot exclude the possibility that the rest of the decision is infected by the failure to provide the Appellant with an interpreter that he understood and therefore I find that the Judge's determination cannot stand and must be set aside in its entirety.
18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. In this case I have determined that the case should be remitted because the Appellant did not have a fair hearing due to the lack of an interpreter that he understood. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.
20. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed, before me.
21. I made the following directions for the resumed hearing ;
  - A Mirpuri interpreter to be instructed **not** Samina Azam (TRI1186339)
  - 2 hours

Signed

Date 7.4.2015

Deputy Upper Tribunal Judge Birrell