**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/14849/2019 (V)

**THE IMMIGRATION ACTS**

**Heard at : Field House**
**On : 9 November 2020**

**Decision & Reasons Promulgated**
**On 20 November 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**MALU [P]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr D Canter, instructed by BS Singh & Co Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection by the parties. The form of remote hearing was Skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appeal comes before me following the grant of permission to appeal to the Upper Tribunal.

3. The appellant is a national of India, born on 16 December 1994. She entered the UK on 8 November 2015 with leave to enter as the fiancée of her sponsor, Jack [C], and was

subsequently granted further to leave to remain as the spouse of her sponsor, valid until 16 September 2018.

4. On 9 August 2018 the appellant made an Article 8 application for leave to remain on the basis of her family life with her husband. On 20 August 2018 written representations were made in support of the application by the appellant's legal representatives. It was explained in the representations that Mr [C]'s physical and mental health had declined to such an extent that it was no longer possible for him and the appellant to live together. Mr [C] had been diagnosed with emotionally unstable personality disorder and persistent subthreshold depressive symptoms and, as a result of his condition, he was liable to outbursts and anger or violence. He also suffered from Friedreich's Ataxia, which was a neurological condition. He had been physically and emotionally abusive towards the appellant as a result of his mental health condition. The couple hoped, however, that the situation would change and they could resume living together and the appellant remained in a close relationship with the sponsor's parents.

5. With the application, the appellant submitted a letter of support from a friend of herself and her husband, [AP], a psychiatric report, a statement from the sponsor and his father and other supporting evidence.

6. The appellant's application was refused on 19 August 2019, a year later, on the grounds that she failed to meet the eligibility requirements of E-LTRP.1.7 of Appendix FM of the immigration rules as she was no longer in a subsisting relationship with Mr [C]. The respondent noted the appellant's statement in her application form that she and Mr [C] no longer lived together due to a decline in his mental and physical health and that he had been physically abusive towards her and had attempted suicide in the past. The respondent considered that the appellant could not, therefore, meet the requirements of Appendix FM on the basis of family life and that neither could she meet the private life requirements in paragraph 276ADE(1) as there were no very significant obstacles to her integration in India. The respondent considered that the appellant's circumstances were not sufficiently compelling to justify a grant of leave outside the immigration rules.

7. The appellant appealed that decision. In her grounds of appeal it was submitted on her behalf that she was no longer living with Mr [C] because, as a result of his mental health conditions, he had been abusive towards her to such an extent that it was impossible to continue living with him. However they continued to see each other and remained married and did not intend to separate. The appellant had spent holidays with his family and there was a hope that the situation would improve. The respondent had failed to consider that the situation the appellant found herself in was unique as she remained committed to the marriage and was hoping the situation would improve as her husband was seeking treatment for his mental health problems.

8. The appellant's appeal came before First-tier Tribunal Judge Cox on 7 November 2019. The judge recorded the appellant's evidence before her, that she had met her husband when she was working in a hotel in India and that the relationship had progressed quickly, with a marriage proposal in less than a month. Her family was not happy about the relationship and her parents had tried to arrange a marriage for her when

Jack returned to the UK, but she had not agreed. Jack then returned to India and they lived together for some time. She did not speak to her parents during that time, but she spoke to her brother a few times, when she called him. However he lived with their parents and so could not be seen to be going against them. The appellant described the abuse she had suffered which culminated in an incident on 11 June 2016 when she fled the house in her pyjamas and took refuge with some people she met until she was able to return to the house after Jack had left. The judge also heard from the couple's mutual friends, [AP] and [JB], whose evidence confirmed the appellant's account of the violence she suffered from her husband. In his submissions before the judge, the appellant's representative Mr Canter sought to argue that the appellant fell within the domestic violence provisions of the immigration rules and that, whilst she could not meet the requirements of the rules themselves because she had not made an application on that basis, the appeal should be allowed outside the rules on the basis that the decision to remove her was disproportionate and in breach of Article 8. He also relied on paragraph 276ADE(1)(vi) of the immigration rules.

9. Judge Cox did not accept that there were very significant obstacles to the appellant's integration in India, as she had lived alone previously during the periods when Jack had returned to the UK, there was no indication that her parents would resort to violence against her and she had the support of her brother, Jack's parents and her friends. As for the domestic violence provisions, the judge considered that it was not clear from the evidence before her that the violence was the reason why the marriage ended. The judge noted the reference to hopes of reconciliation, to the long separation and to Jack's parents saying that the couple could not live together at the moment. It was not clear that the marriage had broken down and there was no satisfactory evidence as to when the relationship ended. The judge considered that the appellant had not provided her legal advisers with all the facts that were now presented and had not instructed them that the marriage was at an end for reasons of domestic violence, as they would have known to make an application on that basis under the rules if that was the case. The instructions she had given to her advisers was that she remained married and did not want to separate from her husband. The judge accordingly refused to give weight to the submission that the appellant would have succeeded in a domestic violence claim had she made an application on that basis. She found that the appellant's circumstances were not exceptional and she concluded that the respondent's decision was proportionate and dismissed the appeal.

10. The appellant sought permission to appeal that decision to the Upper Tribunal on the following grounds: that the judge's finding, that the appellant's marriage did not end because of domestic violence, was contrary to the unchallenged evidence, as it was clear that the relationship ended in June 2016 when the appellant left the marital home, and therefore the judge's Article 8 assessment was flawed; and that the judge had erred in law in her assessment of very significant obstacles to integration for the purposes of paragraph 276ADE(1)(vi) and had failed to consider the expert evidence submitted.

11. Permission was granted by the First-tier Tribunal on 18 May 2020 and the matter then came before me. Both parties made submissions.

12. Mr Canter expanded upon the grounds. With regard to the first ground, he submitted that, although the appellant did not make an application for leave to remain on the basis of domestic violence, she met the most significant requirements of the relevant immigration rule, namely that her marriage had broken down permanently because of the domestic violence. There was copious, undisputed, evidence showing that the appellant had suffered domestic violence and there was therefore no proper reason for the judge's finding, at [47], that it was not clear that the marriage had ended because of domestic violence. The judge's finding in that regard amounted to a material error of law. As for the second ground, Mr Canter submitted that the judge had erred in her findings in relation to very significant obstacles: she had wrongly considered the time the appellant lived apart from her family in India as a comparison in assessing the appellant's ability to live alone in India, when she had been living with Jack some of the time and was living with his friend; her finding that the appellant would have the support of her brother was not supported by the evidence; she had wrongly taken account of continuing financial support from Jack's parents when there was no evidence that that support would continue; and she had found that the appellant would receive financial support from her friends in the UK without putting that to the witnesses.

13. Ms Everett submitted that it was not correct to say that the judge couldn't have found that the appellant's marriage broke down for any other reason than domestic violence and it was open to her to find that there was a possibility of reconciliation and to reach the conclusion that she did. Ms Everett accepted, however, that if it was considered that the judge could only have found that the marriage broke down at the time the appellant left the marital home in June 2016, then there was an error of law in her decision. As for the second ground, Ms Everett submitted that the judge was entitled to conclude that the evidence did not demonstrate very significant obstacles to integration in India.

**Discussion and Findings**

14. I am in agreement with Ms Everett that the second ground is not made out. The threshold for demonstrating very significant obstacles to integration in India is a high one and the judge was entitled to find that it was simply not met on the evidence before her. Indeed, whilst permission to appeal was granted on all grounds, the arguable error specifically identified in Judge Grant's decision was in relation to the first ground.

15. As for the first ground, it is necessary to be particularly careful to separate my own views on the evidence from the relevant issue before me, namely whether Judge Cox erred in law and whether she could not have reached the decision that she did on the evidence before her. Ms Everett readily acknowledged that that was a difficult exercise. There was no dispute that the appellant had been the victim of domestic violence and had suffered serious physical abuse from her husband. However, the reason why the judge concluded that the appellant did not meet the domestic violence provisions in the rules was not because she had doubts about the violence, but because she did not consider it to be clear from the evidence before her that the marriage had actually broken down permanently. Whilst I can understand why the judge concluded as she did, given the references in the evidence to hopes of reconciliation and to the appellant remaining close to her husband's family and remaining involved in details of his life, it seems to me that ultimately the

judge erred by concluding that the evidence did not show that the relationship had broken down permanently.

16. It was clear from the unchallenged evidence that the appellant and her husband separated on 11 June 2016 when she fled the marital home after being physically abused. It is also clear from the evidence that the appellant and her husband had remained living apart from that date and at one point did not see each other for over a year. Where this case differs from others involving domestic violence is the fact that the appellant still loved her husband and remained in contact with him and his family, recognising that the violence arose from a mental illness over which he had no control and not wishing him to be punished for his behaviour through criminal proceedings. However that did not mean that the marriage had not broken down permanently. It seems to me that the judge's error lay in her speculation that the relationship may continue and in the weight she gave to the appellant not having put her case on that basis in her application. However the latter was adequately explained by the unusual circumstances of the appellant's continuing connection to Jack and her involvement in his life and with his family, and the former was simply not made out on the evidence of what was, by the time of the hearing, a three and a half year separation. It seems to me, therefore, that the evidence before the judge ought to have led her to accept that the appellant's marriage had broken down as a result of the domestic violence that she suffered and that the marriage and relationship came to a permanent end on the day the appellant fled her home after being physically abused on 11 June 2016.

17. Ms Everett properly acknowledged that if I concluded that the judge was wrong to say that it was not clear when and why the relationship broke down, then I must find an error of law. She also accepted that if such an error of law was found and the first ground was considered to have been made out, the way in which the grounds had been put were such that the appeal could be allowed without a further hearing. Accordingly, I do find that the judge erred in law and I therefore set aside her decision and re-make it by allowing the appeal. I do so on the basis that, absent the requirement for an application to have been made, the requirements of the immigration rules relating to domestic violence have been met by the appellant and that, there being no adverse public interest factors, the respondent's decision to refuse leave to remain is disproportionate and in breach of the appellant's Article 8 human rights.

## DECISION

18. The making of the decision of the First-tier Tribunal involved an error on a point of law. I set aside the decision and re-make it by allowing the appeal on Article 8 grounds.

Signed: *S Kebede*
Upper Tribunal Judge Kebede Dated: 11 November 2020