



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

Appeal Number: HU/11566/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 16<sup>th</sup> December 2019**

**Decision & Reasons  
Promulgated  
On 4<sup>th</sup> February 2020**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**AB**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms L Mair, Counsel instructed by D & A Solicitors  
For the Respondent: Mr D Mills, Home Office Presenting Officer

**DECISION AND REASONS**

1. An anonymity direction was made by the First-tier Tribunal (“FtT”), and it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, AB is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a citizen of Pakistan. Her appeal against a decision of the respondent dated 9<sup>th</sup> November 2015 to refuse her application for indefinite leave to remain as a victim of domestic violence was dismissed by First-tier Tribunal Judge Lodge (“the judge”) for reasons set out in a decision promulgated on 21<sup>st</sup> March 2017.
3. At paragraph [12] of the decision, the judge identifies the two issues that arose in the appeal. First, whether the appellant meets the requirements for indefinite leave to remain in the United Kingdom as the victim of domestic violence as set out in paragraph 289A of the immigration rules. Second, whether the application for indefinite leave to remain could be refused under paragraph 322(2) of the rules.
4. The judge refers to the evidence that was before the Tribunal at paragraphs [14] to [20] of the decision. At paragraphs [14] and [15], the judge referred to a report of ‘Domestic Violence Incident – Non-Crime’ relating to an incident recorded in a Police Log from West Midlands police. In addition to that evidence the judge refers to the evidence of the appellant and two witnesses, [MA] and [AQ]. The evidence of the appellant was that there had been a number of incidents of abuse from the family of her husband culminating in the incident where the police attended and she was taken away by the police to a relative’s house. The judge considered there to be significant discrepancies in the evidence of the witnesses, and the lack of any record in the police log of a physical assault. The judge found the evidence of [AQ] to be unreliable and at paragraphs [25] and [26], the judge stated:

“25. In the circumstances given the myriad inconsistencies, I cannot accept that the appellant’s account is reliable. Whilst it must be considered “ a piece of evidence that the appellant was subject to domestic violence”, to quote the reasons for refusal letter, that can only be the case taking the appellant’s account at its highest.

26. I am not, however, prepared to take the appellant’s case as described in her statement at its highest. The appellant paints a picture of being controlled by her husband and his family which is at odds with someone who had the support of her father-in-law. As the “pater familias” and head of the household I cannot accept she would have been so constantly badly treated as she described without his intervening.”

5. At paragraph [29], the judge concluded:

“I am satisfied that the appellant has simply been party to an unhappy marriage with the added misfortune of friendly female in-laws. Whilst I am conscious that domestic violence does not require physical assaults and can involve psychological and controlling behaviour as well as verbal abuse. To find as a fact that the appellant has been subjected to that would involve me having to accept the uncorroborated evidence of the appellant. In the circumstances I am not prepared to do that, especially as the only really testable evidence is in relation to the police incident where I find the appellant is unreliable.”

The appeal before me

6. The appellant claims the judge erred in the assessment of the evidence. The appellant had provided evidence of domestic violence in the form of a ‘Police log’ and evidence that the police were called to the former matrimonial home. The evidence established that the appellant had left the property and the incident had been characterised by the police as one of “domestic violence”. The appellant refers to the published guidance of the respondent which provides information about the documentary evidence that is required in support of an application where it is alleged that the relationship was caused to permanently breakdown as a result of domestic violence. The respondent recognises in the published guidance, that victims may not have official documentary evidence to prove domestic violence but evidence such as a police report which confirms attendance at an incident resulting from domestic violence, is of assistance. It is said that, in paragraph [25], the judge refers to the appellant’s account as being unreliable, but appears to accept that the police log is “a piece of evidence that the appellant was subject to domestic violence”, but only if the appellant’s case is taken at its highest. That implies a requirement for a standard higher than the balance of probabilities in the judge’s consideration of the claim.
7. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 15 November 2017. The matter comes before me to determine whether there is a material error of law in the decision of the First-tier Tribunal, and if so, to remake the decision.

8. At the outset of the hearing, Mr Mills, rightly in my judgment, concedes there is a material error of law in the decision of the First-tier Tribunal. He accepts that the appellant had provided a copy of a police report which confirms attendance by the police at an incident resulting from domestic violence. He accepts therefore, that there was sufficient evidence before the First-tier Tribunal to establish that the requirements for indefinite leave to remain in the UK as the victim of domestic violence, as set out in Paragraph 289A of the immigration rules, are met by the appellant. He accepts that the decision as to whether the application for indefinite leave to remain could be refused under paragraph 322(2) of the rules, is closely aligned to the question whether the appellant was the victim of domestic violence, given the circumstances in which the appellant claimed the TOEIC certificate had been obtained. She claimed that her husband had made the arrangements for the TOEIC certificate as part and parcel of the controlling behaviour that was exercised over her.
9. Mr Mills concedes therefore that the decision of First-tier Tribunal Judge Lodge should be set aside, and, that I should remake the decision allowing the appeal. I do so.

Decision:

10. The decision of First-tier Tribunal Judge Lodge is set aside
11. I remake the decision and allow the appeal

Signed

Date

24<sup>th</sup> January 2020

**Upper Tribunal Judge Mandalia**