



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

Appeal Number: IA/06403/2013

THE IMMIGRATION ACTS

Heard at Field House

On 26th September 2013

**Determination
Promulgated**

On 1st October 2013

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR SHAIKH RUBEL MIAH
(ANONYMITY ORDER NOT MADE)**

Claimant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim (Instructed by SEB Solicitors)

For the Respondent: Mr E Tufan (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant against a determination of the First-tier Tribunal (Judge Andonian) promulgated on 15th July 2013 by which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse him leave to remain as the victim of domestic violence.

2. My first task is to decide whether the First-tier Tribunal made an error of law and if so whether and to what extent the determination should be set aside. Mr Karim addressed me on the grounds. The first ground asserts the Judge erred in refusing to adjourn the appeal. The Appellant did not attend the oral hearing of his appeal before the First-tier Tribunal and the Judge was informed that he was not (mentally) well enough to attend to give oral evidence. In refusing the application for an adjournment the Judge took into account that there was no up-to-date medical evidence about his state of health in support of the request. The Home Office Presenting Officer opposed the application. It is clear therefore the First-tier Tribunal was entitled to refuse the request on the basis of the lack of evidence. Before me Mr Karim did not seek to argue that point but challenged the phraseology used by the Judge in refusing the adjournment. The Judge says at paragraph 5:-

"The Home Office Presenting Officer opposed the adjournment and so did I."

It is those last three words which are the subject of challenge. Mr Karim argued that they give the impression of bias. I disagree. The wording may be unfortunate but is simply expressing that the Judge was not prepared to adjourn the case. The Judge goes on to state that there was no medical evidence indicating the Appellant was unfit to attend nor was there any evidence as to when he might be fit to attend. He noted the claim that his mental state appeared to fluctuate from time to time meaning it was not possible to obtain appropriate medical evidence. The Judge was entirely justified in those highly unsatisfactory circumstances to refuse the adjournment. I entirely reject the assertion that it indicates bias on the part of the Judge.

3. The second ground that Mr Karim relied upon has more force. He referred to the Judge's findings on credibility. This is a case where the Appellant came to the UK as a spouse and who claims that his marriage broke down as a result of domestic violence. He had not reported the abuse to the police but had produced a significant amount of documentary evidence that he says supports his claim. Mr Karim took me through the determination to various aspects where the Judge had either misinterpreted, misunderstood or simply failed to take into account the documentary evidence. One example is where the Judge said that there was no evidence before him that the Appellant presented a suicide risk. Indeed he specifically states that the GPs evidence does not support that claim where it is clear from the GP's letter that it does refer to it. Another aspect is the Judge's reference to the lack of evidence about the Appellant's wife's having brought boyfriends to the house to threaten him. The Judge suggests that there is no evidence about that but it is clearly referred to in various documents.
4. The Judge also makes reference to Counsel failing to ask any questions of the witnesses about various matters. In so doing he has failed to take into account that it is not the role of the Appellant's Counsel to cross-examine

his witnesses about matters that are contained in the statement. That is the role of the Home Office Presenting Officer.

5. I agreed with Mr Karim that the Judge's examination of the evidence in this appeal fell short of the accuracy and care that is required which rendered his findings against the Appellant as to his being a victim of domestic abuse unsafe. Given that is the core of what the case is about, I agree the determination should be set aside with no findings preserved. While not conceding, Mr Tufan acknowledged that there were difficulties with the determination.
6. Mr Karim argued that as the determination had been set aside with no findings preserved the appeal ought to be remitted to the First-tier Tribunal. I did not find that appropriate. It cannot be said in my view that the Appellant did not have a proper hearing before the First-tier Tribunal. It is what the Judge did in the determination that was in error and it is to protect an Appellant from that that there is provision for an onward appeal to the Upper Tribunal. I therefore indicated my intention to carry on and redecide the matter.
7. The Appellant and those representing him had been put on notice by Directions issued by the Principal Resident Judge that they should prepare for the hearing before the Upper Tribunal on the basis that, if the Upper Tribunal decided to set aside the determination of the First-tier Tribunal, any further evidence, including supplementary oral evidence, that the Upper Tribunal may need to consider if it decides to remake the decision, can be so considered at that hearing. There is also a Direction concerning the need to make application for the admission of any additional evidence. In this case no additional evidence has been filed nor any Rule 15 application made. Despite the Appellant and his family's presence in court Mr Karim made clear that he had no intention of calling oral evidence. That was somewhat surprising given the adjournment request before the First-tier Tribunal was specifically to allow the Appellant the opportunity to give evidence. Nevertheless it is a matter for the Appellant and those advising him whether he gives evidence or not. It is also a matter for them whether to submit additional and more up-to-date evidence. However I am entitled to take its absence into account.
8. I heard submissions from Mr Tufan and Mr Karim. Mr Tufan relied on the detailed Letter of Refusal and argued that this is not a credible claim and the Appellant is not a victim of domestic violence. It is to be noted that his claim was made just before his leave to remain was to expire and all of the "so-called evidence" stems from that period and there is nothing earlier than November 2012. He pointed out that there is no direct evidence of domestic violence and no tangible objective evidence that that was why the marriage broke down. All of the third-party evidence relates to matters that persons have been told by the Appellant. He acknowledged that in the light of Ishtiaq [2007] EWCA Civ 386 there is no requirement for specific evidence to be adduced but there is no satisfactory reason in this case why there should not have been evidence from the police. He also noted

that despite assertions of physical abuse there is no medical report or evidence of physical injury.

9. Finally, in relation to Article 8 Mr Tufan said that the Appellant had been in the UK only for a short period of time. He has no credible family life and there is no reason why he should be permitted to remain in the UK when he had been allowed to enter purely on the base of a marriage which no longer subsists.
10. Mr Karim in his submissions reminded me that I needed to assess the evidence cumulatively and referred me to the various pieces of evidence from third parties and submitted that those together should satisfy me that the Appellant is indeed a victim of domestic violence. So far as Article 8 is concerned Mr Karim argued that the responsibility the Appellant has for the care of his elderly mother does amount to family life as there is additional dependency. Additionally he has a relationship with his brother and three nephews and thus is also entitled to succeed on Article 8 grounds.
11. The Appellant's case, as set out in his statement of 27th June 2013, is that his marriage, which was an arranged marriage, took place in Bangladesh on 23rd December 2009. Initially he and his wife had a loving and caring relationship and he came to the UK on 2nd November 2010 as a spouse. He was given a period of leave until 14th January 2013.
12. The Appellant says that he had been suffering from low mood, anxiety and depression and that he was unable to respond well and give consistent statements about all the incidents over the last two years as he could not recollect a lot of the events. He stated his unhappy marriage and torture from his wife were the main reasons for his present medical condition.
13. In his statement the Appellant claims that his wife started torturing him in June 2011. She took all of his income from his weekly salary. She threw things at him such as classes and cups. He then refers to a family meeting with a member of his wife's family and a member of his to try and resolve matters. However, matters were not resolved and his wife continued to beat him each night. She pulled his hair and swore at him. The Appellant's brother and brother-in-law met again without success.
14. The Appellant says that he and his wife moved in with his mother in October 2011 where they remained for 13 months until 15th November 2012. He says that he was desperate to save his marriage and therefore avoided reporting matters to the police despite the fact that many people and organisations advised him to do so. He says that on 15th November 2012 his brother took him to his home telling his wife to leave. He says that his wife used to bring her boyfriend to the house (the Appellant's mother's house) to threaten him despite a relationship which was not allowed in their religion. The Appellant's physical and mental torture was unbearable to him and by this time he had already developed various

forms of mental illness. The couple therefore separated when she left his mother's home on 15th November 2012.

15. The Appellant also claimed that despite his crying to see his frail father in Bangladesh, his wife had hidden his passport so he could not visit.
16. He then says that he took legal advice in January 2013 and as a result made the application, the subject of this appeal with accompanying evidence from councillors and friends and acquaintances who knew about the family situation.
17. There is a witness statement from the Appellant's brother who says that he is giving a witness statement because the Appellant is unable to give a good account because he suffers from various forms of mental illnesses e.g. low mood, anxiety and depression and he says that his unhappy married life and torture from his wife were the reasons for that medical condition.
18. The brother says that the Appellant told him in around July or August 2011 that his wife had been torturing him for a month taking his income and throwing things at him. He says that they arranged a family meeting when his sister-in-law said it would not happen again. Unfortunately it did. He confirms that the couple then moved in with the Appellant's mother in October 2011 and remained there for 13 months. He confirms that on 15th November 2012 he arranged for his brother to move to his house and instructed his sister-in-law to leave. He refers to having heard that she had a boyfriend who she used to threaten his brother despite the relationship not being allowed in their religion.
19. The brother also talks about having heard that this woman's previous husband had had difficulties with her and that had been the reason for the breakdown of that marriage. He, the brother claims, telephoned him and told him that he had had a heart attack after two years of torture at her hands.
20. For the reasons given above the Appellant did not give oral evidence at the hearing before the First-tier Tribunal but his brother, the author of that statement did. The only significant matter in his oral evidence over and above this statement was he confirmed that he had not seen any bruises on his brother.
21. There was no other oral evidence nor any other witness statements.
22. I now set out the documentary evidence relied upon. The first document is a letter from the Appellant's GP. It is signed by Dr Rachel Hines of the James Wigg practice in Kentish Town. It is dated 25th February 2013 and addressed to the Appellant's representatives in response to a request from them. The GP says it is written with the patient's consent. The GP says at paragraph 4 of that letter the following:-

"Thank you for your letter about Mr Mia (sic). There is mention of suicidal thoughts in his records; however, I am not aware of any suicide attempts.

He has been seen regarding his depression and anxiety. He saw my colleague on 14th December when he described a very negative relationship with his ex-wife. He was unhappily married for a year and he had moved from Bangladesh to be with her here, it was an arranged marriage. He said she would call up boyfriends while he was there and said if he ever told anyone about the other relationship she would get some of her male friends to attack him. He reports that she regularly threw things at him and also verbally abused him. They had separated for three months prior to this and he reported nightmares and flashbacks and very low mood."

23. The next document is a letter from Mohammed Joyal Uddin, the chair of West Euston Partnership, dated 18th February 2013 and written in response to a request from the Appellant's representatives. West Euston Partnership is said to be a registered charity. Mr Uddin says the following:-

"I confirm that Mr Miah did tell me that his wife was mentally torturing him. I also confirm that I attempted to mediate their differences by having a discussion with her brother Mr Anwar Hussain at his restaurant but was unsuccessful.

I further confirm that Mr Miah reported to me that he was being mentally tortured and I am aware that he informed his doctor that he was contemplating suicide.

I also confirm that his marriage did break down in November 2012 because of this torture."

24. The next document is from Cllr Pat Callaghan, Councillor for Camden Town and Primrose Hill in the London Borough of Camden. In her letter dated 18th December 2012 she says this:-

"Mr Miah has since separated from his wife, as he was a victim of domestic violence. He suffers from depression as a result of the mental harassment and domestic violence he suffered at the hands of his wife.

Mr Miah attended my surgery with his family on several occasions and made complaints to me about his marital affairs. On these occasions I asked him to seek help with professionals for his wife's then erratic behaviour. He tried to make a go of it and failed. For the last six months Mr Miah has lived in Greenland Road with his immediate family. He is presently employed in the catering in the catering (sic) industry at Monsoon's, 24 York Rise, London.

As a local Councillor for Camden Town in Primrose Hill ward, I have known the Miah family in Greenland Road for 10 years and Mr Shaikh for two years. He is a good character and is very supportive of the family and mother who resides with them. His mother is physically frail with hypertension and diabetes. She has lost the sight in one eye and he helps care for her. He also looks after three nephews while Mrs Begum (Miah), his sister-in-law is at work.

I would request that you look at Mr Miah's case sympathetically when considering his application."

25. The next document is a letter to the Appellant from the Right Honourable Frank Dobson MP and dated 10th December 2012 which reads as follows:-

"Further to your visit to my advice service last Friday evening, I confirm that my office has today spoken to your solicitor at SEB Solicitors Limited. My office explained to your solicitor that I had only met you on one previous occasion -Friday 2 November - when you reported that you had suffered physical harm at the hands of your ex-wife. Of course, if you continue to suffer such abuse, you must immediately report this to your local police. My office also explained to your solicitor that, as I do not know you, I am unable to provide knowledge about your character."

26. There is then a letter from Camden Psychological Therapy Services, part of Camden and Islington NHS Foundation Trust, dated 30th November 2012 addressed to the Appellant indicating that the author, a Primary Care Mental Health Worker, had been asked to contact the Appellant by his GP regarding her services for guided self-help which involves helping patients to develop techniques to cope with low mood, anxiety, stress or other common psychological difficulties. The letter asks the Appellant to contact her if he wishes her assistance.
27. The next document is from Camden and Islington NHS Foundation Trust dated 3rd June 2013 enclosing copy medical records. These also relate to matters in November 2012 and indicate that the Primary Care Mental Health Worker met with the Appellant by telephone in late November 2012 when he expressed having daily suicidal thoughts and having nothing to live for. He also indicated he was not sleeping at night. He reportedly became tearful.
28. There is another entry on 14th December 2012 relating to a telephone conversation between the Primary Care Mental Health Worker and the GP practice, the GP having seen him that day and carried out an assessment of his mental state. He was reported to be having fairly regular suicidal thoughts although had not identified any plans to carry them out. He talked about being abused in a previous relationship both verbally and physically and that his partner had been in other relationships at the same time. There was a suggestion that he may need assistance with PTSD in the future.
29. The next document is a report by the Primary Care Mental Health Worker to the GP practice confirming what had previously been said.
30. There is a letter dated 25th April 2013 from NAFSIYAT, Inter-cultural Therapy Centre. This is a letter to the Appellant offering therapy which his GP had indicated he might appreciate.

31. The next document is written by the Bengali Workers Association and is dated 19th February 2013 indicating that the Chair of that organisation was aware that Mr Miah was trying to put his marriage back on track.
32. There is then a letter from another Councillor, Cllr Abdul Quadir of Bloomsbury Ward of the London Borough of Camden and dated 20th November 2012. He reports that the Appellant saw him and told him that he had come to the UK in November 2010 and separated after two years due to domestic violence and that as a result he suffers from depression. He indicates that the Appellant was staying with his brother at that time who he knew very well and he also knew his late father very well and that they were a reputable family in Bangladesh.

Findings

33. I do not find that the evidence in this case establishes the Appellant's marriage broke down as a result of domestic violence for the following reasons.
34. The Appellants statement indicates that his wife's behaviour started in June 2011, some seven months after he arrived in the UK and some 18 months before the couple finally separated and yet apart from his brother's statement there is absolutely no "corroborative" evidence earlier than November 2012.
35. Whereas of course there are seldom actual witnesses to domestic violence it is possible to adduce credible evidence. If the Appellant had complained to Councillors, his GP or any of the persons who have written letters from June 2011 then it is to be expected that they would have said so. On the contrary, the evidence suggests that the first he mentioned it was November 2012 - 18 months after the abuse began.
36. I do not find it credible that his wife's behaviour continued whilst they were living with his mother in his mother's house. If his brother was able to secure her eviction from that property in November 2012 then it would have been possible to do so some 18 months earlier. It is also an indication that the Appellant's wife was not the dominant member of that household.
37. I do not accept that Appellant, living in his family's home would have been forced by his wife to hand over his wages.
38. While Mr Karim, when we were dealing with the error of law, argued that there was no evidence to support the First-tier Tribunal finding it without credibility that the wife would flaunt a boyfriend in front of the Appellant for cultural reasons, I find there was. The Appellant is a Muslim from Bangladesh. His wife is Muslim. Both the Appellant and his brother refer in their statements to extramarital affairs being unacceptable in their religion. The Appellant and his wife are of the same religion. Furthermore I simply do not believe, living in her husband's family's

house, the wife would have behaved in such a way, even if there was no religious objection to extra marital affairs.

39. The wife's behaviour is described in very strong terms as "torture". Torture suggests very serious abuse and yet the Appellant did not think it necessary to mention it to his doctor or anybody else for 18 months. He did not report it to the police. The explanation he gave was that he wished to rescue his marriage. That does not sit well with the numbers of people he apparently did speak to about it after November 2012. It seems to me that the reason he did not report it to the police or to any other persons before November 2012 is because it simply did not take place. By November 2012 he was in fact separated from his wife, she had left the matrimonial home on whatever date and for whatever reason such that as the expiry of his leave approached he needed to amass evidence to secure his stay in the UK. While there is evidence of mental health issues there is no reliable evidence of its cause and indeed there is no up-to-date evidence that he is on medication or receiving treatment or therapies. The lack of up-to-date evidence suggests he is not receiving relevant treatment.
40. The Appellant having been unable to attend the hearing before the First-tier Tribunal, the hearing before me would have been an ideal opportunity for him to advance his case and give evidence and yet he chose not to do so.
41. According to the Appellant and his brother this abuse was happening under their mother's roof, the rest of the family knew about it and so one would assume mother must have also. There is no witness statement from her or indeed from any other family member.
42. If the Appellant's wife was behaving in this way there is no reason, now that they are separated, that the Appellant should not have issued divorce proceedings based on her behaviour and yet he has not done so. He is receiving advice from solicitors. A divorce petition based upon her unreasonable behaviour would have been powerful evidence indeed. Its absence would suggest that there was no such behaviour. I was provided with no explanation as to why there are no divorce proceedings.
43. There is no evidence from any of the authors of the letters that they were told of anything prior to November 2012. It is also the case that they are all reporting what they have been told by the Appellant. He did not apparently consult his GP during 18 months of "torture".
44. Despite the description of quite serious mental health issues and suicidal thoughts the Appellant has chosen to put forward no evidence that since then that he is undertaking any therapies taking any medications or receiving any counselling. That also would have been powerful evidence to support his case but he has chosen to submit none.

45. The timing of the evidence taken together with the timing of the expiry of the Appellant's visa indicates to me that, having taken legal advice, the Appellant appreciated that the only way that he could secure his stay in the UK was to say that the marriage had broken down due to domestic violence. The evidence that has been adduced falls far short of establishing that.
46. So far as Article 8 is concerned it is argued that the Appellant's relationship with his mother and his caring role creates a dependency over and above the norm between an adult child and his mother such as to engage Article 8. I do not accept that it would fall to the Appellant, a man, to carry out the caring duties for his mother when there are female family members. Furthermore the Appellant is apparently working.
47. Even if he were caring for his mother and I have no evidence from her to that effect, he came to the UK with a view to living with his wife, not to care for his mother. There are provisions in the UK to care for elderly persons even if the family cannot do so - but in this case there are other family members.
48. The Appellant came to the UK solely to join his wife. The marriage having broken down, for reasons other than domestic violence, he can have no expectation of being permitted to remain. When he arrived in the UK as a spouse there could be no expectation by his mother or any other members of the family that he was arriving to undertake their care as he was coming as a spouse. With regard to the time he is said to spend caring for his mother I note there is reference to him working which would indicate that he is not present all the time. So far as his private life is concerned he has been in the UK for a short period only. So far as his mental health is concerned, I have been provided with no up-to-date evidence that this is a particular issue currently or that any treatment he may need cannot be obtained in Bangladesh. Accordingly, even if Article 8 was engaged in this case, which is doubtful, the balancing act required in the assessment of proportionality would not tip in the Appellant's favour. His removal will not represent a disproportionate breach of his right to a private and family life.
49. In summary I find this a thoroughly unmeritorious appeal. Having found that the First-tier Tribunal made an error of law in its determination and having set it aside I remake the decision and dismiss it under the Immigration Rules and under the ECHR.
50. The appeal to the Upper Tribunal is dismissed.

Signed

Date 27th September 2013

Upper Tribunal Judge Martin