Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/33673/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 October 2017	**On 27 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR RIZWAN SARFRAZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Daykin, Counsel, instructed by Rashid & Rashid Solicitors
For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Henderson (the judge), promulgated on 2 December 2016, in which she dismissed the Appellant's appeal on all grounds. That appeal had been against the Respondent's decision of 23 October 2015, refusing a

human rights claim. The claim had essentially been based upon domestic violence said to have been inflicted upon the Appellant by his now ex-spouse. In refusing the human rights claim the Respondent had noted that the Appellant arrived in this country with entry clearance as a student and not as a spouse. Therefore the relevant domestic violence provisions of Appendix FM to the Rules could not be met.

The judge's decision

2. Although the judge accepted that the Appellant's relationship with his ex-wife may have been "turbulent" and that she may have been "prone to aggression and temper tantrums", it was concluded that domestic violence had not occurred in the context of a definition suggested by the Presenting Officer (paragraph 34). The judge did not regard the Appellant's evidence on certain matters relating to his family and educational background in Pakistan and how he had supported himself in this country as being plausible (paragraph 33). The judge went on to conclude that the Appellant could not satisfy the provisions of paragraph 276ADE(1)(vi) of the Rules, and having regard to the Appellant's mental health difficulties there were no compelling reasons why he could succeed outside of the context of the Article 8 related Rules.

The grounds of appeal and grant of permission

3. The grounds of appeal assert that the judge erred in her approach to the meaning and contents of domestic violence with reference to the evidence in the case. It is also said that the judge was wrong to have rejected the case under paragraph 276ADE of the Rules. Finally, it is said that the judge misdirected herself with regard to the evidence upon the Appellant's mental health.

4. Permission to appeal was granted by a First-tier Tribunal Judge Andrew on 18 August 2017.

The hearing before me

5. Ms Daykin relied upon the grounds of appeal. She submitted that in light of the evidence and the judge's findings, she should have concluded that the Appellant had suffered domestic violence at the hands of his ex-wife. The judge had failed to factor this in when assessing the Appellant's Article 8 claim outside the context of the Rules. She submitted that the Appellant had only failed to meet the provisions of Appendix FM (assuming that he had in fact been subjected to domestic violence) by virtue of the fact that he entered the United Kingdom as a student and not as a spouse. This was a relevant factor. She acknowledged that it would have been

difficult to have shown that the Appellant could have satisfied paragraph 276ADE(1)(vi). In relation to paragraph 38, the judge was wrong to have found that the Appellant's separation from his ex-wife should have alleviated his depression. Cumulatively, Ms Daykin submitted the individual errors amounted to material flaws in the decision as a whole.

6. Ms Ahmad asked me to note that the Appellant simply could not succeed under either Appendix FM or paragraph 276ADE(1)(vi). In light of mental health evidence, section 117B of the 2002 Act, and on the assumption that the Appellant had experienced domestic violence, it was difficult to see how the judge could have reached any other conclusion than to have dismissed the appeal.

7. I reserved my decision on error of law.

Decision on error of law

8. After careful consideration I have concluded that there are no material errors of law. I emphasise the word "material" because there do appear to be certain errors in the decision, but having regard to it as a whole, the evidence before the judge, and the state of the law on the material issues, I conclude that the outcome of the appeal would inevitably have been the same; namely that the Appellant could not succeed on human rights grounds. My reasons for this conclusion are as follows.

9. In respect of the domestic violence issue I am prepared to accept that the judge erred in failing to conclude that on the evidence before her and the findings made in paragraph 34 (such as they are) she should have gone on to conclude that domestic violence had in fact occurred. It is however perhaps fair to say (with all due respect to the Appellant) that the domestic violence was not, on the evidence before the judge, of a *particularly* serious nature.

10. The judge was of course correct to have concluded that the Appellant could not satisfy Appendix FM because of the nature of his entrance into the United Kingdom as a student and not as a spouse. This may have been a somewhat technical point, but nonetheless a clear provision of the Rules was not met.

11. I would accept that the judge has perhaps failed to provide clear reasons for regarding some aspects of the Appellant's evidence as being implausible, with particular reference to paragraph 33. I would proceed to evaluate the decision as a whole in light of what the Appellant said in his evidence, namely that he had studied in Pakistan up to O-level standard, was not in contact with his family because of the breakdown in his marriage, and that he had undertaken some computer work in the past. The apparent error by the judge does not seem to be of any real significance to the overall picture.

12. The judge was clearly entitled in my view to conclude that the Appellant could not satisfy paragraph 276ADE(1)(vi). The "very significant obstacles" test is a stringent one and this, combined with the meaning of "integration" as clarified by the Court of Appeal in Kamara [2016] EWCA Civ 813 and more recently AS [2017] EWCA Civ 1284, pointed only in one direction, even when the Appellant's case is seen at its highest. Indeed, Ms Daykin recognised the difficulties faced by the Appellant in this regard. The inability to satisfy paragraph 276ADE(1)(vi), whilst not expressly referred to again by the judge, was clearly a relevant factor in the Appellant's ability to succeed outside the context of the Rules. It would always be very much more difficult for him to succeed if he could not show that there were "very significant obstacles" to him reintegrating into Pakistani society.

13. Turning to the issue of the Appellant's mental health, it was wrong of the judge to have stated that his separation from his ex-wife "should" have alleviated his mental health condition. The judge was not in the position of being an expert and the simple fact of separation is not said to have been something which would necessarily have alleviated his difficulties, at least as far as I can see from the medical evidence itself. Having said that, the evidence from the community psychiatric nurse at 70 to 73 of the Appellant's bundle, the letter from the Croydon MAP lead community practitioner at 75 to 76, and the GP's report at 78 to 83, do not disclose particularly serious mental health difficulties on the Appellant's part. They certainly do not describe the Appellant's conditions as being "extreme or life-threatening", something correctly recognised by the judge in paragraph 38. The judge was entitled to find that the reports did not show that the relevant medication was ineffective, and she was also entitled to find that there was a lack of evidence to show that any relevant treatment could not be continued on return to Pakistan. Medical evidence fell to be assessed in the context of the demanding tests imposed even in Article 8 cases (see for example GS (India) [2015] EWCA Civ 40). Even if the past domestic violence was combined with the continuing mental health problems, I cannot see that these combined factors could have constituted very strong or compelling reasons on which to justifiably base success outside the context of the Rules (applying the "fair balance" test in light of paragraphs 56-60 of Agyarko [2017] UKSC 11).

14. My conclusion on materiality is reinforced by the application of mandatory factors under section 117B of the 2002 Act. As the judge correctly notes, the Appellant was not studying or working in the United Kingdom, his basis in this country had always been precarious, and the public interest was clearly powerful, particularly as the Appellant was unable to meet not only Appendix FM but also paragraph 276ADE. He was not financially independent, and his private life (which would have included of course his mental health problems as well as any friendships with people in the United Kingdom such as the witness Mr Kashif) was justifiably accorded little weight.

15. In all the circumstances the end result was inevitable. Whilst I certainly have sympathy with the Appellant, his challenge to the judge's decision fails and his appeal to the Upper Tribunal is therefore dismissed.

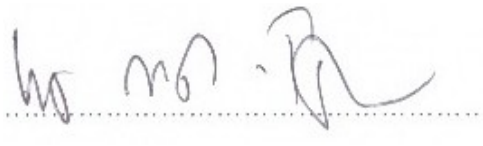
Notice of Decision

There are no material errors of law in the First-tier Tribunal's decision.

The decision of the First-tier Tribunal therefore stands.

The Appellant's appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed  Date: 23 October 2016

Deputy Upper Tribunal Judge Norton-Taylor