Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/32482/2014**

THE IMMIGRATION ACTS

Heard at Field House
On 4th September 2015

Decision and Reasons Promulgated
On 14th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Mr PATRICK CHARLES PATTERSON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Naumann (solicitor) of McGarth LLP.
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

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 Hands ("the Judge"), promulgated on 14 November 2014, which dismissed the appellant's appeal on all grounds.

Background

3. The appellant is a citizen of the USA who was born on 31 August 1955. The appellant entered the UK on 15 December 2011 as the spouse of a person present and settled in the UK in possession of a visa valid until 24 February 2014.

4. On 20 February 2014, the appellant submitted an application for indefinite leave to remain as the spouse of a person present and settled in the UK. On 25 February 2014, the appellant's wife served a petition for divorce on the appellant. On 15 July 2014, the appellant's wife wrote to the respondent, declaring that her relationship with the appellant "*no longer subsists*". On 28 April 2014, decree nisi was granted by the family court at North Shields and the appellant's marriage was dissolved by decree absolute on 17 June 2014.

5. The respondent refused the appellant's appeal on 29 July 2014. The appellant appealed against that decision and, in a Section 120 notice, varied the grounds of his appeal to an appeal for indefinite leave to remain in the UK as a victim of domestic violence in terms of Paragraph 289A of the Immigration Rules.

The Judge's Decision

6. The cases pled before the judge related entirely to an argument that the appellant should be granted indefinite leave to remain in the UK as the victim of domestic violence. The focus in the case before the judge was Regulation 289A of the Immigration Rules. In addition, the appellant claimed that his rights in terms of Article 8 ECHR would be breached by the respondent's decision. The judge found that the appellant's marriage had broken down irretrievably but did not find that the appellant was the victim of domestic violence. The judge dismissed the appellant's appeal on all grounds.

7. Grounds of appeal were lodged and on 4 May 2015, Upper Tribunal Judge Chalkley granted permission to appeal, stating:

> "I believe that the judge <u>may</u> have erred by making contradictory findings as asserted in ground 1 of the application to the First Tier. I do not seek to limit the extent of the challenges."

The Hearing

8. Mr Naumann, solicitor for the appellant, argued that the judge had made an error in law in her approach to her assessment of the date that the appellant's relationship broke down. He argued that the judge placed too much reliance on the appellant's desire for reconciliation when the evidence pointed to the appellant's ex-wife's single-minded pursuit of dissolution of marriage. He argued that there is sufficient evidence to demonstrate that the appellant was a victim of domestic violence on 23 February 2014, that that date pre-dated the date of service of divorce petition and that the only conclusion that could be drawn from the evidence is that the appellant's marriage broke down irretrievably because he is the victim of domestic violence. He argued that inadequate assessment of proportionality had been carried out in the Article 8 balancing exercise; he argued that the judge had failed to take account of

evidence placed before her and had made findings which were unclear and unreasoned. He urged me to find that the decision is tainted by material errors of law and to remake the decision allowing the appeal.

9. Mr Tarlow, for the respondent, relied on the Rule 24 notice dated 1 June 2015 and told me that the judge's decision does not contain errors of law, but sets out clear findings in fact and well-reasoned conclusions drawn from those findings in fact. He told me that the judge had correctly considered Article 8 ECHR and that there were no flaws in the approach taken to the question of proportionality by the judge. He urged me to dismiss the appeal and allow the decision promulgated on 14 November 2014 to stand.

Analysis

10. Although the grounds of appeal are framed so that there are four specific grounds of appeal, in reality, grounds one, two and three turn on the appellant's assertion that he is a victim of domestic violence and that it was domestic violence which brought his marriage to an end; his argument is directed at the manner in which the judge dealt with that evidence. It is argued that the judge's conclusion about the date that the appellant's marriage broke down and the assertion that the marriage has not irretrievably broken down if one party is still willing to work on the marriage cannot be sustained.

11. At [14], the judge correctly sets out that what she has to determine is "… *did the appellant's marriage break down due to domestic violence prior to the expiry of his visa?"* At [14], the judge correctly sets out a chronology of the key events surrounding the appellant's application for indefinite leave to remain, which were an incident involving both the appellant and his ex-wife on 23 February 2014 and the service of a petition of divorce on 24/25 February 2014.

12. At [15] the judge analyses that evidence and comes to the conclusion "…*I do not find that the appellant has provided evidence to establish that his relationship was caused permanently to break down before his visa expired as a result of domestic violence".*

13. The final sentence of [15] is a conclusion which was open to the judge on the evidence available. In his witness statement, the appellant speaks of the dissatisfaction creeping into his marriage and unpleasant treatment that he received from his ex-wife. He specifically states that the first incidents of violence was in spring 2013. It is clear that the focus of the evidence before the judge related to the incident to which police were called on 23 February 2014.

14. Clearly, the appellant's case is that he is the victim of domestic violence. It is beyond dispute that the appellant's marriage broke down irretrievably and has now been dissolved by decree from North Shields Family Court, but in order to succeed under Paragraph 289A, those two factors must be linked. The appellant would have to establish not just that he is the victim of domestic violence but also that it was the domestic violence which caused his marriage to break down.

15. The pursuer in the divorce action was the appellant's wife. The divorce cannot therefore have proceeded on the basis that the appellant was the victim of domestic violence. The appellant's own evidence has consistently been that although he was a victim of domestic violence, in his eyes, the marriage had not broken down irretrievably. His evidence was that receiving a petition for divorce the day after his visa expired was a shock (or at least, a surprise). That is clear evidence that there is no causal link between the appellant's suffering at the hands of his ex-wife and the breakdown of the marriage. Because there is no causal link between the appellant's suffering and the breakdown of the marriage, the appellant cannot fulfil the requirements of Paragraph 289A.

16. The remaining ground of appeal drives at the Article 8 assessment which can been found between [20] and [29] of the decision. At [24], the judge finds that private life is established. The judge gives a correct self-direction at [25] and [26]. At [22], the judge takes account of Section 117A and 117B of the Nationality, Immigration and Asylum Act 2002. Between [27] and [28], the judge clearly sets out the factors which weigh in the appellant's favour and the factors which weigh against the appellant. In doing so, the judge is manifestly carrying out a balancing exercise to assess the proportionality of the respondent's decision to remove. At [29], the judge, having correctly carried out a balancing exercise, draws a conclusion that the respondent's decision is not a disproportionate interference. There is neither error nor inadequacy in the balancing exercise carried out by the judge.

17. I am satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

DECISION

18. The appeal is dismissed.

Signed Date

Deputy Upper Tribunal Judge Doyle