



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

Appeal Number: IA/30240/2014

THE IMMIGRATION ACTS

Heard at Birmingham

On 5th February 2015

Determination

Promulgated

On 11th February 2015

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

M L

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Warren, Counsel, instructed by Kirklees Law Centre

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

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Myers made following a hearing at Bradford on 22nd September 2014.

Background

2. The Appellant is a citizen of Pakistan, born on 9th August 1989. She entered into an arranged marriage in Pakistan on 27th October 2010 and arrived in the UK on 10th August 2011 as a spouse. The marriage was unhappy and the judge accepted that it was abusive from the start.

3. Her husband brought her to her uncle's house in Halifax in August 2013 and told her that she had to stay there whilst he sorted out a house for them to live in in Bradford. He said he would deal with her application for leave to remain as a spouse which was made on 19th August 2013.
4. In November 2013 the Appellant was interviewed in relation to her application which was subsequently refused on 20th January 2014 on the grounds that the Appellant was no longer living with her husband.
5. On the instructions of her uncle an appeal was lodged against that decision and the appeal was listed for hearing on 4th June 2014.
6. Meanwhile the Appellant had visited the Women's Centre in February 2014 after being given information about it by her doctor and, on 18th March 2014, she reported threats made against her by her husband and his family to the police. They took no action and a complaint has subsequently been made about the way they handled the case.
7. On 2nd July 2014 the Appellant withdrew her original application and submitted the present application for indefinite leave to remain as the victim of domestic violence.
8. The judge found the evidence to be inconsistent. For example, the Appellant's friend said that she had a phone and she was able to phone her although the Appellant's evidence was that she was not allowed a phone. The Appellant claimed that she had little support from her uncle and his family but she had lived at her uncle's house since August 2013 and they have obtained help for her by taking her to a doctor and the advice agency as well as arranging the appeal against the refusal for indefinite leave to remain.
9. The judge said that the appellant gave evidence that she had told the doctor that her husband was violent towards her but the doctor's letter makes no mention of violence. She claimed that she was threatened that if she told anyone about the abuse she would meet the same fate as her husband's ex-wife, although she now believes that her husband has returned to her and they are living together in Bradford.
10. She rejected the claim that her husband and his family had arranged the death of her brother.
11. The judge accepted that the Appellant was very unhappy in her marriage, and consequently suffered from depression, but that whilst the emotional abuse she suffered would come within the definition of domestic abuse, it fell short of violence.
12. Her principal conclusion was that the domestic abuse did not cause the marriage to break down. She referred to the evidence in the Appellant's appeal statement which was that so far as she was concerned her relationship was subsisting even in November 2013 because her husband had told her that he would come back to get her once the house was sorted. She made it clear that she intended to tell the immigration officials in November 2013 that she was only living with her uncle on a

temporary basis and that her husband kept promising to take her to live with him but never did.

13. The judge then wrote as follows:

“When pressed she said that she would not have gone with him if he had returned to her because of his past behaviour. However the prevarication and inconsistencies in the evidence lead me to find that in the culture from which the Appellant comes she would have been prepared to go along with the wishes of her family and return to her husband because she would have been reluctant to admit that the marriage had failed. Understandably she would have been reluctant to return to the abusive household she had encountered but in my judgement she would have returned to her husband had he not abandoned her in favour of his ex-wife.”

14. The judge stated that there was no credible reason given for the delay in submitting the application on the basis of domestic violence since she had been in receipt of medical attention and help from the women’s care centre since February 2014. She concluded that whilst the marriage was abusive from the outset it did not break down permanently until some time after November 2013 when it became apparent that the Appellant's husband had abandoned her at her uncle’s and had returned to his ex-wife.

The Grounds of Application

15. The Appellant sought permission to appeal on the grounds that the judge had failed to consider relevant evidence, namely that from the Women’s Centre, and the numerous letters submitted by her confirming that her behaviour mirrored and reflected that of someone who was subjected to domestic abuse. Furthermore the judge had erred in refusing the appeal on the basis that no physical abuse had taken place which was a material error of law. Moreover the judge had overly relied on unclear and speculative findings by making reference to the milieu from which the Appellant came.

16. Permission to appeal was granted by Judge De Haney on 26th November 2014.

17. On 4th December 2014 the Respondent served a reply defending the determination.

Submissions

18. Miss Warren submitted that the determination was not adequately reasoned and that the judge had reached a perverse decision in reaching a decision not open to her on the evidence. There was no basis for her conclusion that the marriage did not break down until some time after November 2013. She had not dealt with the threats made to the Appellant in October 2013 and had improperly relied on her own view of what women from a South Asian culture would do in the Appellant's situation.

19. Mr Diwnycz defended the determination and submitted that the judge had relied on the Appellant's own evidence and reached a conclusion open to her.

Findings and Conclusions

20. First, with respect to ground 1, the judge was not obliged to make reference to the letters submitted by various organisations on the Appellant's behalf because she accepted that the marriage was abusive from the start.
21. Second, the judge did not dismiss the appeal on the basis that she was not satisfied that there had been violence but because she was not satisfied that the emotional abuse led to the breakdown of the marriage within the currency of the Appellant's visa.
22. Third, the judge did not base her conclusion that the marriage had not broken down until some time after November 2013 upon her observation that women from South Asia were likely to return to their husbands but upon the Appellant's own evidence that, so far as she was concerned, in November 2013 the relationship was subsisting. The passing reference to cultural norms was immaterial.
23. In order to succeed in this application the Appellant had to show that the relationship was caused to breakdown before the end of her visa as a result of domestic abuse. The relevant date is August 2013. As at that date the Appellant's husband was supportive of a claim for her to be allowed to remain in the UK as his spouse. On the Appellant's evidence he took her to her uncle's home on what she believed was a temporary basis. There is no basis for Miss Warren's submission that threats were made to her in October 2013. The application for indefinite leave was pursued until June 2014 and it was only at that stage that it was withdrawn and the present application for leave on the basis of domestic violence was made.
24. Miss Warren relied on the case of AG (India) v SSHD [2007] EWCA Civ 1534 for the proposition that clear reasons have to be given for a rejection of the Appellant's account, but in this case those reasons were given. In any event, in AG (India), the judge rejected the Appellant's account as a whole and the Court of Appeal said that clear and forceful reasoning to explain why such a course was being taken was required. Here the judge accepted the basic evidence of an abusive and unhappy marriage, but that in itself does not establish that the requirements of the Rules have been met.

Decision

25. The original judge did not err in law. The Appellant's appeal is dismissed.

Signed.

Upper Tribunal Judge Taylor

Date **10th February 2015**