



IAC-FH-AR-V1

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

Appeal Number: IA/02543/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

On 8 February 2016

On 21 March 2016

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**LYDEN MARK RHODEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Duncan, instructed by A O & Associates

For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

(Delivered orally on 8 February 2016)

Introduction

1. The appellant is a citizen of Jamaica, born on 6 August 1972. He entered the United Kingdom on 21 January 2012 with entry clearance as a spouse conferring leave until 5 April 2014. The appellant's leave was thereafter curtailed on 14 November 2013, although he maintains that he was not made aware of the decision at the time it was made.
2. On 27 January 2014 the appellant made an application for indefinite leave to remain as a victim of domestic violence. That application was refused in a decision of 14 February 2014 and on 27 February 2014 the appellant

was served with a decision to remove him, against which he lodged an appeal to the First-tier Tribunal.

3. First-tier Tribunal Judge Sweet remitted the matter to the Secretary of State; *“for further consideration and a revised decision letter, taking into account section DVILR of Appendix FM and [the appellant’s skeleton argument, witness statement and bundle of documents].”*
4. It is not in dispute that the appellant's case was thereafter reconsidered by the Secretary of State within the correct legal framework, and was once again refused.
5. The appellant again appealed the Secretary of State's decision to the First-tier Tribunal and that appeal was heard by First-tier Tribunal judge Turquet on 13 July 2015 and dismissed on all grounds in a decision issued on 3 August 2015.
6. Permission to appeal to the Upper Tribunal was granted by Judge P J M Hollingworth in a decision of 10 December 2015, which reads as follows:
 - “1. An arguable error of law has arisen in the context of the judge considering whether the test was satisfied before proceeding to consider whether there would be a breach of Article 8.”
 2. In paragraph 44 the judge has referred to that which had not been demonstrated in relation to Jamaica. In paragraph 45 the judge found that for the reasons given removal to Pakistan would be proportionate.
 3. It is unclear to what extent if at all confusion as to the country to which the appellant would proceed has any bearing on the question of whether there are compelling circumstances. It is arguable that insufficient analysis has been provided of the available evidence in relation to the appellant's private life.”

Discussion

7. The pleaded grounds of appeal to the Upper Tribunal are unstructured and lacking paragraph numbering. They can be distilled into the following seven submissions:
 - I. The FtT failed to objectively consider all of the evidence before it, in particular explanations provided by the appellant;
 - II. The FtT placed excessive weight on the appellant's inability to provide evidence of domestic violence, such as a court order or a police report.
 - III. The FtT failed to consider cultural differences as an explanation for why the appellant failed to seek help immediately after he was asked to move out of the matrimonial home;

- IV. The FtT's conclusion, at paragraph 40 of its decision, that the fact that the appellant had been prescribed anti-depressants is not evidence *per se* that he has been a victim of domestic violence and that the curtailment of his leave and the prospect of him being required to leave the United Kingdom could have been the cause of his depression, is based on a misdirection as to the evidence. At the time the appellant was prescribed anti-depressants he was unaware that his leave had been curtailed;
 - V. The FtT erred in considering the issue of proportionality by reference to return to Pakistan. The appellant is a Jamaican national;
 - VI. The FtT erred in its consideration of the whether the appellant has a family life in the UK given that he is not divorced;
 - VII. The FtT erroneously stated, at paragraph 45 of its decision, that few details of the appellant's private life had been provided. The appellant identified associations with friends, uncles and his church - none of which were considered by the FtT.
8. At the hearing Mr Duncan sought to re-characterise the grounds into the following two overarching limbs - indicating at the same time that the appellant would not pursue those grounds highlighted above in paragraphs 7(I) and 7(III).
 9. The first limb, encompassing those grounds set out in paragraphs 7(II) and 7(IV) above, is now formulated as follows:

The FtT erred in failing to take lawful account of the appellant's evidence given in relation to the absence of the provision of evidence obtained contemporaneously with the domestic violence (such as police reports) and, consequently, it attached excessive weight to the failure to produce such evidence.
 10. Mr Duncan re-formulated the remaining grounds into the following submission:

The FtT's consideration of the issue of private life is deficient given its cursory nature and the failure to take into account relevant evidence.
 11. Taking the re-formulated grounds in turn. It was conceded by Mr Duncan, as it must be, that the FtT did not treat the absence of contemporaneous evidence as being determinative of the appellant's appeal. Clearly, the FtT cannot be faulted for observing the absence of such evidence when coming to its conclusions, this fact being obviously relevant to issue it was required to determine. Once it is established that the absence of such evidence is capable of being relevant to the issue being determined, the question for the Upper Tribunal is whether the FtT attached irrationally excessive weight to such absence.

12. Reading the decision as a whole, and considering the evidence that was before the FtT for myself, I do not concur with Mr Duncan's submission. The FtT was in the best position to determine what weight to attach to any particular feature of the relevant circumstances of the case. As part of my analysis of the FtT's decision I observe that it scrutinised with great care the evidence produced by the appellant in support of the assertion that he had been subjected to domestic violence and that this had been the cause of the breakdown of his marriage. In the course of such analysis the FtT identified, in paragraphs 35 to 38 of its decision, a number of implausibility's and inconsistencies in the appellant's recounting of the relevant events. It was this, in large part, that led the FtT to conclude that it was unable to rely upon the evidence given by the appellant as to the events which underpinned the core issue in the appeal.
13. The lawfulness of this conclusion is not, I find, materially detracted from by the rationale deployed in paragraph 40 of the FtT's decision, in which the following is said:

“I do not find that the fact that the appellant has been prescribed Fluoxetine, an anti-depressant, is evidence per se that he was a victim of domestic violence. He had his leave curtailed and was facing the possibility of having to leave the United Kingdom. These events in themselves could cause someone to be low or depressed.”
14. The challenge brought in this regard, as highlighted in paragraph 7(IV) above, relates to the FtT's speculation that the appellant's knowledge of the curtailment of his leave could have caused the depression which led to him being prescribed Fluoxetine – knowledge which the appellant denies having at the material time. Irrespective of the state of the appellant's knowledge at the relevant time, it is plain that in paragraph 40 of its decision the FtT was doing no more than postulating that there could alternative sources for the appellant's depression, other than that claimed. This was a perfectly lawful approach in light of the available evidence on this issue, particularly when set in the context of its conclusions as a whole.
15. Turning to the second limb of the re-formulated submissions, the contention that FtT erred in its conclusion that the appellant does not have a family life in the UK is entirely misconceived. The core of the appellant's claim is that his marriage has entirely broken down. It is plainly misconceived in such circumstances to seek to rely upon the existence of family life with his estranged wife to bolster his Article 8 claim. In addition, there was no evidence before the FtT which was capable of leading it to conclude that the appellant has an established family life with any other person in the UK.
16. Moving on, contrary to that submitted by Mr Duncan the FtT did not consider the issue of Article 8 proportionality on the basis of the appellant being required to return to Pakistan. The reference thereto in paragraph 44 is no more than an accidental slip. There are references throughout

the decision to the appellant being a Jamaican national and of return to Jamaica; indeed, at paragraph 44 thereof there are no less than three references to circumstances that pertain to the appellant's return to Jamaica.

17. Read as a whole and in the context of the evidence before me I find the FtT's reasoning in paragraphs 44 and 45 of its decision to be entirely adequate. Although it is correct to identify that the FtT does not mention the appellant's connections to the church, and it may also be that he gave oral evidence as to relationships with extended members that is not reflected in the documentary evidence, these cannot be characterised as failings capable of affecting the outcome of the appeal. The appellant does not meet the requirements of the Immigration Rules and the statutory requirements (set out in s.117B of the Nationality, Immigration and Asylum Act 2002) identify that little weight is to be attached to the appellant's private life in the UK, given the precarious nature of his stay here (see AM (s.117B) [2015] UKUT 260 (IAC)).
18. Despite Mr Duncan putting forward everything that could be said on behalf of this appellant I, nevertheless, dismiss this appeal for the reasons set out above. The First-tier Tribunal's decision is to remain standing.

Notice of Decision

The First-tier Tribunal's decision does not contain an error of law capable of affecting the outcome of the appeal. The appellant's appeal before the Upper Tribunal is dismissed.

Signed:



Upper Tribunal Judge O'Connor