



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006136
First-tier Tribunal No:
HU/05040/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued
On the 19 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MARTHA YVETTE ASIIMWE
(ANONYMITY ORDER NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jafar
For the Respondent: Ms Amira

Heard at Field House on 19 June 2023

DECISION AND REASONS

1. This is the appeal of Martha Yvette Asimwe against the decision of the First-tier Tribunal (of 3 November 2022) to dismiss her appeal, originally brought against the Respondent's decision (ultimately of 23 November 2021) to refuse her application on human rights grounds as a domestic violence victim.

Background to appeal

2. The immigration history provided by the Respondent sets out that the Appellant entered the UK as a partner on 12 May 2018, with leave valid until 8 September 2018, extended until 22 April 2022. She had previously resided here from August 2011 to January 2016.

3. On 9 October 2020 she applied for indefinite leave to remain as a victim of domestic violence. That application was refused because the Respondent did not accept that she had provided sufficiently independent evidence of her experiences as the accounts detailed by each source came directly from the Appellant's personal verbal testimony and not from a reliably independent source; the same could be said of the psychological report by Georgia Costa, of the Willoughby Place. A letter from Dr Gupta, her GP, of 2 October 2020 did not establish that the author's opinion was supported by an examination of the Appellant by a person trained to investigate domestic violence, and failed to indicate whether any of her illnesses might be attributable to that source. The divorce decrees supplied were issued pursuant to proceedings that made no finding on this issue.

4. Evidence prayed in aid by the Appellant before the First-tier Tribunal included
 - (a) A letter of 6 October 2020 from NHS Talking Therapies (Barking & Dagenham) stating "Ms Martha Yvette Asimwe is presenting with symptoms consistent with depression, anxiety stress and isolation due to her experiencing domestic abuse ..."

 - (b) A letter from her GP of 2 October 2020 stating that she was a victim of domestic violence and had commenced antidepressants and was being seen by counselling services.

 - (c) Psychologist Georgia Costa's Psychological Report of 5 July 2020 setting out her opinion that:

"Ms Asimwe is suffering with mental health issues as a result of the situation she finds herself in. She went against her parents and gave up her life to come to the UK and marry a man she fell in love with. Since being here she has discovered that her husband is not the man she thought he was and she has been left in a very difficult situation. Her family have disowned her and she has been locked at home with her abusive husband and family. This has been a very traumatic experience for her as she does not feel able to return to Uganda because of the situation with her family and yet remaining with her husband is intolerable. She is incredibly stuck with a perceived lack of choices. This has severely impacted her mental health."

5. The Judge below directed himself that "Since the standard of proof is the balance of probability, mere assertions on the appellant's part would not, in my judgement, be sufficient to discharge the burden of proof." He found
 - (a) It was surprising that the Appellant had only registered with a GP Practice on 24 June 2020: it was highly surprising and significant

given it was just a few months prior to the appellant's claimed date of breakdown of the marriage which suggested advanced planning in procuring evidence; it was highly implausible that she only learnt that she was not registered with a GP from the Accident and Emergency department in Barking in June 2020 after the pandemic restrictions were lifted. She would surely have been aware having lived in the UK for some time that a third party cannot register someone with a GP.

- (b) The GP's letter did not advance her case: she clearly had not reported domestic violence to the GP given that the records did not show any referral to the police or social services being made (or offered to her). She had not told the doctor that she had been repeatedly locked up forcibly in the bedroom which cast doubt on whether that aspect of her account was true.
- (c) The evidence of her friends did not assist: were her account true, it could be assumed that they would have helped her contact the emergency services. There was an inconsistency between her evidence and that of her friend as to why the Appellant had not approached the police: the Appellant said that it was because her experience of the Ugandan police was that they did not assist domestic violence victims, whereas her friend said that she had tried to reassure the Appellant that the police here took such matters seriously.
- (d) It was implausible that the Appellant's family would both encourage his mistreatment of her but also wish for her to bear his child, that they would want the Appellant to convert to Islam given her husband himself drank socially (inconsistently with that faith), and the proposition that they would have the resources to escort her when she exercised "*smacks of pursuing a line to fit in with the definition of domestic violence*".

6. Having rejected the Appellant's claim to be a domestic violence victim, the appeal failed on that ground. As to any residual human rights claim, she was a well-educated woman able to make a living for herself in Uganda and the immigration decision did not result in unjustifiably harsh consequences.

Permission to appeal

7. Grounds of appeal of 11 November 2022 contended that the Judge had materially erred in law because
- (a) He was wrong to direct himself that independent corroborative evidence was essential when the common law starting point was that a witness could establish their case on oral evidence alone.

- (b) The finding that the GP's evidence did not corroborate her account of domestic violence was made without regard to the express acceptance of her evidence to such effect, one letter stating in terms that she was a domestic violence victim, been proscribed antidepressants and was being seen by counselling services.
 - (c) It was wrong to make credibility findings based on assumptions as to how the perpetrators might act: in particular their conduct might not be rational.
8. The First-tier Tribunal granted permission to appeal on the basis that it appeared that the Judge had arguably erred in law in several respects: eg failing to engage with the psychologist's conclusion that the Appellant's mental health problems were due to her husband's abuse, finding that the hospital could not determine whether someone was registered with a GP, and drawing an adverse inference from the perceived failure of the GP to refer her on to other services, that expectation transcending the professional duties of doctor to patient.

Upper Tribunal hearing

9. For the Appellant Mr Jafar concisely developed the submissions in the grounds of appeal. Ms Amira in response submitted that the psychological report had been effectively addressed via the Judge's findings which amounted to adequate reasons: he had not simply made presumptions but given clear and brief reasons which showed no error of law.

Decision on error of law

10. As the Court of Appeal accepted in Ishtiaq [2007] EWCA Civ 386, bearing in mind the purpose of the domestic violence immigration route, it would not be lawful to construe the relevant Immigration Rules such that an applicant may only prove the necessary facts by producing evidence of the kind prescribed by the Secretary of State in instructions to caseworkers. That is further authority beyond that cited before me via Re B that Judges should make a holistic evaluation of the evidence relied on without simply making presumptions based on a lack of corroborative evidence. It is not correct for a Judge to direct themselves that satisfaction of the balance of probabilities presupposes the availability of corroborative evidence. In any event, in this appeal there was corroborative evidence available via the Appellant's friends who had supported her appeal.
11. It seems to me that the errors identified as arguably established in the permission grant are in fact made out on a fuller investigation of the appeal. Several of the First-tier Tribunal's findings are speculative and based on assumptions as to plausibility which the long-established jurisprudence of this Tribunal strongly discourages. It is perfectly possible that NHS staff at a hospital will be able to determine whether

someone is registered with a GP. Whether or not a GP surgery will refer an individual on to counselling and other support services will depend on a patient's willingness to acquiesce to that happening.

12. As the error of the First-tier Tribunal was central to the facts it ultimately found, the appeal will have to be re-heard. The nature and extent of the fact-finding is such that the First-tier Tribunal is the more appropriate forum and so the appeal is remitted for that purpose.

Decision:

- (1) The decision of the First-tier Tribunal involved the making of an error on a point of law.
- (2) I set aside the decision.
- (3) I remit the appeal for hearing afresh before the First-tier Tribunal.



Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

17 July 2023