



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/33899/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Determination  
Promulgated**

**On June 24, 2014**

**On July 23, 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**MR MIRZA HAFIJUR BEIG  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr Timpson, Counsel, instructed by Maya  
Solicitors

For the Respondent: Ms Johnstone (Home Office Presenting Officer)

Interpreter: Mr Rahman

**DETERMINATION AND REASONS**

1. The appellant, born June 12, 1982, is a citizen of Bangladesh. On May 9, 2005 the appellant was issued with entry clearance as the spouse of a person settled in the United Kingdom. He

entered the United Kingdom on June 20, 2005 and was granted leave to enter until May 8, 2007. On March 15, 2011 the appellant was detained as an overstayer and served with form IS151A as a section 10 overstayer. On May 3, 2011 he submitted an application for indefinite leave to remain as a victim of domestic violence but as he was an overstayer his application was refused without a right of appeal on July 11, 2011. On July 8, 2013 he submitted a fresh application for indefinite leave to remain as a victim of domestic violence. The respondent refused the application having considered it under paragraph 298A HC 395, Appendix FM and paragraph 276ADE HC 395. The respondent also found there were no exceptional circumstances that would persuade her to allow the appeal outside of the Immigration Rules under article 8 ECHR.

2. On August 28, 2013 the appellant appealed under Regulation 26 of the Immigration (European Economic Area) Regulations 2006.
3. The matter came before Judge of the First-tier Tribunal VA Osborne (hereinafter referred to as "the FtTJ") on March 26, 2014 and in a determination promulgated on April 11, 2014 she found the appellant did not satisfy the EEA Regulations because she was neither satisfied he was living in a relationship akin to a marriage nor that the sponsor was a qualifying person. She went on to dismiss his appeal under article 8 on the basis the appellant did not meet the requirements of Appendix FM and paragraph 276ADE of the Immigration Rules and she further found there were no exceptional circumstances that persuaded her to consider the appellant's family life/private claims outside of the Immigration Rules. The appellant was offered an in-country right of appeal after a decision had been taken to remove him on August 5, 2013.
4. The appellant appealed that decision on August 16, 2013 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. The appeal was listed before Judge of the First-tier Tribunal Pickup (hereinafter referred to as the FtTJ) on December 3, 2013 and in a determination promulgated on December 6, 2013 he dismissed his appeals under the Immigration Rules and article 8 ECHR.
6. The appellant appealed this decision on December 16, 2013 and Designated Judge of the First-tier Tribunal MacDonald considered the matter on December 23, 2013. He refused the appellant permission to appeal finding the grounds amounted to nothing more but a disagreement. The grounds of appeal

were renewed to the Upper Tribunal on January 10, 2014 and on January 30, 2014 Upper Tribunal Judge Rintoul granted permission to appeal finding the FtTJ may have erred in his approach to what constituted domestic violence.

7. The matter was listed before Upper Tribunal Judge Chalkley on April 28, 2014 for an error of law argument. At that hearing he found there had been an error of law and he issued directions for the future conduct of the matter.
8. A transfer order was made on May 24, 2014 releasing this appeal to be heard by any Deputy or Upper Tribunal Judge and the matter was listed before me on the above date.
9. The appellant's solicitors indicated through their counsel they had not received the directions but confirmed that they had read all statements to their witnesses in a language they understood and no amendments were needed to any of them and each witness would be adopting his or her statement.
10. At the outset of the hearing I raised with the representatives whether the respondent had considered this under the correct rule. As this was an application submitted after July 9, 2012 and the appellant's extant leave had expired in 2007 I indicated that this application should be dealt with under Section DVILR of Appendix FM of the Immigration Rules. The respondent had considered the application under paragraph 298A HC 395 but in my opinion this was not applicable to this appeal because firstly the application had been made after July 2012 and secondly the appellant's extant limited leave had expired and the transitional arrangements would not apply to his appeal. Mr Timson agreed my view was correct albeit nobody had previously dealt with this and he was content to proceed on that basis.
11. I have taken into account all of the evidence that was submitted to the FtTJ and I have also had regard to my record of proceedings, the relevant IDI, case law and the submissions of the two representatives.

### **THE APPELLANT'S CASE**

12. The appellant adopted his statement and gave oral evidence. He was then cross-examined by Ms Johnstone and he also answered questions put to him by myself.
13. The appellant's claimed his uncle arranged his marriage to Akima Bibi, a British citizen. Their marriage had taken place in Bangladesh and shortly afterwards he had applied for entry

clearance as a spouse and that this application had been granted. He had to pay a large dowry prior to the marriage and this money was still outstanding.

14. He stated that he and his wife originally lived in London for four months and then they moved into her father's house in Hyde, Cheshire. They lived there together for about six months and then moved into her brother's house.
15. The appellant claimed his marital difficulties began whilst he was living in her father's house. He described his wife as being hot-tempered and under the control of her father. She and her father insisted he handed over his wages to her father, as he was the head of the family. The appellant resented this because he had earned the money and felt he should not have to pay all of his wages to his father-in-law. However, in order to maintain peace and harmony he agreed to hand over his wages. His father-in-law would give him money back, which the appellant described as pocket-money.
16. After the appellant and his wife moved into his brother-in-law's house there were still problems because his brother-in-law was on drugs and was quite violent at times because of the drugs. The appellant did not elaborate on this during his oral evidence.
17. The appellant confirmed that the marital strife with his father-in-law continued over money and his wife always backed her father rather than him. In answer to a question posed by myself he agreed that prior to any allegation of domestic violence, his marriage was experiencing problems because his wife and father-in-law took all his money and this made him feel bad. In response to a question "So were the money problems the cause of the breakdown of your marriage" he responded, "Yes it was a major problem and she was a very angry person. I did not do anything without her permission. She wanted control."
18. The appellant referred in his witness statement to being hit by his father-in-law in an argument about money and he stated this shocked him. He said this prompted him to speak to his wife about leaving the Hyde area but she wanted to remain where they were living. The appellant believed this was because she was under her father's control.
19. He then described two incidents that he now relies on as evidence he was the victim of domestic abuse. In his statement, confirmed in cross-examination, he stated that both his wife and father-in-law physically beat him. He reported this to his sister's husband, Shahed Ahmed, by calling him. He suffered redness to his cheek but this injury would not have

been visible to Shahed because he did not see him until the following day. He suggested any discrepancy between this account and what he told Shahed was possibly a typing error.

20. In his witness statement he claimed that a few days later a further incident took place. During cross-examination he suggested the incident occurred two to three months later and when challenged about this discrepancy he stated the incident had occurred a long time ago (eight years ago). He described contacting Shahed and telling him that he had been locked out of his own house. Shahed and a number of others (all witnesses at today's hearing) turned up at the house and they all went inside to try and resolve the problems. During this discussion the appellant stated both in his written statement and his oral evidence that his father-in-law, brother-in-law and wife had assaulted him. He told me that his wife and in-laws had punched, slapped and kicked him to his face and body. He had no marks but the blows caused him pain.
21. They left the house and since that date he has not personally spoken to his wife. He felt shocked and hurt by her actions and in particular that his wife had slapped him in front of other people. In 2010 he became aware that his wife had remarried but maintained that he had never received any divorce papers.
22. He believed that his marriage had broken down because of her violence and believed the marriage may have survived if they had moved away from the area as he had suggested.
23. He did not report the matter to the police because he was ashamed about what had happened
24. Ms Johnstone cross-examined him on the following matters:
  - a. Whether his wife had re-married-He replied that he had never received any papers but a man who lived in Hyde, Abdul Majid, told him that she had remarried in 2010. He was unaware where she lived now or what her current circumstances were.
  - b. He blamed any inconsistencies on the fact the events occurred a long time ago or possibly a typing error.
  - c. He did not keep a diary but may have kept notes of events. He had not made a note of the incident when he was assaulted in front of a number of witnesses.
  - d. In so far as the witnesses were concerned he confirmed prior to the incident detailed above he did not know Ali

Choudhury and he knew, through marriage, Shahed (wife's husband), Khalid Miah (Shahed's brother-in-law), Helena Begum Khan (Mr Miah's wife) and Mussamat Lovely Begum (Appellant's sister). With the exception of Mussamat and Shahed he had little to do with the other witnesses.

- e. He confirmed in his oral evidence he had worked for two to three years in the United Kingdom. According to his witness statement he had given up work around March 2011.
  - f. He had not applied to remain between 2006 and 2011 because his wife had his passport. He accepted he made his first application after the police had arrested him as an overstayer.
  - g. He feared he would face problems if returned to Bangladesh because he owed money.
25. In re-examination the appellant clarified he did not keep a formal diary but he was sure he wrote things down. He had not been to see a doctor because he was not fully confident in English and he also saw the same doctor as his wife had been seeing. He had not reported matters to the police because his wife kept an eye on him.

## **WITNESS EVIDENCE**

### **Shahed Ahmed's evidence**

26. Shahed Ahmed adopted his witness statement and stated he first became aware of the appellant's marital problems when he received a call from the appellant. He confirmed that he had visited the appellant's in-law's house on two separate occasions. On the first occasion the appellant told him that his wife had assaulted him in front of his in-law. He went round to their property and spoke to her parents and he stated that the in-laws told him they would look into the incident and try and resolve things between the appellant and his wife. Under cross-examination he stated that he had called the appellant's in-laws to try and resolve matters and when challenged by Ms Johnstone about why this was not in his original statement he stated that he told the solicitor what had happened.
27. Turning to the second incident, in his statement he stated that two weeks later he received another call from the appellant in which he stated he had been "kicked out" of his in-law's property so he and others went around to the house to try and talk to his wife and his in-laws. He also explained that they all went to the house to help him because as Muslims that what

they did. At the hearing he stated it was two to three months after the first incident. Regardless of the date he maintained that the appellant and his wife were arguing and she then went towards him and slapped him and the only person to strike the appellant was his wife.

28. He did not see any injuries on either occasion although he did notice the appellant was upset.
29. When questioned about whether the appellant worked he stated the appellant had not worked since he left his wife although he made the point that he went to work himself.
30. He confirmed the appellant had lived with him since 2006. He had never asked him if he had had any contact with his wife. He had allowed him to remain, despite his leave having expired, because he had a large debt in Bangladesh.

#### **Mussammat Lovely Begum's evidence**

31. She adopted her witness statement and gave oral evidence. She had only met the appellant's wife on one occasion apart from the time she went to the appellant's in-law's house. She was aware that he had problems because her husband had told her but prior to seeing an incident at the appellant's in-law's house she had been unaware of the problems. She had not told her brother to return to Bangladesh because he owed money and had massive debts in Bangladesh. She stated that her brother had lived with her since leaving his wife and during that time he had not worked. With regard to the incident at the appellant's in-law's house she confirmed that her brother's wife approached him and slapped him. Nobody else hit him and her father suggested they all leave because his daughter was becoming restless. She had no further contact with the appellant's wife or her family.

#### **Ali Choudhury's evidence**

32. He provided a witness statement and gave oral evidence. He confirmed he had little contact with the appellant, as he was Shahed's friend. He last saw the appellant at the original hearing before the FtTJ. He confirmed the appellant's wife slapped him once in his presence. No one else hit him and he was certain it was only one slap.

#### **Khalid Miah's evidence**

33. He provided a witness statement and gave oral evidence. He confirmed he had little contact with the appellant and had not

seen him since apart from at court. He confirmed he saw her slap him.

### **Helena Begum Khan's evidence**

34. She provided a witness statement and gave oral evidence. She stated she had met both the appellant and his wife when they visited her property shortly after the appellant had arrived in the United Kingdom. The next time she saw them was at the appellant's wife's house. She did not see the appellant very much. She confirmed that when she saw them at the appellant's wife's house the appellant was physically assaulted.

### **SUBMISSIONS**

#### **Ms Johnstone**

35. Ms Johnstone relied on the refusal letter. She submitted the appellant had failed to satisfy Section E-DVILR. 1.3 of Appendix FM of the Immigration Rules. The appellant has failed to provide evidence that during the last period of limited leave as a partner his relationship with his wife broke down permanently as a result of domestic violence. Ms Johnstone submitted the evidence did not support his claim that his marriage had broken down due to domestic violence. She submitted the following factors undermined the appellant's claim:-
- a. The appellant delayed making his application for five years and only attempted to make this claim after the police arrested him for being an overstayer.
  - b. Although he called evidence to support his claim their statements were provided almost five years after the date of the alleged incident. Additionally, all of the witnesses are either family or friends of the family.
  - c. No weight should be attached to the letters from the Greater Manchester Bangladesh Association and Community Centre (B34) or Akeeda Community Project (B35) or the Jabez Group (B36) because the letters are based on what he told them and no one from any of the organisations attended to give evidence.
  - d. The letter from the Akeeda Community Project contains information that is not supported by any evidence. For instance the letter alleges the appellant's wife had remarried but did not explain where that information came from and it also claimed he was suffering from depression but there was no medical evidence to support this claim.



36. Ms Johnstone further submitted there were numerous inconsistencies in the evidence and these undermined the credibility of the claim. In particular:-

- a. There were differences in evidence about when the second incident occurred. Both the appellant and Shahed Ahmed gave different oral evidence to that contained in their written statements.
- b. The appellant's evidence about what happened on the second incident differed greatly from that of the other witnesses. He alleged that he had been punched, kicked and slapped by all of his wife's family whereas the other witnesses claimed he had only been slapped.
- c. The letter at page B35 referred to a diary of events. The appellant in cross-examination stated that he had not diarised the second incident and when challenged claimed initially he did not keep any diary but then claimed he kept a record of some matters. He did not produce this record either to this Tribunal or the original Tribunal.
- d. The appellant made a statement in March/April 2011 and stated that he worked until shortly before the statement. In his oral evidence he suggested that he gave up work 18 months after he split from his wife, which would be around October 2007. This evidence was inconsistent and undermined the appellant's credibility. Shahed Ahmed and his wife both said the appellant lived with them and both said he had not worked since he left his wife. There is a clear inconsistency between what the appellant has said and what these close relatives said in their evidence. The clear inconsistencies undermine the credibility on other issues.
- e. The appellant's brother-in-law and sister knowingly allowed and encouraged the appellant to break the law by overstaying. Neither encouraged him to contact the respondent or to seek to regularise his position despite his purported claim that he had suffered domestic violence.
- f. The fact the witnesses had little to do with the appellant makes it less credible that they would have been invited to a family meeting between the appellant, his in-laws and his wife.

37. The appellant failed to contact the police about the domestic abuse and despite two letters (B35 and B36) referring to

medical problems there was no evidence he had attended at the doctors at all.

38. His claim about being at risk was not supported by any evidence from Bangladesh and this undermined his claim that he would be at risk.
39. The respondent disputes he suffered any domestic violence but even if the Tribunal accepted he had been “slapped” Ms Johnstone submitted it is clear that this was not the reason for the breakdown in the marriage. The appellant resented having to hand over his wages to his father-in-law and the fact his wife was controlled by her father. The evidence from the appellant was he had been “kicked” out of the house before the alleged slapping incident and Ms Johnstone submitted that it was the financial issues and other matters that led to the permanent breakdown of the relationship and the “slap” was not the reason for the ending of the marriage.
40. The appellant does not meet either Appendix FM or paragraph 276ADE of the Immigration Rules. He has family in Bangladesh and he has overstayed more than seven years. There is nothing exceptional that would require this appeal to be considered outside of the Rules.
41. The appeal should be dismissed.

### **Mr Timson**

42. Mr Timson submitted there was plenty of evidence to support the appellant’s claim that his wife in or around April 2006 had hit him. Applying the respondent’s own guidelines and the case law set out in JL (Domestic violence: evidence and procedure) India [2006] UKAIT 00058 and Ahmed Iram Ishtiaq 2007 EWCA Civ 386 Mr Timson submitted the appellant had made out he had suffered domestic violence and that this behaviour was part and parcel of the breakdown of the relationship.
43. The witness evidence on the second incident was consistent and most of the witnesses had little or no connection to the appellant. Some had only seen him at the last court hearing. They were credible witnesses and if there had been any inconsistency in their evidence then allowance should be made for the fact they were giving their evidence many years after the event. None of the witnesses “over-egged the pudding” and claimed in their witness statements they had seen more than they had seen. This makes their accounts more credible.

44. Whilst the letter at B35 had been submitted by the appellant in support of his case Mr Timson agreed little weight should be placed on it. Whether the appellant kept a diary or not his evidence was that he recorded some events.
45. The fact the appellant did not attend either his doctors or the police station was explained in evidence. This should not be held against him.
46. The appellant has been here a long time and during this time he has established a private life. He has no real ties to Bangladesh and accordingly he should be granted leave under paragraph 276ADE HC 395.

### **ASSESSMENT OF EVIDENCE AND FINDINGS**

47. This is an application for indefinite leave to remain on the grounds that the appellant's marriage ended due to the appellant's wife assaulting him.
48. Mr Timson kindly supplied me with a copy of the UKBA's guidance on applications for indefinite leave to remain as a victim of violence. However the copy he handed was out of date and had been replaced by new guidance on January 28, 2014. This guidance considered the new Immigration Rules whereas the document provided by Mr Timson considered what was needed to satisfy paragraph 298A HC 395 and pre-dated the change in the Rules for domestic violence cases. I have therefore had regard to the correct guidance in assessing whether the appellant's claim, if accepted on the balance of probabilities, amounts to domestic violence within the Rules.
49. The January 2014 guidance states:

"The government introduced a new definition of domestic violence from 31 March 2013. The definition of domestic violence and abuse is:

Any incident or pattern of incidents controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can include, but is not limited to, the following types of abuse:

- psychological
- physical
- sexual

- financial
- emotional.

(2) Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by:

- isolating them from sources of support
- exploiting their resources and capacities for personal gain
- depriving them of the means needed for independence
- resistance and escape, and
- regulating their everyday behaviour.

(3) Coercive behaviour is:

- an act or a pattern of acts of assault, threats, humiliation and intimidation, or
- other abuse that is used to harm, punish, or frighten their victim.

(4) Family members, whether directly related, in-laws or step-family, are defined as:

- mother
- father
- son
- daughter
- brother
- sister, and
- grandparents.

(5) The legal definition of injury is when any harm is done to a person by the acts or omissions of another.”

50. The guidance confirms that where the relationship broke down for reasons other than reasons of domestic violence the applicant cannot benefit from this Rule.

51. Where an application is made outside of the probationary period (the appellant’s limited leave) the guidance states:-

“If an application is received from a person without valid leave to remain in the UK, you must consider the reason they were out of time and must make a judgement on whether this affects the assessment of the evidence submitted in support of the application.

You must consider:

- The age of evidence being relied upon. This may impact verifying the evidence.
  - How the applicant has been financially supported.
  - When the relationship permanently broke down.
  - If there are any official reports, for example from the police that show passports and travel documents were withheld and the police had to retrieve them.
  - The time between the breakdown of the marriage and the application.”
52. To prove domestic violence has occurred the appellant must submit supporting documents and where there are no police or court documents the appellant should support any medical report detailing injuries, letter from social services confirming they are involved in a domestic violence incident and a letter from a domestic violence support organisation.
53. Witness statements from friends or family and letters from official sources that relay unfounded reports by the applicant but do not confirm the incident must be treated with caution.
54. I have considered both JL (Domestic violence: evidence and procedure) India [2006] UKAIT 00058 and Ahmed Iram Ishtiaq 2007 EWCA Civ 386. These cases pre-date the changes in the Immigration Rules but some of the principles clearly survive the changes in the Rules.
55. The appellant’s immigration history is set out above in paragraph [1]. Having read the papers and listened to a number of witnesses give their evidence I am satisfied that the appellant’s marriage was an unhappy one. His marriage was arranged by a man lived in London and the appellant had to pay a dowry and in order to do this it seems he borrowed money that he was expected to repay. I was provided with no evidence of this debt or any other evidence such as statements or letters to support his claim that he was unable to return because he owed money. I accept a dowry would have been paid but I am unable to comment on the amount of the dowry, as no papers were included in the court bundle. Shortly after marrying the appellant applied for permission to enter as a spouse.
56. There are a number of inconsistencies in the evidence and these are matters I have taken into account. These include:
- a. The appellant claimed that when he arrived in the United Kingdom he and his wife went to live in London for the first

four months but this is contradicted by the evidence of his sister (Mussammat) and her husband (Shahed) who both stated that since arriving in the United Kingdom the appellant has lived with his wife and her family in Hyde, Cheshire.

- b. The appellant's account of both alleged incidents of violence differs from those of all the other witnesses. The appellant claimed in his statement that he told Shahed that his father-in-law and wife had attacked him whereas Shahed's evidence was clear on this issue that the appellant had told him only his wife had assaulted him (paragraph [6] of Shahed's statement). The appellant's oral and written evidence about the second incident was that he had been attacked his father-in-law, brother-in-law and his wife whereas five other witnesses had stated only his wife had slapped him. The appellant's claim was he had been punched, kicked and slapped by all of the family members.
- c. The appellant's evidence of when the incidents occurred also contained inconsistencies. In his witness statement he claimed the first and second incident occurred within a couple of days of each other whereas in his oral evidence he claimed they were two to three months apart. Shahed's evidence in both incidents also contained inconsistencies. In his written statement he stated they were two weeks apart whereas in his oral evidence he claimed they were two to three months apart. The fact they both claimed at the hearing that the incidents were two to three months raises questions about the reliability and credibility of their accounts. I have taken into account the incidents occurred some time ago but there is a big difference between two days and three months.
- d. In his oral evidence the appellant stated in cross-examination he had not kept a diary but this was contradicted in a letter submitted by the appellant to support his claim and contained at B35. That letter specifically recorded, "he wrote down everything in his diary". When challenged during the hearing the appellant he firstly claimed he could not remember if he kept a diary and then he stated he was not keeping a diary and then in re-examination he stated he believed he wrote something down. He failed to produce any such document.
- e. The appellant claimed he had no knowledge of the appellant's whereabouts and had not had any contact since mid 2006. However, the letter had page B35 referred to the

appellant going to an advice surgery from 2008 until January 2011 regarding his domestic violence problem. The letter stated he was the victim of emotional, financial, physical constant torture. This letter was wholly inconsistent with the appellant's account as he said he had not had any contact since 2006. If the appellant's account was correct then by the time he went to the Akeeda Community Project he had not seen his wife for around two years. The account he appears to have given to them differs significantly even to the extent that the author of the letter referred to him being forced to sell property in Bangladesh-something he never referred to anywhere in his evidence.

- f. The appellant claimed in his written evidence that he worked until shortly before he made his witness statement in March/April 2011. In oral evidence he claimed he only worked for three years from the date of entry. This evidence was contradictory. The appellant's sister and brother-in-law both claimed he had not worked since 2006 despite living with him since that date. Regardless of which version of the appellant's evidence is correct the evidence of both his sister and brother-in-law contradicted it.

57. In addition to these inconsistencies there are a number of credibility issues that the UKBA guidance states should be considered. The appellant claimed he suffered domestic violence in 2006 and his leave to enter ended on May 8, 2007. He therefore was out of time to firstly extend his leave and secondly he was out of time to bring this claim. The fact he was out of time to bring it does not mean his application has no merit but the guidance makes clear that the decision maker and ultimately myself must consider carefully that delay and whether this affects what he is claiming. In that regard I note the following:-

- a. The evidence from the appellant and his witnesses was five years old although each witness says they witnessed the second incident. The remainder of their evidence is based in what the appellant told them.
- b. There are no official reports about the alleged domestic violence. There are letters from persons in the community from 2011.
- c. He submitted his first application (no right of appeal) five years after the alleged incidents and only after the police had detained him as an overstayer.
- d. His family, according to the evidence, were aware of his claim and chose not to assist him in regularising his stay

and also chose to financially support him (on their evidence) since 2006.

- e. The relationship broke down after the appellant was “kicked out” of the family home. The relationship had broken down because of financial arguments and because the appellant’s wife would not move away from her parents-something confirmed in oral evidence by the appellant.
  - f. The appellant claims that his wife and others assaulted him during this period but this is not supported by the other witnesses save with regard to the alleged slap on the second occasion.
58. I also have had regard to the appellant’s failure to produce any evidence that he had been seeing a doctor or produce his written record of events despite being aware of the observations of the FtJ. Letters submitted speak of his medical problems and I do not find it credible that the appellant produced no evidence to support his medical condition. His failure on two occasions (both hearings) to produce his contemporaneous notes of what had been happening is a factor I have had regard to.
59. The inconsistencies and the factors I have set out in paragraphs [56] to [58] above adversely affect the credibility of the appellant’s claim.
60. However, against this background I still have to consider the evidence of all of the witnesses who claim they saw the appellant’s wife slap him. Their evidence whilst consistent to each other is undermined by three important factors:-
- a. The delay in making these statements.
  - b. There is no credible explanation why all these people turned up at his wife’s house. With the exception of the appellant’s sister and brother-in-law none of the others had had anything to do with the couple and have not since. Bearing in mind the appellant had been thrown out of his family home I do not find it credible that his in-laws would have welcomed not only the appellant back into the house and five complete strangers.
  - c. Inconsistencies in relation to the appellant’s sister’s and her husband’s evidence as highlighted above.
61. So whilst I take on board Mr Timson’s submissions about their independence and the fact they have not exaggerated what happened I have to balance their evidence against all of the other matters I have referred to above. Telling facts in this whole appeal are:



- a. The appellant did nothing until he was arrested and served with form IS151A (notice of removal).
  - b. He only made an application for domestic violence after he was arrested.
  - c. His failure to provide any reliable supportive documents.
62. I accept this marriage broke down but from the appellant's oral evidence and written evidence I am satisfied this marriage broke down because the appellant was unhappy with his wife and her family. The feeling appeared to be mutual because following an argument in mid 2006 he was told to leave the family home. In his oral evidence the appellant accepted as much.
63. I am not satisfied there was a meeting as claimed by the witnesses. I accept there may have been efforts made to resolve their difficulties but I do not accept the five witnesses, who claim to have attended, went to a meeting. I do not accept the appellant was assaulted and I find this marriage broke down for reasons other than domestic violence.
64. I therefore dismiss the appellant's claim for indefinite leave under Section DVILR of Appendix FM of the Immigration Rules.
65. Mr Timson has also submitted that if I found against the appellant on this issue then I should consider the appellant's claim for private life under paragraph 276ADE HC 395. In order to succeed he would have to demonstrate the appellant satisfied subsection (vi) of paragraph 276ADE namely "he is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK."
66. The decision of Ogundimu [2013] UKUT 60 (IAC) should be considered as the Tribunal provided guidance on the correct approach to be taken. The Tribunal found-

"120. In approaching our consideration of the meaning of this rule we remind ourselves of the guidance given by Lord Hoffmann in Odelola v Secretary of State for the Home Department [2009] 1 WLR 1230:

"[4] Like any other question of construction, this [whether a rule change applies to all undetermined applications or only to subsequent applications] depends upon the language of the rule, construed against the relevant background.

That involves a consideration of the immigration rules as a whole and the function which they serve in the administration of immigration policy."

121. In Mahad v ECO [2009] UKSC 16, Lord Brown, when considering the question of construction of the Immigration Rules, said as follows:

"[10] The rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy. The respondent's counsel readily accepted that what she meant in her written case by the proposition "the question of interpretation is...what the Secretary of State intended his policy to be" was that the court's task is to discover from words used in the Rules what the Secretary of State must be taken to have intended...that intention is to be discerned objectively from the language used, not divined by reference to supposed policy considerations. Still less is the Secretary of State's intention to be discovered from the Immigration Directorates Instructions"

122. We take note of the fact that the use of the phrase "no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK" is not exclusive to paragraph 399A of the Rules; it is also used in paragraph 276 ADE, in the context of the requirements to met by an applicant for leave to remain based on private life in the United Kingdom when such person has lived in the United Kingdom for less than 20 years.

123. The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.

124. We recognise that the text under the rules is an exacting one. Consideration of whether a person has 'no ties' to such country must involve a rounded assessment

of all the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances. Nevertheless, we are satisfied that the appellant has no ties with Nigeria. He is a stranger to the country, the people, and the way of life. His father may have ties but they are not ties of the appellant or any ties that could result in support to the appellant in the event of his return there. Unsurprisingly, given the length of the appellant's residence here, all of his ties are with the United Kingdom. Consequently the appellant has so little connection with Nigeria so as to mean that the consequences for him in establishing private life there at the age of 28, after 22 years residence in the United Kingdom, would be 'unjustifiably harsh'.

125. Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members."

67. Paragraphs [123] to [125] of Ogundimu are of particular importance as these highlight the matters that a Tribunal should have regard. Applying this guidance to these facts I find the majority of the appellant's family lives in Bangladesh. He has lived here legally for a maximum of twenty-three months and since then he has been living here illegally and on his evidence he had been working illegally until possibly 2011. He has spent the majority of his life in Bangladesh and his only basis for being here was his marriage, which he states is now over because his wife has remarried. The appellant has cultural ties, family and friends in Bangladesh. There is no suggestion he has fallen out with his family. I do not accept he has any problems over borrowed money as no evidence was presented.
68. The appellant's claim under paragraph 276ADE HC 395 fails. The Court in MMM (AP) v The Secretary of State for the Home Department [2013] COSH 43 re-affirmed that approach the court took in R (on the application of Onkarsingh Nagre) 2013 EWHC 720 namely the appellant has to show there is a good arguable case in order to have his case considered outside of the Rules and I do not find any good arguable case for dealing with this case outside of the Immigration Rules for the reasons set out in paragraph [67] above.

69. No submissions were made for family life under Appendix FM or article 8 ECHR.

**DECISION**

70. There was a material error of law.

71. I have remade the decision and I dismiss the appellant's appeal under the Immigration Rules (Section DVILR of Appendix FM and paragraph 276ADE HC 395).

72. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**

I make no fee award I dismissed the appeal.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

