



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001812

First-tier Tribunal No: HU/51692/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6th July 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Mr Muhammad Abdullah
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr R K Rai, counsel instructed by Iqbal Law Chambers
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 15 June 2023

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Broe heard on 17 January 2022. Permission to appeal was granted by First-tier Tribunal Judge Scott on 27 April 2022.

Anonymity

2. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

3. The appellant is a national of Pakistan aged thirty-one. He was granted leave to enter as a partner and entered the United Kingdom in this capacity on 4 August 2018. His relationship with his partner broke down as of 1 November 2019. On 13 August 2020, the appellant applied for indefinite leave to remain as a victim of domestic violence. That application was refused without a right of appeal on 30 October 2020. The appellant challenged that decision in a pre-action protocol letter, following which his application was reconsidered by the respondent. That reconsideration led to a further decision dated 21 April 2021, which is the subject of this appeal.
4. In the decision letter of 21 April 2021, it suffices to say that the respondent concluded that the appellant failed to provide sufficient supporting or corroborating evidence to substantiate his claim to be a victim of domestic violence.

The decision of the First-tier Tribunal

5. The appellant, who was the only witness, gave evidence at the hearing before the First-tier Tribunal, stating that the abuse he encountered included physical assaults. The judge noted that the supporting letters made no reference to domestic violence and that the GP's letter made no reference to the appellant being subjected to physical violence and found that this inconsistency damaged the credibility of the appellant's claim.

The grounds of appeal

6. The grounds of appeal referred to a letter from a psychotherapist relied upon by the appellant, arguing that the judge erred in finding that it did not prove that the appellant was a victim of abuse and in failing to give adequate reasons for rejecting the expert's view.
7. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

There is an arguable error of law. At [27], the Judge refers to the letter from Mr Jasmer Chauhan and states that he is 'not persuaded that the descriptions of his [the appellant's] condition given by the...psychotherapist prove that he was a victim of abuse.' In his letter, Mr Chauhan opines that 'the level of trauma that Mr Abdullah has experienced since being in this marriage is clearly visible in his emotional and psychological presentation.' It is arguable that the Judge failed to take Mr Chauhan's opinion of how the appellant presented before him into account when making his findings that the appellant was not a victim of abuse.

8. The respondent filed a Rule 24 response dated 24 May 2022. In it, the appeal was opposed, with the following comments being made.

It is noted that the grounds of appeal refer to the report of an expert medical evidence. It is respectfully submitted that it is clearly nothing of the sort as it fails to comply with a single requirement of an expert report. There are no instructions, no indication of the author's expertise, no indication of how long the assessment took, and no evidence that the author of the report had seen any of the Appellant's medical records. The report has evidently relied on nothing more than the Appellant's own testimony.

The psychotherapist report evidently has not considered if the Appellant was feigning his symptoms and the FTT was therefore entitled to find that evidence did not support the claim that he was a victim of domestic abuse.

The error of law hearing

9. Ms Ahmed confirmed at the outset of the hearing that the appeal was opposed. Mr Rai stated that the appellant was delayed in attending the hearing but that he was content to proceed in the appellant's absence. Thereafter I heard succinct submissions from both representatives in support of their respective positions. In summary, Mr Rai argued that it was irrational for the judge to conclude that there was no evidence of domestic abuse against the appellant, that the judge did not provide a balanced view of the report and there were no negative findings against the appellant nor the report in the decision and reasons. Ms Ahmed argued that the judge carefully considered the evidence in the psychotherapist's report, noted that the writer of that report made no claim that the appellant was the victim of domestic abuse and the judge made adverse points regarding the credibility of the appellant's evidence.
10. At the end of the hearing, I informed the representatives that the decision of the First-tier Tribunal judge contained no material error of law. I give my reasons below.

Decision on error of law

11. The grounds contend that it is irrational for the judge to conclude that the letter from Mr Jasmer Chauhan, did not 'prove' that the appellant was a victim of abuse. At paragraph 3 of the grounds, an extract of the report is set out which begins with the statement, 'since marrying his wife and relocating to the U.K. Mr Abdullah has experienced ongoing neglect in the form of emotional, psychological, and physical abuse.' This sentence in isolation gives the impression that Mr Chauhan is providing a supporting opinion however, when the preceding paragraphs are considered, it is obvious that the psychotherapist is, at this part of the report, merely recording what the appellant told him during the assessment.
12. At paragraph 4 of the grounds, the following extract is provided from the penultimate paragraph of the report, 'the level of trauma that Mr Abdullah has experienced since being in this marriage is clearly visible in his emotional and psychological presentation.' This extract does appear to suggest the psychotherapist has accepted that the appellant has experienced trauma in his marriage. This extract was set out by the judge at [17] of the decision and it is therefore clear that it was taken into consideration as part of the judge's global assessment of the evidence. At [27], the judge reached the following conclusion.

I accept that his marriage has broken down. That does not appear to be in dispute. I do not however accept that the relationship broke down permanently as a result of domestic abuse. He has not established this. I find it likely that the Appellant will have found the experience to be distressing but I am not persuaded that the descriptions of his condition given by the GP and the psychotherapist prove that he was a victim of abuse. The requirements of the rules cannot therefore be met. The Appellant has not discharged the burden of proof.
13. It was open to the judge to find that the marriage breakdown was distressing for the appellant but that there was insufficient evidence that this breakdown was owing to domestic abuse given that the psychotherapist's opinion, that the 'level

of trauma is visible' falls far short of saying that the appellant's presentation was consistent with a survivor of domestic abuse.

14. The judge's conclusion took into consideration all the evidence in the round and therefore the comments at [27] must not be read in isolation but alongside other findings by the judge.
15. The judge made additional findings between [22-25]. Noting that the supporting letters from friends, which also accompanied the appellant's the human rights application, contained no mention of domestic abuse, the authors of those letters provided no further information for the appeal nor attended the hearing and there was no statement or attendance by the appellant's brother with whom he stayed after his marriage broke down.
16. Contrary to Mr Rai's submission, the judge noted inconsistencies in the evidence including that the appellant told his GP that he had no close relatives despite two of his brothers living in Bedford and there was no mention in the letter from the GP of the appellant being subject to physical abuse yet the appellant, during his oral evidence, relied on a statement in which he referred to being subjected to slaps and kicks. These findings are not challenged.
17. I conclude that the judge gave adequate reasons, which were wholly supported by the evidence, for concluding that there was insufficient proof that the appellant's marriage broke down on account of domestic abuse. There was no error in the approach of the judge.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 June 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.