



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Numbers: HU/07992/2019

THE IMMIGRATION ACTS

**Field House
On 29th October 2019**

**Decision & Reasons
Promulgated
On 31st October 2019**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**ROHIT [M]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, of Counsel, instructed by Lloyds Clifford
Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of India who came to the UK in June 2001 and claimed asylum. That application was refused, and his appeal was dismissed. He then overstayed in the UK. He married a British citizen, Ms [AA], in October 2012, and applied to remain on the

basis of this marriage in 2013. This application was granted, and he had leave to remain on the basis of the marriage from 13th May 2013 to 13th November 2015. His leave was then extended until 10th July 2018 on the basis of his marriage. However, on 15th October 2016 he was ejected from the family home, and he commenced divorce proceedings on 17th October 2017 with the divorce being made absolute on 1st December 2017.

2. On 10th July 2018 the appellant applied for indefinite leave to remain on the basis that he had been a victim of domestic violence. This application was refused, and he applied again on 31st August 2018. That application was refused too with a right of administrative review, which upheld the refusal decision on 21st December 2018. The appellant then submitted a pre-action protocol letter which the respondent treated as a human rights' application, and refused in the decision of 16th April 2019 with a right of appeal.
3. The appellant's appeal against the decision refusing the human rights application was dismissed by First-tier Tribunal Judge Wylie in a determination promulgated on the 2nd July 2019.
4. Permission to appeal was granted by Upper Tribunal Judge Blum on 23rd September 2019 on the basis that it was arguable that the First-tier judge had erred in law in failing to consider the appellant's evidence that he had been a victim of domestic violence and rejecting the contention due to a lack of corroborative evidence.
5. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions -Error of Law

6. In the grounds of appeal and oral submissions it is argued, in short summary, that the First-tier Tribunal Judge erred in law at paragraphs 23 to 24 of the decision as there was a failure to consider the credibility of the appellant's own evidence that he had been a victim of domestic violence, particular as it is argued that he had been subjected to a pattern of coercion because his ex-wife and family had called the police and he had been subject to prosecution for assault. It is argued the First-tier Tribunal erred in law because it simply noted that there was insufficient reliable evidence to support the claim. It was not considered that mental abuse, such as the threatening, abusive and coercive behaviour experienced by the appellant, is unlikely to leave corroborative injuries and less likely to lead to the involvement of the police, and that the appellant, as a man, is less likely to have reported the abuse.

7. In a Rule 24 response and in oral submissions the respondent argues that the First-tier Tribunal did consider the quality of the appellant's evidence as it is said that there were no specific details or a description of what happened. It was not necessary for the Judge to set out the full evidence before him. There was no evidence that the appellant had contended before the First-tier Tribunal that he had been subjected to threatening and punishing behaviour through the police prosecution. The fact that it would be potentially possible to find domestic violence on a such a factual matrix did not mean that the First-tier Tribunal had erred in this case. The appellant was simply trying to reargue his case before the Upper Tribunal.

Conclusions - Error of Law

8. The history of the appellant's troubles with his ex-spouse and her two children S and A is set out in the decision at paragraphs 9 and 10. It was a submission of his legal representative, recorded at paragraph 18 of the decision, that this evidence should be accepted as evidence of physical and emotional abuse. The evidence of the appellant is considered at paragraph 23 of the decision, but it is found to be lacking specific details and a full description of what happened. The totality of the evidence is found at paragraph 24 of the decision to be insufficient to show on the balance of probabilities that the appellant has been a victim of domestic violence.
9. I do not find that the First-tier Tribunal has erred in law. The decision was rationally open to them on the evidence and is sufficiently reasoned. The evidence of the appellant was clearly considered as set out above. There is no contention in the oral or written evidence from the appellant before the First-tier Tribunal that the appellant's wife and her children calling the police during the "altercation" in 2013 or the police prosecution of the appellant were elements of coercive threatening domestic violence, see the witness statement of the appellant at page 6 of the trial bundle before the First-tier Tribunal. It was rationally and lawfully open to find that the history of family conflict which led to the appellant leaving the family home, which is set out by the appellant in his evidence, did not show on the balance of probabilities that the appellant had been a victim of domestic violence. I find that the First-tier Tribunal did not unlawfully require supporting evidence as a condition for a finding of domestic violence, but simply factually noted that there was none in this case.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal dismissing the appeal on human rights grounds.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 29th October 2019