Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/32600/2015

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision & Reasons promulgated**
On 19 May 2017	**On 23 May 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MARYAM IMRAN
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no appearance
For the Respondent: Mr Mills – Senior Home Office Presenting Officer

ERROR OF LAW FINDING – DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Andrew ('the Judge'), promulgated on 18 October 2016, in which the Judge dismissed the appellant's appeal against the respondent's refusal to grant the appellant leave to remain in the United Kingdom outside the Immigration Rules.

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2. The appellant is stated on the Upper Tribunal file to have no representative although was assisted by solicitors before the First-tier Tribunal. Those solicitors continued to represent the appellant until 10 January 2017 when a letter was received confirming they are no longer instructed in the case and asking the Upper Tribunal to contact the appellant at her new address in Walsall.
3. Permission to appeal was granted in this matter on 30 December 2016 and a copy of the notice of hearing setting out the date, time, and venue was posted to the appellant and the Presenting Officers Unit by first class post on 17 March 2017. The correspondence has not been returned to the Tribunal as not having been delivered and the Tribunal is satisfied that there has been valid service of a notice of hearing upon the appellant at her last notified place of service, her new residential address.
4. Notwithstanding the above, the appellant failed to attend the hearing. There is no application for an adjournment or explanation for the appellant's absence. It is considered appropriate in all the circumstances for the hearing to proceed in the appellant's absence in light of the fact there is no explanation for why the appellant has not attended, the principles of fairness are not offended by the matter proceeding in light of all the facts as known, and in light of the overriding objective.

Background

5. The appellant is a citizen of Pakistan who appealed against a refusal to grant leave to remain outside the Immigration Rules. The matter came before the Judge at a hearing at Sheldon Court in Birmingham on 4 October 2016. The Judge sets out her findings from [4]to [32] of the decision under challenge. Those findings may be summarised as follows:

    a. The appellant's representative sought to rely upon the domestic violence provisions of the Rules and Article 8. The claim by the representative he wished to rely upon an asylum claim was made for the first time at the hearing. The above respondent's representative confirmed the Secretary State would not give consent to the new matter being raised [5].

    b. The appellant entered the United Kingdom on 27 January 2000 with a spouse Visa valid 27 January 2001. The appellant was later granted leave outside the Rules on 9 August 2011 to 31 August 2012 [6].

    c. Paragraph 289A of the Immigration Rules applies [8].

    d. There was some element of domestic violence in the appellant's first marriage [9].

    e. The marriage did not break down as a result of domestic violence. The appellant's first husband asked her to leave the house. Had he not asked her to leave she would have stayed with him. [10].

f. The appellant was asked to leave the house in 2010 far in excess of the date of 27 January 2001. Thus, the appellant was unable to produce any evidence that the relationship was caused to permanently breakdown before the end of the period of leave because of domestic violence [11].

g. The appellant is unable to meet the Rules.

h. The appellant has given birth to three children during her first marriage but only has letterbox contact with the children. It is speculation on behalf of the Independent Social Worker that the appellant will at any time in the future be able to resume any face-to-face contact with any of the three children [13].

i. The appellant claims that her husband divorced her Islamically. The appellant's former husband has remarried and on the balance of probabilities has produced documentation either in the United Kingdom or in Pakistan which would confirm that he is divorced and was free to marry [14].

j. The appellant would not tell the Judge what she had done between 2010 and 2012. The appellant met another man and married him Islamically on 5 May 2012. The appellant has two children from that marriage one aged 4 and the other 2 ½. Both of whom are citizens of Pakistan [15].

k. The appellant has been abandoned by her second husband approximately 3 months ago and she now lives in an hotel provided by the Local Authority [16].

l. The Judge was satisfied there has been a divorce and the appellant was free to remarry [17].

m. The appellant continues to have ties with Pakistan. The appellant is 36 years of age and lived the first 20 years of her life in Pakistan. The appellant speaks the language of Pakistan has little if any grasp of English. The appellant's cultural identities are with Pakistan and not the United Kingdom and she remains immersed in the culture of Pakistan [19].

n. The Judge could not be satisfied on the evidence that the appellant would be at risk on return to Pakistan. No weight could be placed upon comments by the Independent Social Worker in relation to any alleged risk [20].

o. The appellant is unable to meet the requirements of paragraph 276ADE of the Immigration Rules [21].

p. The Judge adopted the structured approach to assessing Article 8 outside the rules as per *Razgar* [24].

q. The Judge was not required to consider the best interest of the children from the first marriage as that had been considered by the Family Court who concluded it was in the children's best interests to only have letterbox contact with the appellant. The best interests of the children from the second marriage were considered in accordance with Section 55 [25].

r. The children from the second marriage are very young and both citizens of Pakistan who would be removed to Pakistan with their mother as a family unit [26].

s. The Judge was unable to accept the appellant's claim as to ostracism from her family was credible. In any event, the appellant will be able to take advantage of the support in Pakistan such as shelters or crisis centres. At least some accommodation will be available for the appellant and the children in Pakistan [27 – 29].

t. The appellant is not integrated into the United Kingdom. The appellant speaks no English and there is nothing to show she can ever be financially independent [30].

u. On the evidence the Judge was unable to make a finding that there are any compelling circumstances in this matter [31].

6. The appellant sought permission to appeal to the Upper Tribunal which was granted by Acting Resident Judge Appleyard in a decision dated 30 December 2016, the operative section of which reads:

> 3. The ground seeking permission to appeal argue that the Judge erred in her assessment of whether the Appellant suffered domestic violence, found that the Appellant's former husband was "legally divorced" in the absence of any evidence to that effect, speculated, misdirected herself under the Immigration Rules in relation to family and private life and erred in dealing with the Article 8 issues.
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> 4. These grounds are all arguable.

Error of law

7. In relation to the domestic violence element of the case, the Judge accepted that there was some element of domestic violence within the first marriage. The Judge thereafter concluded that even if there had been evidence of domestic violence it did not cause the marriage to permanently breakdown.

8. The Judge correctly set out the appellant's immigration history which is relevant to assessing whether the appellant was able to succeed under paragraph 298A of the Immigration Rules.

9. 298A sets out the requirements for indefinite leave to remain in the United Kingdom as the victim of domestic violence. The current domestic violence rules are now contained in Appendix FM section DVLR although a number of complex transitional provisions are to be found in paragraph 280(c) of the Rules. These provide that where an applicant was granted entry clearance or limited leave to enter or remain as a spouse before 9 July 2012 where the applicants leave to enter or limited leave in that capacity remains extant, then the old paragraph 289A continues to apply on domestic violence issues. I was not referred to these provision specifically. The Judge noted that as the application was made as long ago as 22 August 2013 the earlier paragraph still applied. There is no challenge to this element of the decision.
10. The requirements of 298A include a requirement for (a) admission to the UK for a period not exceeding 27 months as a spouse or civil partner of a person present and settled in the United Kingdom or an unmarried or same sex partner of a person present and settled in the United Kingdom (b) the grant of leave to remain as the spouse or civil partner or unmarried partner or same-sex partner in accordance with paragraphs 285 or 295E of the Rules (c) the relationship with the spouse or civil partner or unmarried partner or same-sex partner was subsisting at the beginning of the last period of leave granted in accordance with relevant provisions of the Rules and (d) is able to produce evidence to establish that the relationship was caused to permanently breakdown before the end of that period as a result of domestic violence.
11. The Judge noted that the relevant qualifying period of 12 months expired on 27 January 2001 yet the appellant did not leave her husband's property until 2010. Based on the evidence before the Judge, the finding that the appellant had failed to show that the relationship had broken down before the end of the appropriate period as a result of domestic violence was a conclusion fully open to the Judge on the facts.
12. In relation to the judge's finding that the appellant was divorced, this was a conclusion fully open to the Judge. The source of which is to be found within the Independent Social Workers report in the applicant's appeal bundle. The conclusion by the Judge based upon that evidence was a finding fully open to her based on the appellant's own evidence.
13. The Judge properly considered the requirements of paragraph 276ADE and no arguable legal error is made out in relation to [19] where the Judge assesses the nature of the ties the appellant has to Pakistan. Finding that very significant obstacles to return to Pakistan had not been made out is a conclusion fully open to the Judge based on the evidence provided.
14. The Judge proceeded to consider the merits of the Article 8 claim outside the Immigration Rules by following the five-step structured approach in *Razgar [2004] UKHL 27* in which the Judge had regard to section 117 A and B of the Nationality, Immigration and Asylum Act 2002. The Judge was also aware of the need to consider the best interests of the appellant's children from her second marriage, having given adequate and sustainable reasons for why it was not necessary to consider the best interests of the children from the first marriage.

15. The conclusion the best interests of the children of the second marriage are to remain with their mother with whom they shall be removed as a family unit is a finding reasonably open to the Judge.
16. The reality of return for the appellant with two young children was clearly in the Judges mind. There is specific reference to the appellant claiming that she will be homeless on return to Pakistan and consideration of the relevant country guidance and reported decisions of the Upper Tribunal relating to the availability of shelters and effective protection for women who have been victims of domestic violence who are returned to Pakistan. The appellant is divorced and free to marry reducing the risk of family reprisals.
17. The Judge who heard the appellant give evidence considered the written material and concluded that the appellant's claims were not credible and there was nothing preventing her taking advantage of the available support in Pakistan, including accommodation and other resources available.
18. Although the Grounds raise several issues they fail to establish any arguable legal error material to the decision to dismiss the appeal in the determination under challenge.
19. The Judge considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made, all of which fall within the range of findings reasonably open to the Judge on the basis of the evidence she was asked to consider.

Decision

20. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

21. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed……………………………………………….
Upper Tribunal Judge Hanson

Dated the 19th May 2017