



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

Appeal Number: IA/35176/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 31 August 2017**

**Decision & Reasons Promulgated
On 05 September 2017**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

ABDUL KAYUM

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. S. Iqbal of counsel instructed by Taj Solicitors

For the Respondent: Mr. S. Kotas, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant, who was born on 5 December 1987, is a national of Bangladesh. He arrived in the United Kingdom on 21 January 2010 as a Tier 4 (General) Student Migrant. He married on 15 February 2012 and on 23 March 2012 he applied for leave to remain, as the partner of a

person settled in the United Kingdom. On 7 January 2013 he was granted leave to remain in this capacity until 7 January 2015.

2. On 22 October 2014 the Appellant applied for indefinite leave to remain as the victim of domestic violence.
3. His application was refused. He appealed and his appeal was dismissed by First-tier Tribunal Judge Lawrence in a decision promulgated on 21 December 2016. The Appellant appealed and he was granted permission to appeal by First-tier Tribunal Judge Landes on 5 July 2017.

ERROR OF LAW HEARING

4. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below. It became apparent during the hearing that neither the Appellant's representatives or the Upper Tribunal had a full copy of the Home Office Bundle and that this also appeared to have been the case at the hearing before the First-tier Tribunal.

DECISION

5. It was the Respondent's case that the Appellant was not entitled to indefinite leave to remain as he could not meet the requirement of sub-paragraph 289A(ii) of the Immigration Rules because his relationship with his wife was not subsisting when he was last granted leave as her spouse on 7 January 2013. She maintained that his marriage had broken down on 7 September 2012.
6. In paragraph 6 of his decision, First-tier Tribunal Judge Lawrence found that the Appellant's relationship with his wife had ended on 7 September 2012. However, he failed to give any, or any sufficient, reasons for reaching this conclusion in the light of the evidence which was before him. The Home Office Presenting Officer relied on the contents of the letter, dated 20 October 2014, which was written by the Appellant to accompany his application for indefinite leave to remain. This letter concentrates on the events which led up to him leaving the matrimonial home on 7 September 2012 and does not mention events after that date.

7. This incident is confirmed in an entry at page 42 of the Appellant's Bundle from a police investigation, which stated that "the [Appellant] is safe and well and has now got his property back". His medical notes also confirm that he told his GP on 6 September 2013 that he had separated from his wife in or around September 2012. However, the letter from Dr. Rana, dated 4 September 2014, states that the Appellant's medical notes for 6 September 2013 referred to his wife and mother-in-law being violent towards him, which suggests that this was an on-going situation.
8. Furthermore, the police records included in the Appellant's Bundle, indicated that the Appellant and his wife were together as a couple in Finsbury Park on 25 September 2013 when they suffered a racially motivated attack. The records also showed that they attended Limehouse Police Station together on 9 October 2013 and were recorded as having been married for two and a half years and as living with the Appellant's parents-in-law. First-tier Tribunal Judge Lawrence did not consider this evidence and reach any findings on it.
9. I have also reminded myself that in *MK (duty to give reasons) Pakistan* [2013] UKUT 641 (IAC) the Upper Tribunal held that:

“(1) It is axiomatic that a determination disclosed clearly the reasons for a tribunal's decision
(2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight, whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons”.
10. Therefore, the First-tier Tribunal Judge erred in law by not providing any reasons for deciding that the Appellant could not meet the requirements of paragraph 298A(ii) of the Immigration Rules.
11. The Appellant also had to establish that for the purposes of sub-paragraph 298A(iii) of the Immigration Rules his relationship was caused to permanently break down before the end of the period of leave as a result of domestic violence.

12. I have reminded myself that in *LA (para 289A: causes of breakdown) Pakistan* [2009] UKAIT 00019 the Asylum and Immigration Tribunal also found that “when deciding if an appellant 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”.
13. Page 10 of the Home Office Guidance on *Victims of Domestic Violence*, which was in force on 25 November 2016, also indicates that incidents of controlling, coercive or threatening behaviour and psychological abuse, not just physical violence, fall within the definition of domestic violence. Page 29 of the Guidance also states that victims can rely on a letter from their GP and any evidence from the police.
14. The letter from Dr. Rana refers to the Appellant having been subjected to violence by his wife and mother in law. Paragraphs 7 to 16 of the Appellant’s statement also record numerous incidents of physical and psychological abuse. In addition, the First-tier Tribunal Judge accepted that the Appellant had provided photographs of injuries caused to his neck, shoulder and arm, which post-dated 7 January 2013 and were said by the Appellant to have been caused by his wife in April, August and October 2013.
15. In paragraph 10 of his decision, the First-tier Tribunal Judge’s refers to this evidence but does not indicate what, if any weight, he gives to it. He also failed to take into account the Appellant’s own evidence. In *LA (Pakistan) v Secretary of State for the Home Department* [2007] EWCA Civ 386 the Court of Appeal adopted the finding in *JL (Domestic violence: evidence and procedure) India* [2006] UKAIT 00058 where it was found that “the Immigration Judge is not confined on an appeal to the evidence “required” by the Secretary of State, nor is an appeal bound to fail if the “required” evidence has not been produced. The question of whether domestic violence has occurred is to be determined on the basis of all the evidence before the Immigration Judge”.
16. The First-tier Tribunal Judge did not follow the guidance given by the Court of Appeal or by the Home Office when considering the evidence before him. Therefore, he also erred in law by not taking into account relevant evidence and policy.

17. As a consequence, I find that First-tier Tribunal Judge Lawrence did make material errors of law in his decision and reasons.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to the First-tier Tribunal for a re-hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Lawrence.

DIRECTIONS

- (1) The Respondent do file and serve a full copy of her bundle on the Appellant's solicitors and the First-tier Tribunal within 14 days of the *de novo* appeal being re-listed in the First-tier Tribunal.**

Nadine Finch

Signed

Date 31 August 2017

Upper Tribunal Judge Finch