



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

Appeal Number: IA/16715/2014

THE IMMIGRATION ACTS

**Heard at Sheldon Court
Birmingham
On 25th November 2014**

**Determination Promulgated
On 15th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ARSLAN AZIZ
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: Mr S Vokes of Counsel instructed by Brys Immigration Consultants

DETERMINATION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a determination of Judge of the First-tier Tribunal Rose promulgated on 30th June 2014.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to him as the Claimant.

3. The Claimant is a male citizen of Pakistan born 23rd April 1979 who arrived in the United Kingdom having been granted entry clearance as the spouse of a British citizen. The Claimant's marriage broke down and in February 2014 he made an application for indefinite leave to remain as the victim of domestic violence.
4. His application was refused on 17th March 2014 and his appeal was subsequently heard by Judge Rose (the judge) on 25th June 2014.
5. The judge heard evidence from the Claimant and two witnesses, and was satisfied that he had been the victim of domestic violence and that the Claimant's relationship with his wife was caused to permanently break down as a result of that domestic violence. The appeal was allowed under the Immigration Rules with reference to paragraph 289A, and on human rights grounds.
6. The Secretary of State applied for permission to appeal to the Upper Tribunal relying upon two grounds which are summarised below.
7. Firstly it was submitted that the judge had made a material misdirection of law in relation to the Immigration Rules by not indicating what elements of the evidence given by and on behalf of the Appellant were sufficient to amount to domestic violence. It was submitted that the judge had not engaged with whether the Claimant's wife's conduct amounted to domestic violence.
8. Secondly it was submitted that the judge had made a material misdirection of law in relation to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention). It was contended that the judge's findings in relation to Article 8 were inadequate and largely guided by findings made under the Immigration Rules on domestic violence, therefore were flawed. It was also contended that the Claimant's circumstances did not disclose compelling reasons outside of the Immigration Rules for granting leave, and the judge had erred in so finding.
9. Permission to appeal was granted by Judge of the First-tier Tribunal J M Holmes who found both grounds to be arguable.
10. Following the grant of permission the Claimant submitted a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In brief summary it was contended that the judge had correctly applied the Immigration Rules and correctly directed himself as to the burden and standard of proof and taken into account all the evidence and not materially erred in law.
11. It was submitted that the judge properly considered the relevant case law that being LA (Pakistan) [2009] UKAIT 00019, and had taken into account the Respondent's case, and had not acted perversely, and had given adequate reasons for his findings.

12. The Tribunal issued directions that there should be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination should be set aside.

The Secretary of State's Submissions

13. Mr Mills relied upon the grounds contained within the application for permission to appeal. He pointed out that there was no evidence of domestic violence before the First-tier Tribunal, other than oral evidence. Mr Mills submitted that the Claimant's evidence as contained in paragraphs 3 and 4 of his witness statement was that his wife had mostly ignored him, and otherwise constantly shouted at him, and submitted that the judge had erred in finding that the behaviour of the Claimant's wife amounted to domestic violence, and had "set the bar too low".
14. Mr Mills accepted that violence did not have to be physical, and referred to the guidance on domestic violence which had been issued by the Home Office which is contained at page 9 of the Home Office Guidance - Victims of Domestic Violence valid from 28th January 2014. This guidance referred to controlling, coercive or threatening behaviour, and Mr Mills submitted the behaviour of the Claimant's wife as described in the determination, did not meet the threshold of domestic violence and the judge had erred in so finding.
15. Mr Mills observed that it was arguably irrational for the judge to accept that the behaviour amounted to domestic violence, and in paragraph 20 of the determination the judge had not explained how the Claimant's wife shouting at him satisfied the definition of domestic violence. I was referred to paragraph 24 of AN (Pakistan) v SSHD [2010] EWCA Civ 757 which indicated that for conduct to constitute domestic violence, it must reach some minimal level of seriousness.
16. In relation to Article 8, Mr Mills submitted that this either stood or fell together with the challenge to the determination under the rules.

The Claimant's Submissions

17. Mr Vokes agreed with Mr Mills in relation to Article 8.
18. Mr Vokes relied upon his skeleton argument in relation to irrationality, and submitted that it was a bold submission to contend that no judge could have allowed the appeal on the evidence placed before the First-tier Tribunal.
19. Mr Vokes submitted that the judge had set out all the issues in the case, and set out the submissions of both parties, correctly applied the burden and standard of proof, and referred to the appropriate case law.

20. The judge had set out the Home Office definition of domestic violence and considered the evidence in the round, and had not merely found that the Claimant's wife had shouted at him, but had found that her behaviour isolated the Claimant, humiliated him, and that she had made threats to have the Appellant deported from this country, and the evidence in the round had reached the minimum level of seriousness and amounted to domestic violence.
21. Mr Vokes submitted that the Upper Tribunal should not lightly interfere with credibility findings made by the First-tier Tribunal Judge who had had the benefit of hearing the evidence, and pointed out that there was a high threshold before irrationality could be found.
22. Mr Vokes concluded by commenting that while another judge may not have made the same findings, this did not amount to irrationality or perversity, and this determination disclosed no error of law.

The Secretary of State's Response

23. Mr Mills submitted that the crux of the challenge to the determination is whether the minimum level of seriousness has been met. He clarified that the main challenge of the determination is insufficiency of reasoning.
24. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

25. I do not find that the judge erred in law for the following reasons.
26. The judge set out the correct burden and standard of proof and correctly considered paragraph 289A of the Immigration Rules. The judge specifically referred to LA (Pakistan), and the judge set out the case made by both parties.
27. It is clear that the judge was aware of the Home Office definition of domestic violence, as this is set out in part in paragraph 20 of the determination.
28. I do not agree with the submission in the grounds that the judge did not indicate what elements of the evidence was sufficient to amount to domestic violence. The judge summarised the evidence of the Claimant and his two witnesses and found them to be credible, and gave adequate reasons for so finding.
29. The judge found the behaviour of the Claimant's wife went beyond behaviour described by the Presenting Officer as "not culturally respectful", but amounted to threatening behaviour, and psychological and emotional abuse. It is clear from the Home Office guidance that such behaviour is capable of constituting domestic violence and the judge correctly pointed this out in paragraph 20.

30. One aspect of coercive behaviour, according to the Home Office guidance is humiliation of the victim, and the judge specifically found that the Claimant's wife's behaviour in front of relatives, one of whom was a witness at the hearing, was both humiliating and hurtful. The judge found that the Claimant's wife's behaviour was controlling in that it isolated the Claimant from sources of support, and again this is referred to in the Home Office guidance. Although there was no documentary evidence, the judge was entitled to accept oral evidence if he found that evidence to discharge the burden of proof.
31. One aspect of the Claimant's wife's behaviour which was accepted by the judge is that she would threaten to call the police to have him deported, particularly if he told anyone about the manner in which she treated him. There is reference to this in paragraphs 11, 14 and 21 of the determination. The judge was entitled to find that this type of behaviour made the Appellant feel constantly under threat and vulnerable.
32. The judge in paragraph 11 recorded that the Appellant felt that he had become completely isolated because of his wife's behaviour, and that he felt under constant pressure to be quiet and obedient and to comply with his wife's pretence of marriage. In paragraph 19 the judge recorded the witness Mrs Parveen explaining that the Claimant's wife "wanted to control everything and everybody", and again such behaviour is specifically referred to in the Home Office definition of domestic violence.
33. As Mr Mills clarified, the main challenge to the determination is inadequacy of reasoning, rather than a contention of irrationality or perversity. I do not find any evidence to support the contention that the conclusions in the determination were irrational or perverse.
34. In relation to reasoning I set out below the head note in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC);

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they won or lost.
35. I conclude that the judge has made findings which were open to him on the evidence and given sustainable reasons so that the parties can understand why they won or lost. I conclude that the grounds challenging the decision in relation to the Immigration Rules amount to a disagreement with the findings made, but do not disclose an error of law.
36. In relation to Article 8, both representatives indicated there was no need to make separate submissions on this, because if the Secretary of State's challenge succeeded under the Immigration Rules it would also succeed under Article 8, but if the challenge under the Immigration Rules failed, it

would also fail in relation to Article 8. I agree with those submissions, and I find no material error of law in the determination.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeal of the Secretary of State is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity direction.

Signed

Date: 1st December 2014

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT **FEE AWARD**

There is no fee award for the reasons given by the First-tier Tribunal.

Signed

Date: 1st December 2014

Deputy Upper Tribunal Judge M A Hall