



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/43523/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 20<sup>th</sup> May 2016

Decision & Reasons Promulgated  
On 28<sup>th</sup> July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MI

(ANONYMITY DIRECTION MADE)

Respondent

**Anonymity**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) I make an anonymity order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceeding or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst other, all parties

**Representation:**

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer  
For the Respondent: Mr A Chohan, Counsel instructed by SZ Solicitors

**DECISION AND REASONS**

1. This appeal concerns Mr MI, a national of Pakistan, whose date of birth is recorded as [ ] 1983. On 29<sup>th</sup> May 2012 he was granted limited leave to enter the United

Kingdom until 27<sup>th</sup> July 2014 as a spouse. On 24<sup>th</sup> July 2014 he made application for variation of his leave. He relied on there having been domestic violence. It is an important ingredient of the Immigration Rule upon which reliance was placed that the relationship broke down as a result of domestic violence. A decision was made to refuse the application on 11<sup>th</sup> October 2014. Mr MI appealed.

2. His appeal first came before Judge Davey, sitting in the First-tier Tribunal at Taylor House on 6<sup>th</sup> February 2015. At that time both parties were represented. The Secretary of State was represented by Mr Kotas. He had certain documents in his possession which he sought to rely upon but because the documents were to be filed and served late and because the representatives of Mr MI would not have had sufficient time to consider the contents of those documents the matter quite properly was adjourned. The documents included a letter from Mr MI's wife dated 15<sup>th</sup> July 2014 which letter sets out something of the nature of the relationship between her and Mr MI and an email dated 6<sup>th</sup> February 2015, sent, I note, at 4:36 in the morning, to Mr Kotas answering questions put by him but essentially that email was the basis of what might be described as an informal witness statement.
3. The matter came back before the First-tier Tribunal on 23<sup>rd</sup> July 2015. The matter was heard by Judge of the First-tier Tribunal Devittie. Although Judge Devittie does not record any representation by either party in fact it is common ground and important in this matter that Mr MI was represented by Mr Chohan who appears before me in the Upper Tribunal but the Secretary of State, for whatever reason, did not have representation. It is not suggested that she did not have proper notice and so there was the opportunity for the Secretary of State to be represented at that hearing had she thought fit. The history of this matter is set out by Judge Devittie in his Determination and Reasons at some length.
4. Mr MI arrived in the United Kingdom on 27<sup>th</sup> April 2012 with leave valid until 27<sup>th</sup> April 2014 as the spouse of a person settled in the United Kingdom. Before the expiration of that leave he made an application for leave to remain on the grounds of domestic violence pursuant to paragraph 289 of the Immigration Rules. Paragraph 289 of the Immigration Rules provides materially that an applicant has to show that his relationship has broken down as a result of domestic violence; there is a list of documentary evidence that is required to prove domestic violence.
5. In the witness statement submitted by Mr MI for leave to remain he stated that:
  - (i) He met his wife through a marriage bureau, in 2010. They married in 2011. After the marriage they lived in Pakistan with their parents for a while, and his wife gave birth to a son on [ ] 2011. They remained in Pakistan for a while, to enable his wife to return to the United Kingdom to initiate the application process for him to join her in the United Kingdom as a spouse.
  - (ii) He obtained a spouse visa on 27<sup>th</sup> April 2012 and arrived in the United Kingdom in December 2012. Their daughter was born in the United Kingdom on [ ] 2013. Their difficulties began in July 2013. His wife was insisting that he

should make a greater financial contribution to their joint expenses. She was in good employment, but he could not obtain suitable employment, because of his limited fluency in the English language. He asked her to assist him in doing an English course, but she refused him to do so. She kept him in the matrimonial home at all times. She levelled threats against him on a frequent basis and told him that she would have him deported from the UK. On more than one occasion she chased him out of the house. He was too scared to call the police because he feared he would be deported and would never see his children again.

- (iii) In November 2013 his wife chased him out of the matrimonial home and he has not returned since that date. She continued to contact him through the telephone and through text messages – making persistent threats and causing him mental and emotional distress. He moved in with a friend.
- (iv) After he had left the matrimonial home, she indicated to him that she wished to travel to Pakistan with the children. At that stage, he had managed to obtain a court order prohibiting her taking the children out of the jurisdiction of the United Kingdom courts without his consent. She gave him the undertaking that she would stay with the children with his parents, and on that basis he consented to her taking them to Pakistan for a period of no more than 28 days. His wife left for Pakistan with the two children on 14<sup>th</sup> November 2013, and after a month, she informed him that she had left his parents, and had moved to reside with her parents in Pakistan.
- (v) He tried in vain to contact his wife at her parents' home in Pakistan. When he did get through, her brother threatened to shoot him. His emotional distress reached such a level, that he was admitted into hospital suffering from anxiety and depression. He was very concerned that he would not see his kids again. When he did speak to his wife on one occasion when she was in Pakistan, she repeated her demand that he had to earn at least £3,000 in order for their marriage to continue. He asked her to assist him with funds and if she did so he would be happy to travel to Pakistan. She refused to assist him.
- (vi) On 7<sup>th</sup> May 2014 he was informed that his wife, had returned to the United Kingdom, but only with her son, leaving her daughter with her parents in Pakistan. He managed after some difficulty to contact his wife in the United Kingdom and to have a limited contact on a few occasions with his son. His wife again repeated her financial demands. After a period of about ten days she denied him with any further contact with his son. He was advised by a friend to contact a domestic violence group, but they felt unable to assist him, on the basis that they only assisted female victims.

Judge Devittie then goes on to set out in his determination how Mr MI had himself described his contact with the police following events on 18<sup>th</sup> June 2014.

6. Mr MI gave live evidence which is set out by Judge Devittie in the Record of Proceedings. In addition Judge Devittie had before him a report dated 4<sup>th</sup> July 2014 from the Orient Medical Practice which spoke of Mr MI attending the emergency unit in March 2014 with symptoms of stress and anxiety for which he received medication. There is also evidence that Mr MI attended the accident and emergency unit in April 2014 with palpitations related to anxiety and stress. Mr MI was seen again in June and July 2014 with it being recorded on those occasions that Mr MI had spoken at length about his personal circumstances and marital difficulties.
7. Mr MI was noted by Judge Devittie as having accepted that his wife had not been physically abusive; his case was that he had been subjected to "emotional torture". This is sometimes otherwise known as coercive controlling behaviour. Examples were given to the judge such as "his wife had kicked him out of the house in the middle of the night". Further, "she had made him sleep on the floor". Other examples are set out.
8. Judge Devittie then makes reference to a report from the Ilford Medical Centre dated 13<sup>th</sup> July 2014 which speaks of Mr MI suffering from depression since last year, with low mood, poor sleep and panic attacks. Importantly the report makes mention of Mr MI reporting that he was a victim of domestic violence from non-physical, verbal and emotional abuse.
9. Judge Devittie further had a police report following the incident of 18<sup>th</sup> June 2014. It reads as if the police were certainly sympathetic to Mr MI and there is previous consistent evidence contained within this report of Mr MI reporting that his wife had, "apparently kicked him out of this address sometime around November". The Secretary of State, as I have already observed, did not accept that the relationship had broken down as a result of domestic violence. It was accepted that the marriage had broken down but the cause was an issue.
10. Judge Devittie went on to allow the appeal. He found Mr MI to be a credible witness. He took into account not only the evidence at the hearing but also the various reports to which I have referred and he noted that there was a remarkable degree of consistency in the evidence. In addition it was noted that there had been a wilful breach of a High Court order by the Appellant's spouse, a factor which is material in this appeal because it goes to the credibility which ought to be attached by me to further evidence which the Secretary of State invites me to consider. I note that Judge Devittie said:

*"In my view the conduct of the Appellant's spouse in breaching an undertaking she gave to the court, is not inconsistent with the allegations that the Appellant (Mr MI) has made against her in these proceedings and in his application for leave to remain on the grounds of domestic violence."*

11. Judge Devittie noted that there was no attempt by Mr MI to embellish his account and noted his demeanour. Judge Devittie noted that Mr MI was tearful throughout his evidence and he was of the view that the demeanour was not contrived. Judge

Devittie had no hesitation on the basis of the evidence before him in allowing the appeal both under the Rules and on human rights grounds.

12. Not content with that decision by notice dated 30<sup>th</sup> September 2013 the Secretary of State made application for permission to appeal to the Upper Tribunal on the basis that there was evidence submitted by the Secretary of State at the first hearing, which was adjourned, which for some reason was either not before Judge Devittie or not considered by him. On 11<sup>th</sup> April 2016 Judge of the First-tier Tribunal Colyer granted permission. Thus the matter comes before me.
13. Mr Bramble for the Secretary of State, in reliance upon the documents which I have read with care, contends that there was a material error of law. He makes that submission on the basis that the evidence which was submitted, being essentially a complete denial by the Appellant's wife of the behaviour which he, Mr MI, alleges, were it considered by Judge Devittie, was capable of materially affecting the outcome.
14. Clearly the judge ought to have had regard to that evidence. The first hearing was adjourned in order that the evidence could be considered and it does appear that Judge Devittie did not have regard to it and I so find. There was no reason for him not to have done so. The previous hearing was adjourned on 6<sup>th</sup> February 2015 and there is a clear note from Judge Davey as to the reason why the matter was adjourned. The Secretary of State was entitled to have proper consideration given to the evidence that was placed before her and in those circumstances I find that the error of law was material.
15. I go on to consider whether I ought to remit this matter to the First-tier Tribunal or re-make the decision. I see no reason to remit. I have all the evidence before me. The evidence which the Secretary of State wanted Judge Devittie to have regard to is now before me and, importantly, the Secretary of State was not represented at the First-tier Tribunal so no submissions would have been made and importantly the evidence of the wife would not have been adduced. There is no suggestion that she attended at the hearing. Certainly that forms no part of the appeal and so in re-making the decision I remind myself that the burden of proof is upon Mr MI. He has to satisfy me on balance of probabilities that the marriage broke down as a result of domestic violence. I do not need to set out the entire Rule because it is not in issue that the point that was to be resolved was precisely that. This is not a difficult case to resolve. On the one hand was Mr MI who gave clear evidence that was accepted as consistent. It was corroborated. Any idea of recent fabrication is dealt with by the previous consistent evidence. Formal evidence is not required in this jurisdiction but section 6 of the Civil Evidence Act 1995 points to how recent fabrication and previous consistent evidence might be looked at and any analysis of that legislation would be favourable to Mr MI.
16. Mr Bramble has been very realistic in his submissions. He accepts that there are real difficulties for the Secretary of State because the spouse was not called to give evidence and the Secretary of State was not represented. What weight am I to give

therefore to the evidence? On the one hand a man who has given consistent evidence and regarded as credible and on the other hand a witness statement and an email which has not been tested in circumstances in which, with a background of domestic violence, one might expect conflicts in the evidence such as this. Clear it is that this was not a happy relationship but I am satisfied on the basis of the totality of the evidence, and I have read with care the letter of 15<sup>th</sup> July 2014 and the email which was placed before me, that the Appellant in the First-tier Tribunal, Mr MI, has proved his case. Neither party require me to go on to consider any element of the Article 8 appeal which is irrelevant in any event if the appeal is allowed under the Rules.

**Notice of Decision**

17. The decision of the First-tier Tribunal contained a material error of law and is set aside. The decision of the First-tier Tribunal is re-made such that the appeal is allowed both under the Rules and, for the avoidance of doubt, on human rights grounds.
18. I have made an Anonymity Direction because of the nature of the behaviour to which the Appellant was subjected.

**Signed**

**Date 6<sup>th</sup> June 2016**

**Deputy Upper Tribunal Judge Zucker**

**TO THE RESPONDENT**  
**FEE AWARD**

19. I do not interfere with the fee award that was not made in the First-tier Tribunal for the reasons given by Judge Devittie as no submissions were made that I should do otherwise.

**Signed**

**Date 6<sup>th</sup> June 2016**

**Deputy Upper Tribunal Judge Zucker**