



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

Appeal Number: IA/10819/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 February 2015**

**Determination
Promulgated
On 12 February 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL G A BLACK

Between

**MR AMANDEEP PATHAK
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr Parkinson, Senior Home Officer Presenting Officer

DETERMINATION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination promulgated by the First Tier Tribunal (Judge D Ross) on 17th October 2014 in which he dismissed the Appellant's appeal against a curtailment of his leave to remain as a spouse under paragraph 281 of the Immigration Rules and with reference to paragraph 323(ii) of the Rules. A decision made to vary

leave so that non remains and directions made under section 47 Immigration, Asylum & Nationality Act 2006.

2. There was no appearance by or on behalf of the Appellant at the hearing before me. I was satisfied that he had been properly served with the Notice of the date and time of the hearing and that there had been no request for an adjournment nor communication from the Appellant giving reasons for his failure to attend. I proceeded to hear submissions from the Respondent's representative.

Background

3. The Appellant is a citizen of India. He married on 25.6.2012 in Delhi and had been granted leave to enter the UK as a spouse to 21.12.2014. On 12.2.2014 the Respondent made a decision curtailing his leave having received a letter dated 18.12.2013 from the Appellant's wife. In the letter she stated that the marriage was not subsisting and the marriage had been dissolved on 4.10.2013. She claimed that the Appellant was violent towards her and that he married her in order to secure entry to the UK. She provided a letter dated 31.1.2014 to the Respondent consenting to the information being used. The Appellant's evidence was that it was his wife who had assaulted him and gave an account of past incidents. He produced two witness statements as corroborative evidence and called his friend at the Tribunal hearing.
4. In his grounds of appeal the Appellant claimed that it was his wife who had been violent towards him and that was the reason for the break down of the marriage.
5. In a decision and reasons the Tribunal found that the Appellant was not credible and preferred the account given by his wife. It heard evidence from a friend of the Appellant who it considered had exaggerated his account of having witnessed violence by the wife towards the Appellant. The Tribunal found the Appellant's demeanour to be aggressive and blustering which it took into account. It also had regard to the Appellant's immigration history showing that he used deception in a previous application for leave as a student [19]. The findings are set out at [16-24]. The Tribunal concluded that the Appellant failed to discharge the burden on him to show that marriage had come to an end because of violence by the wife. It accepted her account of having attended hospital in December 2012 for treatment following an attack upon her by the Appellant, the fact that she reported the matter to the police on two occasions, instituted divorce proceedings and thereafter informed the Respondent of the position.
6. In grounds of appeal the Appellant complained that the Tribunal failed to give reasons for its findings as to the Appellant's demeanour, why it rejected the evidence from the Appellant's friend and further had misstated the evidence of violent incidents.

7. Permission was granted by UTJ Renton who considered all of the grounds to be arguable.
8. The Respondent opposed the appeal in a Rule 24 response stating that the findings made were open to the Tribunal.

Submissions

9. I heard submissions from Mr Parkinson. His starting point was that the parties had never been married and therefore the Appellant could not rely in paragraph 281. He cited the divorce petition as evidence, which showed that the marriage was never consummated and had been annulled.
10. In the alternative Mr Parkinson submitted that the Tribunal had not made a factual error as to the number of claimed incidents of violence. Rather the Tribunal had summarised the evidence at its highest. The Tribunal was entitled to draw inference from the Appellant's demeanour and infer that he would not be intimidated. The Tribunal did not find his account credible and placed little weight on the account from the friend. The Tribunal did not specify any required definition of or level of domestic violence. The Appellants own evidence was inconsistent as to the nature of and length of the relationship; he claimed that the parties were still seeing each other in October 2013 [7].

Discussion and conclusion

11. I am satisfied that there was no material error of law in the decision made by the Tribunal. The Tribunal gives clear reasons as to why the appeal failed. The Tribunal concluded that the marriage had come to an end, which was not disputed, and the Respondent was therefore entitled to curtail the leave under paragraph 323 [16]. This was the immigration decision under appeal.
12. The Tribunal went on to consider the issue of the marriage and whether or not the Appellant could rely on paragraph 289A of the Immigration Rules. It does not appear that any such application was made by the Appellant and no decision made by the respondent.
13. Nevertheless I deal with the issues raised in the grounds. The Tribunal found that the Appellant did not discharge the burden on him to show that the marriage came to an end as a result of violence towards him and that was not his evidence in any event [20 & 24]. The Tribunal preferred the account given by his wife in findings [18] which have not been challenged. Reliance was placed on the information included in the letter from his wife sent to the Home Office and the divorce.
14. The Tribunal took into account that the Appellant did not inform the Respondent of any breakdown and had not instigated divorce proceedings.

15. Whilst the Tribunal made reference to the Appellant's demeanour and observed that he was unlikely to be intimidated, such observations do not amount to any error of law, having regard to the decision and reasons as a whole. Further there was no finding that there was only one incident of violence; the Tribunal was setting out its view of the evidence at its highest based on the witness' account [23].
16. Although the point raised by Mr Parkinson there could be no valid marriage because it had been annulled, has some merit, however this was not an issue raised before the Tribunal.

Decision

17. There is no material error of law disclosed in the decision which shall stand.
18. The appeal is dismissed on immigration grounds.

NO ANONYMITY ORDER MADE

Signed

Date: 12.2.2015

Deputy Judge of the Upper Tribunal GA Black

TO THE RESPONDENT

FEE AWARD - As I have dismissed the appeal there can be no fee award.

Signed

Date: 12.2.2015

Deputy Judge of the Upper Tribunal GA Black