Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16614/2019 (V)

THE IMMIGRATION ACTS

Heard at Bradford by Skype for business	**Decision & Reasons Promulgated**
On the 18 November 2020	**On 10 December 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

FP
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Greer, Counsel instructed on behalf of the appellant
For the Respondent: Mr M. Diwnycz, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant, a citizen of India, appeals with permission against the decision of the First-tier Tribunal (Judge Mensah) (hereinafter referred to as the "FtTJ") who dismissed her human rights appeal in a decision promulgated on the 23 January 2020.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a third party and other proceedings. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. Permission to appeal was issued and on 9 January 2020 permission was refused by FtTJ Easterman, but granted on reconsideration by UTJ Sheridan on the 30 July 2020 for the following reasons:

> "At paragraph 24 of the decision the judge stated it was clear to her that the appellant "is a rather domineering young woman". This conclusion appears to be based entirely on the appellant's conduct during the hearing. The judge also stated in paragraph 24 that the appellant's confidence during the proceedings was "not consistent with a vulnerable oppressed woman."
> It is arguable that the judge found the appellant "domineering" only because of her demeanour and the weight placed on this was inconsistent with *SS (Sri Lanka) R, on the application of v SSHD* [2018] EWCA Civ 1391. The judge also arguably erred by finding that because the appellant appeared confident at the hearing she was less likely to be a victim of domestic violence when there was no evidence before the FtT indicating that women who appear confident in formal settings like a tribunal are less likely to be victims of domestic violence."

4. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

5. The hearing took place on 18 November 2020, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

6. I am grateful to Mr Greer and Mr Diwnycz for their clear and helpful oral submissions.

Background:

7. The history of the appellant is set out in the decision letter and the decision of the FtTJ. The appellant is a citizen of India. On 19 December 2017 she married her husband and on 19 July 2018 was issued with a 33- month partner visa is valid until 19 April 2021.

8. On 16 August 2018, the appellant entered the United Kingdom.

9. On 8 September 2018, her relationship with her spouse broke down and they began living apart. The FtTJ recorded [8] that the appellant gave evidence that her marriage effectively ended the weekend of 8 September 2018 where her husband and in-laws dropped off at a brother's home and within days her husband informed her that he did not want to continue with the marriage. The appellant never returned to her home and it appears she had little or no contact with her husband thereafter.

10. On 22 November 2018, the appellant applied for leave to remain under the domestic violence concession and was granted limited leave outside the rules on 4 December 2018 until 3 March 2019.

11. On 6 February 2019, the appellant sought indefinite leave to remain in the UK on the basis of her former marriage to a British citizen as a victim of domestic violence.

12. Her husband applied for and was granted an annulment which was made final on 19 July 2019.

13. In a decision taken on 18 September 2019, the respondent refused her application under paragraph D-DVILR 1.3 of Appendix FM.

14. The decision letter set out the requirements to be met for indefinite leave to remain as a victim of domestic violence and expressly cited the relevant paragraphs. In particular E-DVILR 1.3 that the applicant must provide evidence that during the last period of limited leave as a partner of a British citizen…. The appellant's relationship with their partner broke down permanently as a result of domestic abuse.

15. The decision letter also made reference to the definition of domestic violence that was introduced in March 2013 and also the modernised guidance.

16. By reference to the appellant's claim the respondent set out the evidence advanced by the appellant in support of her claim which included a medical history from the medical practice, patient records, counselling records, letters from my well-being College and a medical report file from a hospital in India.

17. The respondent proceeded to consider that material at pages 4 – 6 of the decision letter. The respondent made the following points:

(1) the information is insufficient as supportive documentary evidence as the account detailed upon each document has been taken entirely from the appellant's personal verbal testimony and is not considered to be from a reliably independent or resolutely impartial source. And that the testimony has not been supported by other significant items of sufficiently reliable, additional, corroborative, or independent evidence.

(2) As regards the medical history and patient records, the documents have been submitted as evidence of domestic violence. However, they contain no reference to domestic violence. No assessments or conclusions are outlined within the documents that indicate or accept that the appellant had been assessed or found to be a genuine victim of domestic violence, provided by relevant medical professional who had carried out an appraisal of the appellant and her claims. The information was not sufficient in establishing her claim.

(3) When considering the counselling records in the letter from My well-being College, the items indicate that she was referred to therapy service due to depression. However no conclusions are outlined in the documents accepting that she had been assessed or found to be a genuine victim of domestic violence or that she had been found to be in need of therapy as a direct result of domestic violence provided by relevant medical professional who carried out an appraisal of the appellant's claims.

(4) The letter from the college dated 17/4/19 confirms that the appellant was discharged the service after attending five sessions

(5) As regards the medical report from India, this was presented as evidence in support of the claim that she had ingested bleach as a result of her distress and unhappiness in relation to the stated arranged marriage. She also stated that she was pressured into reporting to the attending doctors that she had ingested the bleach under accidental circumstances. However the documents do not indicate or support the claim that she had deliberately ingested bleach for the reasons now given or that it was a result of an arranged marriage or that it had any relation or connection to domestic abuse or even that she was coerced into providing an incorrect account.

(6) The screenshots of the alleged text message exchanges purports to be a summary of various communications between the appellant's brother and the appellant's former partner. However, it is not independently source and has been compiled by unknown persons. It is not clear who the messages are between and it cannot reliably be verified that the messages originated from the appellant's brother's electronic device or those of her former partner. It cannot be independently established or verified that the

messages were authored by the appellant's former partner stop when looking at the Internet articles, they are of a generic nature.

(7) The appellant was provided with a number of additional opportunities to obtain provide documentary evidence request having been sent on seven May, five June, six August 23rd August, and 10 September 2019. However, the appellant failed to provide sufficient, demonstrative evidence that she was a genuine victim of domestic violence.

(8) In conclusion in light of the reasons set out, the respondent considered that the appellant was not able to produce evidence to establish that the relationship with her former spouse has caused a permanent breakdown during the relevant period as a result of domestic violence.

18. The appellant appealed the decision, and it came before the FtTJ on the 6 January 2020. In a decision promulgated on 23 January 2020 her appeal was dismissed. The FtTJ heard evidence from the appellant and her brother and considered documentary evidence that had been advanced on the appellant's behalf. Having done so the judge did not accept the appellant's account that this was a "forced marriage" but that it was a marriage to which she agreed despite reservations. The judge assessed the evidence but found that her evidence was "vague, inconsistent and lacking credibility" that there was a paucity of documentation dealing with the divorce (at [15]). The FtTJ also made reference to inconsistent evidence given by the appellant during the hearing (at [14]-15] and [17]. The judge concluded that she is not given a truthful account of the history in India or in the United Kingdom and had failed to demonstrate that she had suffered domestic abuse. The judge therefore dismissed her appeal.

<u>The hearing before the Upper Tribunal:</u>

19. Mr Greer, Counsel on behalf of the appellant, who appeared before the FtTJ relied upon the written grounds of appeal. There were no further written submissions. There was no Rule 24 response on behalf of the respondent.

20. I also heard oral submissions from Mr Greer, and I confirm that I have taken them into account when reaching my decision. I intend to consider those submissions when addressing the grounds of challenge.

21. I begin to consider ground 2 first of all. Mr Greer submits that the FtTJ gave weight to an immaterial matter which was the appellant's demeanour at the hearing. In his oral submissions, Mr Greer submitted that at [24] the FtTJ noted her impression of the appellant during the hearing as follows:

"The appellant is not a vulnerable person. In fact, it was clear to me she is rather domineering young woman who is not afraid to assert herself and did so throughout the hearing." And later continued

"whatever her reasoning, in my view it shows she sufficiently confident to assert herself in the context of these formal legal proceedings and this is not consistent with a vulnerable oppressed woman who submits to the will of others."

22. Mr Greer relied on the observation made by UTJ Sheridan when granting permission where it was stated that the judge arguably erred in finding that because the appellant appeared confident at the hearing she was less likely to be a victim of domestic violence when there was no evidence before the FTT indicating that women who appear confident in formal settings like a tribunal were less likely to be victims of domestic violence.

23. He further submitted in his oral submissions that the comments made at [24] were wholly inappropriate and were irrelevant to whether she had been in an abusive marriage.

24. Mr Greer submits that if it is the case of the judge believed that domineering young women are less likely to be victims of domestic violence, this is plainly wrong and arguably contaminates her findings in respect of whether the appellant was indeed a victim of domestic violence.

25. I have given careful consideration to the submission made by Mr Greer. He has directed the tribunal to paragraph 24 where the judge set out her observations and findings related to the appellant's demeanour. They are set out above.

26. As a result of those observations Mr Greer argues that not only were they inappropriate observations but it is also unclear to what extent the judge the relied upon her independent view of the appellant's demeanour in forming a view as to the likelihood of the appellant being a victim of domestic abuse.

27. It has long been recognised that it is usually unreliable and often dangerous to draw a conclusion from the witness's demeanour as to the likelihood that the witness is telling the truth. The reasons for distrusting reliance on demeanour are magnified when the witness is of a different nationality from the judge and is either speaking English as a foreign language or is giving evidence through an interpreter (I refer to paragraphs 36 and 37 of *SS (Sri Lanka) R, on the application of v SSHD* [2018] EWCA Civ 1391).

28. It is plain from reading the decision in *SS (Sri Lanka)* that findings based on demeanour are unreliable and to attach significant weight

to such impressions or observations run the risk of making judgements which have no rational basis.

29. I would add to that that it may also be wrong to assume the way an appellant or witness gives evidence is an indication of whether or not it is true. The way in which the witness reacts to the process of giving evidence may vary wildly.

30. However, the Court of Appeal in *SS (Sri Lanka)* also stated:

> "40. This is not to say that judges (or jurors) lack the ability to tell whether witnesses are lying. Still less does it follow that there is no value in oral evidence. But research confirms that people do not in fact generally rely on demeanour to detect deception but on the fact that liars are more likely to tell stories that are illogical, implausible, internally inconsistent and contain fewer details than persons telling the truth: see Minzner, "Detecting Lies Using Demeanor, Bias and Context" (2008) 29 Cardozo LR 2557. One of the main potential benefits of cross-examination is that skilful questioning can expose inconsistencies in false stories.
>
> 41. No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgments based on the appearance of a witness or on their tone, manner, or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts."

31. In the paragraphs cited above reference is made to the way such judgments should be made and rather than attempt to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the evidence and to consider whether it is consistent with the other evidence, including with what the witness said on other occasions or against other probable facts.

32. When seen in the light of the determination as a whole, that was in fact the approach undertaken by the judge in the preceding paragraphs before those observations at [24].

33. Whilst Mr Greer has referred the Tribunal to parts of paragraph 24, which I have set out above, it is important to consider the paragraph

in its entirety and where it comes in the FtTJ's decision. The paragraph is not at the beginning of any assessment of the appellant's credibility or the assessment of the evidence but the conclusions of her assessment and after having considered all of the evidence including the documentary evidence, the supporting evidence both oral and documentary and the oral evidence of the appellant. The judge begins paragraph 24 by stating "Overall I found the appellant an unreliable witness who exaggerates. I do not accept her family forced her into marriage, but I accept she agreed to a marriage she later regretted. Further, I find she has not given a truthful account of the history in India or the United Kingdom and has failed to demonstrate that she suffered any domestic violence whatsoever."

34. This was the judge's omnibus finding and was not based on her assessment of the appellant's demeanour which she later went on to describe at paragraph 24 but was based on her assessment of the evidence undertaken in the preceding paragraphs.

35. Whilst I agree that assessments made of demeanour particularly in the context of domestic violence are unreliable indicators as to whether the incident took place, when reading the decision of the judge it has not been demonstrated that she attached any or any significant weight to those observations. What the judge did carry out prior to that observation was what the Court of Appeal considered to be the correct way of assessing the factual matrix and rather than assessing whether the testimony was truthful in the manner in which was given, the FtTJ focused on the reliability and consistency of the evidence given by the appellant. Thus, when seen in that context I do not consider that the FtTJ erred in law.

36. This leads me to ground 1 which challenges part of the FtTJ's assessment of the evidence.

37. Dealing with ground 1, it is submitted that the FtTJ erred in law by misdirecting herself in respect of whether the appellant had endured a forced marriage and domestic violence.

38. In his oral submissions Mr Greer took the Tribunal through the appellant's witness statement and her claim to have been subjected to emotional pressure from family members, treatment by her in-laws after they married and ways in which he said her in-laws had controlled her life. He submitted that the appellant's evidence fell within the definition of domestic violence and that the treatment of the claim trivialised and misunderstood the extent of her experiences.

39. The second point raised in the oral submissions related to whether or not the appellant had been subject to a forced marriage.

40. Mr Greer submits that at [18] the FtTJ concluded that the appellant was not forced into marriage by her parents as her parents sought to convince her to agree to the marriage. At [17] the judge made reference to the evidence as follows:

> "when asked what would have happened if she had maintained a refusal she said, "it would have been difficult, just because I said no they were not talking to me." The appellant says bad things were said to her that hurt feelings but gave no particular in any of her evidence. The appellant referred me to "Islam" which she told me says, "if we take our parents blessing we will be happy."

41. It is submitted that the pressure from the appellant's parents towards the appellant arguably fell within the definition of a forced marriage and thus the judge misdirected herself in respect of the definition.

42. In considering those submissions, as with any decision of a judge, it requires the decision to be read in its entirety. Not doing so fails to consider the decision in its context rather than the particular paragraphs that are highlighted.

43. The issue of whether the appellant's marriage was a forced marriage or an arranged marriage was not identified as an issue the judge was required to determine. The parties at the hearing are expected to identify the issues to be determined by the Tribunal. This is so the parties and the judge can be directed to the relevant issues and the evidence can also be directed towards those disputed issues. In this appeal the judge expressly asked the parties to identify the issues which are set out at [5]. As recorded there, neither party expressly referred to the issue of forced marriage.

44. Furthermore, whilst the written grounds advanced on behalf of the appellant referred to the government's definition of forced marriage, none of the guidelines were produced before the judge by either advocate nor do they feature in the appellant's bundle or that of the respondent.

45. The UK government's forced marriage unit provides a definition of forced marriage. That reads as follows:

> "what forced marriage is
>
> you have the right to choose who you marry, when you marry or if you marry at all.
>
> Forced marriages when you face physical pressure to marry (for example, threats, physical violence, or sexual violence) or emotional and psychological pressure (e.g. if you are made to feel like you are bringing shame on your family).

46. Whilst the issue was not expressly clarified by the advocates, it is clear from reading the decision that the judge did undertake an assessment of whether the marriage had been a forced marriage as opposed to an arranged marriage. In undertaking that assessment, the judge considered the evidence given by the appellant, both oral and written and considered the evidence in support which included evidence from her brother.

47. The FtTJ's assessment is set out at paragraphs 10 – 23. The judge began her assessment by considering the appellant's evidence as to why she married "to keep my family happy" but "she was not happy about it". The judge returned to the appellant's evidence as to why she had married at paragraphs 12 and 13. Prior to this, the judge considered the evidence relating to the ingestion of Phenyl that observed at paragraphs 10 – 11 that while she gave positive weight the document, the document itself did not prove the marriage was a "forced marriage". The judge therefore considered that document in the light of and "in the round" alongside the other evidence (see paragraph 11).

48. At paragraph 16 – 18 the judge set out her conclusions on the evidence. The judge did not find that the appellant had given a consistent or credible account of the marriage as a "forced marriage". The judge stated "the appellant has not suggested that she was against arranged marriages per se. In fact, it was cultural and social norm and something she expected. I accept she married because she felt this was what her family wanted, but I do not agree she was forced in the context of domestic violence. I find she agreed to the marriage despite reservations. It is not consistent that she was forced, when on her own evidence her family and those around including parents sought to convince her he was a good person and sought her agreement the marriage. If this were a forced marriage they would have had no need to take such steps."

49. The FtTJ was entitled to place weight on the fact that while the appellant had reservations about the marriage, this did not amount to it being a forced marriage within the definition. The judge made the point and it was one worthy of weight, that the appellant's own evidence was that her parents and others tried to convince her that he was a good person and to seek her agreement for the marriage and that there would have been no need to have done so, had this been a forced marriage as she had stated.

50. At [17] the FtTJ set out inconsistent evidence given by the appellant at the hearing. The judge set out the appellant's evidence that when she initially refused, her family were not talking to her. When asked what would have happened if she had maintained a refusal she said, "it would have been difficult, just because I said no they were not talking to me." The judge also recorded that the appellant said, "bad things are said to her that hurt her feelings but gave no particulars on

any of her evidence." His further recorded by the judge that the appellant referred the Tribunal to "Islam" and said, "if we take our parents blessing we will be happy."

51. In essence, the judge found as a fact that the appellant's account given in oral evidence was either lacking in particulars (where she could give no details of the "bad things" that was said to her) and the judge also found that her oral evidence was inconsistent with her written evidence in which she claimed her father had shouted at, threw a glass at which had cut her face and he had disowned her. The judge recorded "I find her inconsistent evidence and failure to mention these apparently far more serious matters when asked at the hearing to damage her credibility."

52. Whilst I agree with Mr Greer that familial pressure can fall within the definition, there was no misdirection made by the judge because it is plain from reading the decision that the judge did not accept that the appellant had been under any pressure, whether by way of threat, physical violence or emotional psychological pressure, and gave reasons for finding that the appellant's evidence was lacking in support and particularisation or by providing inconsistent evidence.

53. Those findings also have to be considered alongside the other findings of fact made by the FtTJ. The judge made an assessment of the evidence concerning the marriage and whether the marriage had broken down due to domestic abuse.

54. At [14] the judge summarised the appellant's claim that she had been subjected to emotional, psychological, and physical abuse. The FtTJ set out findings on the conduct of the parties during the marriage at a number of paragraphs (see paragraphs 14, 15, 18, 19 and 20 – 24) and gave reasons in accordance with the evidence as to why the judge did not accept the appellant's account.

55. At [14] the FtTJ found her claim in the written evidence that she had been subjected to physical abuse by her husband to be inconsistent with her oral evidence. The judge contrasted the written evidence with her oral evidence where she accepted that she had not been subjected to physical abuse but said that it was in the context of sexual behaviour. The judge found that this was inconsistent with her present factual claim for a number of reasons. Firstly, the appellant had not previously said that she refused to have sexual relations with her husband (her witness statement at paragraph 61 made reference to her husband using only for "sexual relations"). Secondly, the appellant had not given credible evidence concerning the reasons given for the annulment of the marriage. At [14] the judge noted the evidence before the Tribunal was that the appellant's husband had sought an annulment of the marriage. Whilst the appellant was a party to those proceedings, none of the documentation relevant to those proceedings had been provided which could shed light on what

had happened save for a copy of the Decree Absolute and that the judge was critical of that. Furthermore, the judge recorded at [15] that when the appellant was asked about the grounds of the annulment she did not provide a "clear answer" that said, "she was not happy, and the marriage was forced". The judge concluded "what the decree shows is that the appellant did not pursue a divorce of her husband on the ground she was coerced as she was the respondent. It shows the petitioner was in fact her husband and the appellant told me she agreed to the divorce. I do not accept the appellant has shown she had sexual relations with husband, or that any such relations amounted to domestic violence. Her evidence is vague, inconsistent, and lacking credibility and there is a paucity of documentation. I also consider her reference to physical abuse in her statement damages her overall credibility and is indicative of a person willing to lie or exaggerate her history." The grounds do not challenge that finding and it is one that was reasonably open to the judge on the evidence.

56. The grounds challenge the finding at [19]. It is further submitted that the appellant's case was that when she joined her husband and in-laws in the UK, she faced restrictions in respect of her behaviour including over what she could wear, when she was allowed to eat and how often she was permitted to behave. At [19] the judge appeared to conclude that the treatment suffered by the appellant at the hands of her in-laws, taken at its highest, did not amount to domestic violence. The judge stated, "the fact a husband and his family expected the appellant to assist in household chores is not of itself evidence of domestic violence."

57. The grounds do not accurately set out what the judge considered at paragraphs 18 – 19. At [18] the judge referred to the definition of controlling and coercive behaviour. Within the policy the definition of domestic violence and abuse is given at which includes "any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. This can include, but it is not limited to, the following types of abuse: psychological, physical, sexual, financial and emotional.

58. The policy goes on to refer to "other forms of abuse which includes controlling behaviour which is defined as "a range of acts designed to make a person subordinate or dependent by; isolating them from sources of support, exploiting their resources and capacities personal gain, depriving them of the means needed for independence, resistance and escape, and regulating their everyday behaviour. Coercive behaviour is also defined as follows "an actual pattern of acts of assaults, threats, humiliation and intimidation and other abuse that is used to harm, punish or frighten the victim." The policy recognises that no distinction shall be made between psychological

abuse and physical abuse when assessing if a person has been the victim of domestic violence or abuse.

59. The FtTJ made reference to the definition at paragraph 18 and at [19] after considering the appellant's evidence found "none of the matters above have in my view been sufficiently evidence to demonstrate domestic violence at the hands of any family member." As regards the account of household chores, the FtTJ considered the appellant's evidence which was set out that she was made to hoover the family home every day and undertake household chores. The judge sought to contrast this with what she had undertaken in her own home. The evidence given by the appellant was that when she was in India she was at home helping with the household chores. The judge concluded at [19] "her evidence about being made to undertake household chores is vague and lacking in particulars that would be need to show she was being subject to mental abuse in any form. The fact her husband and his family expected the appellant to assist in household chores is not of itself evidence of domestic abuse. In fact, none of the matters above have in my view been sufficiently evidenced to demonstrate domestic violence at the hands of any family member."

60. Thus, when paragraph 19 is read as a whole, the judge gave adequate and sustainable reasons why she did not accept the appellant's evidence as it was vague, lacking in particularisation and was insufficiently evidenced.

61. It is therefore not a case of the judge misdirecting herself as the grounds assert that the judge did not find that the appellant had provided evidence upon which the judge could place weight and reliance.

62. The judge also made further factual findings at paragraph 20 that there was a lack of reference made by her brother about any form of domestic abuse, at [21] that the witness attended at the appellant's home and saw no evidence of any problems, further at paragraph 21, the witness did not suggest any threat of violence or any force of violence or threats from her husband. The judge also highlighted that some of the appellant's evidence was inconsistent with that given by her brother. In respect of the messages at [21] the judge found that the content of the messages showed no more than a husband attempting to speak with the appellant during the period leading to the divorce and that there was no credible evidence that he wanted to anything other than to pursue the divorce. At [22] the judge considered the appellant's evidence relating to parents but found that the evidence her brother did not support any threats of violence from her parents as a result of the marriage ending. At [23] the judge analysed the medical evidence and at [24] the judge gave her omnibus conclusions.

63. Consequently, it has not been demonstrated at the judge erred in law in the way the grounds have asserted.

64. Ground 3 argues that the judge misdirected herself in respect of whether the appellant's marriage broke down due to domestic violence.

65. It is submitted that at [26] the FtTJ stated

"to be clear, even if I had accepted any of those matters above could be classified as domestic violence (which I do not), it is absolutely clear the marriage did not break down as a result, but ended because the appellant's husband decided the marriage was not working and sought a divorce."

66. It is submitted that this is irreconcilable with the reported case of *LA (paragraph 289A; causes of breakdown) Pakistan [*2009] UKIAT 00019 and was therefore wrong in law.

67. Mr Greer referred to the decision and a copy was set out in the consolidated bundle (sent by email).

68. The headnote in the decision in *LA (paragraph 289A; causes of breakdown) Pakistan* [2009] UKIAT 000 reads as follows:

In the light of AG (India) v Secretary of State for the Home Department [2007] EWCA Civ 1534, when deciding if an appellant who is the victim of domestic violence has proved that the "relationship was caused to permanently break down before the end of that period as a result of domestic violence" the Tribunal must be careful to assess the evidence in the round, looking at the totality of the evidence and remembering that a broken marriage.

69. Having read the decision, I do not consider that it has a bearing on the decision of the FtTJ. On the facts of that particular case the judge was satisfied that the appellant had been the subject of domestic abuse and is set out at paragraph 36 "believed everything the appellant had to say". Notwithstanding those positive findings the judge in that case found the difficulty was over the cause of the marital breakdown and that when she left the home it was not because of the domestic violence but because of the lack of commitment on her husband's part. Thus, the Tribunal found that the judge had erred in law because from the factual findings it should have been apparent but for the domestic violence the marriage would not have ended.

70. The decision in *LA* was decided on its own particular facts and there are no factual comparisons to be made in the present appeal. The position of the FtTJ was that she did not accept that the appellant's marriage had been a forced marriage but one that she had agreed to that had later regretted. At [26] the judge stated that she had

rejected the appellant's claim to have been the victim of domestic abuse. That being the case, it was open to the judge to conclude that she did not accept the marriage had broken down due to domestic abuse.

71. Consequently, the alternative finding at [26] does not demonstrate any error of law if the primary factual finding was one that was open to the judge to make. For the reasons set out above, the conclusions drawn from the decision when taken as a whole is that the findings were open to the judge to make on the basis of the evidence that was before her. Whilst the references to an appellant's demeanour are generally deprecated for the reasons set out above, it is not been demonstrated that significant or any weight was given to those observations and that the judge had placed weight and reliance upon the factual assessment of the evidence, both in terms of its reliability and consistency when seen in the light of the evidence as a whole.

72. For those reasons, the decision of the FtTJ does not involve the making of an error on a point of law and the decision shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtT shall stand.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Upper Tribunal Judge Reeds

Dated 19 November 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the

Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email