



IAC-AH-LEM-V1

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

Appeal Number: IA/12636/2015

THE IMMIGRATION ACTS

Heard at Bradford

On 21st March 2016

**Decision & Reasons
Promulgated
On 13th April 2016**

Before

UPPER TRIBUNAL DEPUTY JUDGE ROBERTS

Between

**MIRZA MUHAMMAD TEHSEEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Javed of Reiss Solicitors Bradford

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan (born 29th January 1987). He appeals with permission against the decision of the First-tier Tribunal (Judge Dickson) dismissing his appeal against the Respondent's decision to refuse him leave to remain in the UK as a victim of domestic violence. The refusal decision is dated 23rd March 2015.

Background

2. The Appellant arrived in the United Kingdom on 29th June 2012 after being given leave to enter as the prospective spouse of Shazad Begum, a British citizen. That leave to enter was effective until 21st December 2012. On 19th November 2012 the Appellant submitted an application for further leave to remain as a spouse. That application was granted on 7th March 2013 with the Appellant having leave to remain until 7th March 2015.
3. The Appellant's wife gave birth to their son on 26th September 2013. The marriage ran into difficulties. On 6th March 2015 the Appellant applied for indefinite leave to remain in the United Kingdom as the victim of domestic violence. The Respondent refused that application on 23rd March 2015 and also made a decision that the Appellant should be removed by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
4. The Appellant appealed the Respondent's decision, and the appeal came before Judge Dickson on 14th July 2015. In a comprehensively set out decision the judge reminded himself that a victim of domestic violence must satisfy paragraphs 289A(i) – (iii) of the Immigration Rules. He also considered whether the Appellant could meet the criteria set out in Appendix FM 276ADC and paragraph EX.1 of the Rules. He also considered whether the Appellant could avail himself of article 8 ECHR.
5. The judge heard oral evidence from the Appellant, his sister-in-law Mrs Rabina Kauser and Mrs Akhtar a family friend. In addition there were several statements from associates of the Appellant. All statements testified to there being problems within the marriage between the Appellant and his wife.
6. Having considered the evidence, the judge dismissed the appeal. In summary he accepted that the relationship between the Appellant and his wife had permanently broken down. He also accepted that he had no doubts that in common with other failed marriages there may have been some heated moments between the couple and that on one occasion the Appellant's wife may have filled his shoes with cold water. However, he was not satisfied that the marriage had broken down because of domestic violence on the part of the Appellant's wife. He noted the medical report produced did not assist the Appellant. The report which was from a GP simply records the Appellant informing the GP that his wife mistreated him. The judge also noted that the Appellant only reported matters to the police in February 2015 by which time he had not been living with his wife and child for some four months. Apart from noting the complaint, no further action was taken by the police.
7. The Appellant sought and was granted permission to appeal the FtT's decision. The relevant parts of the grant of permission are set out here.

“2. It is arguable as set out in the grounds that the judge did not give adequate reasons for explaining why he rejected the evidence of Mrs Akhtar as to the domestic violence perpetrated on the appellant. He simply says that he was not assisted by her evidence but he does not explain why. He did give reasons however, at least implicitly, for rejecting Mr Baber Ali’s evidence, the contradictions referred to being the location at which the appellant was allegedly collected by Mr Barber Ali. Whilst it does not follow that even if there was violence as described by Mrs Akhtar, that was the reason for the marriage breaking down, the judge appears to have come to his conclusions at [39] on the basis he was not satisfied that there was violence beyond heated moments, and the appellant’s shoes being filled with cold water. Accordingly if the judge erred so far as rejecting Mrs Akhtar’s evidence is concerned, any error could be material to the finding whether the marriage did indeed break down as a result of domestic violence.

3. It is said at paragraph 6 of the grounds that the judge should have allowed the appeal to the limited extent because the decision letter did not deal with the fact there was an access order in place but it is difficult to see how the respondent’s decision could have been not in accordance with the law if the access order was not in place at the date of the respondent’s decision (indeed it appears the appellant’s child was then in Pakistan).

4. It is said that the judge erred in failing to acknowledge the appellant’s involvement in the child’s upbringing since his birth and that the appellant was waiting for his wife’s bank details to pay maintenance but the question was when the appellant was taking an active role in the child’s upbringing not simply whether he intended to take such a role in the future (the rules say “taking and intend to continue to take” – my underlining) or had taken one in the past. The judge’s findings as to the role the appellant was taking at the date of the hearing appear justified on the evidence that the appellant had not seen the child since November 2014 and had not provided financial support.

5. Nevertheless as I would grant permission in any event on the ground as to domestic violence and as the totality of the facts are relevant to the appellant’s case under Article 8 ECHR, I do not limit permission despite my comments above.”

Thus the matter comes before me to decide whether the decision of the First-tier Tribunal discloses an error of law such that the decision needs to be set aside and remade.

The UT Hearing

8. Mrs Javed who appeared on behalf of the Appellant, based her submissions on the lines of the grant of permission. She submitted that the Appellant’s

claim was one of domestic violence and that the FtT Judge had not given adequate reasons for explaining why he rejected the evidence of Mrs Akhtar as to the claimed domestic violence perpetrated on the Appellant. That evidence may have been material in finding whether the marriage had broken down as a result of domestic violence.

9. Mr Diwnycz submitted that the judge's findings were sound, both in terms of the jurisprudence and the evidence before him. He said the grant of permission is not persuasive in showing that the decision is incorrect. The best that could be said for the Appellant's case was that Judge Dickson may have erred only in failing to spell out robustly his reasons for showing that the evidence of Mrs Akhtar did not assist. However one looked at the decision the reality was that the evidence fell far short of that required to establish a case of domestic violence. Any error therefore would be immaterial. The short medical evidence was provided late in the day and police involvement was minimal. The decision should stand.

Discussion

10. I find myself in agreement with Mr Diwnycz's submissions. Judge Dickson has produced a detailed and thorough decision following a hearing in which the Appellant and two witnesses gave oral evidence. He has taken into account the written statements of other witnesses and noted that the medical evidence and police involvement is minimal.
11. Contrary to what is asserted in the grounds seeking permission, it is clear why Judge Dickson said he was not assisted by Mrs Akhtar's evidence. At [33] the judge records the following:

"Mrs Akhtar confirmed the truth of her statement. She was living with the Appellant for some time and his wife was always slapping him round the face as well as committing other abuses. Mrs Akhtar told Mr Mullarkey that she lived with the Appellant and his wife for some time. The worst incident was when the Appellant came back from work and picked up his son. His wife snatched his son off him and said the child was sleepy. She slapped him and grabbed hold of the child. She did not remember the date and year that this had happened."

At [34] the judge records:

"I was not assisted by the evidence of Mrs Kauser and Mrs Akhtar although her statement gives numerous incidents of abuse. She said the worst incident was when she took their son away from the Appellant because he was sleepy and slapped his face".

The judge then went on to say at [39]:

"The Appellant is now separated from his wife who has returned from Pakistan with their son. I accept that the relationship has permanently broken down. I have no doubt that in common with

other failed marriages there may have been some heated moments between the couple and that on one occasion he wife may have filled his shoes with cold water.”

12. I am satisfied that Judge Dickson has considered the evidence which was put before him. He records that Mrs Kauser had not seen directly any conflict between the Appellant and his wife and only knew what the Appellant told her. Mrs Akhtar reported that the "worst" incident was the slap when the Appellant picked up his sleepy child, but could not even remember the date or year when this is said to have occurred. The judge was entitled to evaluate that evidence by saying it did not assist the Appellant. I am satisfied he has reached an outcome which was available to him on the evidence before him. I find the grounds amount to little more than a disagreement with the judge’s findings and conclusions.
13. The judge did go on to consider Article 8, acknowledging that the Appellant has a son in the United Kingdom who is a British citizen. However the marriage has broken down. The judge properly considered that there was no evidence put before him to show why the Appellant could not continue to have contact with his son through modern means of communication and/or by making application to visit his son.
14. For the foregoing reasons the decision of Judge Dickson discloses no error of law and the decision stands.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

No fee award.

Signed

Date

Upper Tribunal Deputy Judge Roberts