



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

Appeal Number: HU/03613/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 21st May 2021**

**Decision & Reasons Promulgated
On 1st June 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**M E K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appealed against the Respondent's decision, dated 8 February 2019, to refuse his human rights claim and deport him to Egypt. The Appellant's appeal before the First-tier Tribunal was allowed by First-tier Tribunal Judge Eldridge for the reasons given in his decision promulgated on 9 December 2019. Upper Tribunal Judge Jackson set aside this decision for the reasons given in her decision of 15 April 2020 and the matter was listed for rehearing before me.
2. It was agreed at the outset of the hearing that the issue to be decided in this appeal was whether the Appellant's criminal offending amounted to

serious harm. Upper Tribunal Judge Jackson found that the First-tier Tribunal erred in finding that this was not the case and the matter was to be reheard on this basis. It was agreed that, should the deportation provisions not apply, the Appellant's human rights claim would be allowed because there were preserved findings from the First-tier Tribunal that the Appellant had a genuine and subsisting parental relationship with his children and it would not be reasonable for them to leave the UK.

The Appellant's evidence

3. At the hearing before me the Appellant and his wife gave evidence. The Appellant relied on his witness statement, dated 31 October 2019, as evidence-in-chief. In that witness statement he stated that he had gone to his mother-in-law's house to pick up the children and his mother-in-law called the police because she did not want him in the house. The police came and asked the Appellant to go away. He left with the children. The following day his wife came to see him, demanding to take the children with her and he was given notice to leave the bed and breakfast accommodation. Thereafter, he went to live in the caravan at the back of his friend's house, KT. At this time his wife had obtained a restraining order, although he still had contact with her through his friend and his wife would still drop the children off to see him. Two weeks after this restraining order was obtained, his wife came to the caravan in which he was living and said she no longer wanted to live with her mother. The Appellant arranged for her and the children to come and live in the caravan. They were then informed they would be given a council flat and they moved into a new flat, which was a fresh start. His wife applied to revoke the restraining order.
4. In his oral evidence, the Appellant stated that the restraining order had been imposed as a result of the financial situation. There were ups and downs in the relationship and it was extremely difficult. They had just been evicted from their house and his visa was running out in 2016. He had lost his business and was not allowed to work. His wife was doing her best to support them and they went into sheltered accommodation. There was no window in the room and they found it difficult to get on. Things escalated and his wife said she was going to go and stay with her mum. He was not allowed to go in the house and they did not have any money. He was unable to work and had been denied contact with his children.
5. At that point the family home had broken up, but they had got back together again. Unfortunately, this was after the restraining order had been put in place. The solicitors advising his wife had said she had to get a restraining order. She came to the caravan where he was staying because she was not getting on with her mum and dad. She wanted to join the family back together again. This was the event that breached the restraining order. He did not realise the responsibility he had put on himself by breaching the restraining order. He did not go near the address

and he was told by the solicitor advising him that he should have told his wife and the kids to go away when they came to the caravan, but he did not want to put them out on the street. He maintained that he pleaded not guilty and was sentenced to six months in prison. However, when asked further he said that his wife did not attend and give evidence and there was no evidence called against him. The PNC record records a guilty plea. The Appellant accepted he was advised by the duty solicitor to plead guilty and the solicitor had told him he was stupid to allow his wife in the caravan. He had complied with probation. He had never harmed his wife. He did not really understand what the restraining order meant. His wife had done that on advice to protect herself and the kids. One month later they had got back together and she had applied to revoke it, but revocation was refused.

6. In cross-examination, the Appellant was asked if his wife complained to the police. The Appellant stated that the CPS in court brought it to the attention of the judge. He only saw his wife to collect the kids and drop off, but it was for his wife's protection. He said there were very difficult circumstances that had led to the restraining order. It would not happen again as he had learnt his lesson. He had been to anger management courses which had helped him understand how other people feel and to understand his marriage. He was married aged 21 when he was quite young. He really started to understand his position ten years later when he was in England. He was now better placed to deal with stress and hardship. He was asked if he had been charged with disruptive behaviour in 2021 and he said no. He was asked what made him say his wife had not experienced serious harm and the Appellant stated, "this has been really difficult for all of us".
7. The Appellant was asked if he had complied with his bail conditions. He explained that he received a phone call during lockdown to say that he had to sign in Croydon because the local office in Eaton House had closed down. He was unable to call back as he did not have the number and, therefore, he sent an email. He sent 25 emails and only got a response a few days ago. The message asked him to give details and he replied asking why he had been sent to Croydon when he had always been signing at Eaton House. The phone calls were at strange times of the day, 9am on the first day of Eid. He had since received a letter in December 2020 which stated Eaton House had opened again but he was still getting phone calls saying he had to go to Croydon. He was not abusive and he did not swear during these phone calls. He had also received a phone call saying he should report at Eaton House.
8. The Appellant kept getting letters saying he was going to be deported. His children were old enough to read now and knew what was going on. He had contacted the Home Office about paying for his current application in instalments. He was told he was not allowed to remain in the country and could go voluntarily. He therefore decided to go to Egypt as a family, but having spoken to the Home Office, they were not allowed to travel

because the Home Office would only cover his flight and not that of his wife and kids. His dad lived near to Eaton House and could see if it was open. This was not his biological father although this person had treated him like a son since he came to this country.

9. In answer to questions from me, the Appellant said that when he went to see his kids at his mother-in-law's house, he was not allowed in and was waiting outside. He was not threatening, but he did not go away, so the police were called. The police got the kids out and they went home with him. It was agreed that the kids would be with his wife and he kept going round to see his kids. This was the only time the police had been called. He had received a letter saying that he had to attend court. There was no physical harm. He accepted there was shouting. He wanted to see his kids and explain that he was not going away. He was shouting out loud that he wanted to see his kids and he now knew how to deal with things better. He had not been in trouble with the police since.
10. The Appellant's wife gave evidence, relying on her letter dated 5 November 2019 as evidence-in-chief. I asked what was the incident which caused her to obtain a restraining order. She said they were having a hard time. They had lost their property and business and her husband was unable to work. It was a really stressful time. Her husband was at home while she was working. There were lots of arguments about money. The Appellant was depressed because he could not work and it all got a bit nasty on her side, not his. She was getting really angry and a couple of times she lashed out. She asked him to leave and he would not. She called 111 and asked him to go away. He said he had nowhere to go. She did not want him arrested. She just wanted him out of the flat. She was not in the house at the time. She was at the stables with the horse. She had left him in the flat after a blazing row and it got ugly and she said she was taking the kids to school and going.
11. There was another occasion at her mother's house when he would not go away. He was not physically abusive. He did threaten her when the children did not want to see him. She stated, "he messaged me 'I will kill you'" but she never felt that he wanted to kill her. The police came to the stables to speak to her. She did not want to press charges or make a statement, she just wanted to get him out and give them some time to calm down. She had never felt unsafe, she just needed help with him moving out. She had been to live at her mother's house and then came back to the Appellant and they got a council flat. She then said this was after the police decided to prosecute. The case had gone to court when she was at her mum's house and the officer had asked if she wanted a restraining order purely for the children.
12. I asked, "What was the incident which led to the breach of the restraining order?" She said they were back living together and she looked into having the restraining order revoked. Her husband lived with KT in his house and in KT's caravan at the back of his house. She went to the

caravan whilst the restraining order was in place. It was not this visit that caused the restraining order. She confirmed that while living at her mum's the restraining order was taken out as he wanted to see their children, but then they had got back together. There had then been the incident at the stables which had resulted in a breach of the restraining order and she had visited the caravan at some point in between the two events.

13. In cross-examination, Mr Tufan asked, "What was the effect of the restraining order on you and the children?" She replied that it was very tiring. The children were fine, but she and her husband had spent a lot of time arguing due to financial matters. She was not affected psychologically. These incidents were caused by financial stresses and strains because her husband was not working. She stated, "One of us was not working, the other one had to do it. We did not have money for the kids to do things, school trips etc." She was asked how she would behave if it happened again and she said the situation had not changed, but they had learned to deal with it. They now discuss it rather than fighting about it.

Submissions

14. Mr Tufan submitted that the Appellant's criminal offending and convictions had caused serious harm. There were a number of offences although most were minor. The effect on his spouse, children and her family at the time did amount to serious harm. There was clearly turmoil at that time and incidents resulting in complaints to the police. These incidents had caused serious harm and also had resource implications for the general public.
15. In response, the Appellant said that his relationship with his wife had not been believed by the Home Office from the outset when he first applied to come to the UK in 2005. He had never lied. When he had texted that "I will kill you" he did not mean it. They had a fight and they had argued. It was anger at that moment in time. He had no intention to do it.

Conclusions and reasons

16. The Appellant and his wife have given consistent evidence and I find that they are both credible witnesses. The Appellant's wife seemed a little confused about the order in which the incidents had taken place, but she was able to confirm the timeline when asked. I am satisfied that her evidence is by and large consistent with the Appellant's. I also find that it is not exactly the same which leads me to conclude that her account is credible. The Appellant was unaware the police had visited his wife at the stables. I find this did not undermine his credibility. The Appellant went to court and was sentenced to six months' imprisonment for breaching a restraining order by allowing his wife to live with him. He accepted he did

not realise the responsibility put on him and that he should not have lived with her.

17. I am satisfied that the offences have come about as a result of a domestic dispute caused by financial stresses and strains within the marital relationship. On the facts of this case, the Appellant's offending behaviour did not amount to serious harm. The deportation provisions do not apply to the Appellant.
18. Having read the decision of Upper Tribunal Judge Jackson, she saw no reason to displace the finding of the First-tier Tribunal that the Appellant was in a genuine and subsisting parental relationship with his children and it would be unreasonable for them to leave the UK. She was of the view that, if the deportation provisions did not apply, the Appellant would succeed under Article 8. I agree.
19. I therefore find that the Appellant's offending behaviour did not cause serious harm. The deportation provisions do not apply and the Appellant's appeal is allowed on Article 8 grounds.

Notice of Decision

Appeal allowed.

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 him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed

Date: 28 May 2021

Upper Tribunal Judge Frances

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal, I have considered making a fee award and have decided to make a fee award of any fee which has been paid.

J Frances

Signed

Date: 28 May 2021

Upper Tribunal Judge Frances