



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Number:
IA/19326/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 30 September 2014 Determination promulgated On 5 March 2015**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**Mustafa Jafar Lightwala
(Anonymity order not made)**

Appellant

and

**Secretary of State for the Home Department
Respondent**

Representation

For the Appellant: Mr G Cutting of Slough Immigration Aid Unit.
For the Respondent: Mr P Duffy, Home Office Presenting Officer.

DECISION AND REASONS: ERROR OF LAW

1. This is an appeal against the decision of Designated First-tier Tribunal Judge Manuell promulgated on 27 June 2014 dismissing the Appellant's appeal against the decision of the Respondent dated 7 May 2013 to refuse to vary leave to remain and to remove him from the UK pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

Background

2. The Appellant is a national of India born on 1 December 1986. He entered the UK on 30 January 2011 with leave valid until 28 February 2013 granted pursuant to entry clearance as a spouse (issued on 30 November 2010). The Appellant had married Ms Fatima Trunkwala on 29 October 2010 in India. On 21 February 2013 by way of application form FLR(O) the Appellant applied for further leave to remain on the basis of his marriage. The application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 7 May 2013, essentially on the basis that the Respondent had received information from Ms Trunkwala that the Appellant's marriage had broken down. A decision to remove the Appellant was made in consequence, and a Notice of Immigration Decision, also dated 7 May 2013, was served on 10 May 2013.

3. The Appellant appealed to the IAC. On appeal he did not dispute the fact of the breakdown of the marriage, but sought to rely upon paragraph 289A of the Immigration Rules on the basis that he claimed that the marital relationship was caused permanently to breakdown as a result of domestic violence.

4. The Designated First-tier Tribunal Judge dismissed the Appellant's appeal for reasons set out in his determination.

5. The Appellant sought permission to appeal which was granted by Designated First-tier Tribunal Judge MacDonald on 18 July 2014. The grant of permission to appeal, in so far as it is germane, is in the following terms:

"The grounds of application indicate that it was very clear from the evidence that the main perpetrator of the domestic abuse was not the appellant's wife but his mother-in-law. It is said, for reasons given, that the Judge did not properly consider the mother-in-law as the main perpetrator. Furthermore the judge made no findings on the credibility of the appellant, did not attach enough weight to the evidence of 2 witnesses, speculated that the appellant was aware of paragraph 289A and make confused findings.

In his determination the judge narrates some of the evidence given but arguably does not appear to make clear factual findings about why the marriage broke down or any findings on the credibility of the appellant. For the reasons put forward the grounds are arguable."

6. The Respondent has filed a Rule 24 response dated 21 August 2014 resisting the challenge to the decision of Judge Manuell.

Consideration: Error of Law

7. In the premises, the Appellant claimed that his marriage had broken down permanently because he was the victim of emotional abuse and bullying orchestrated by his mother-in-law – albeit that in due course she also wore down his partner such that Ms Trunkwalla sided with her mother against the Appellant. In this context I note the summary of the situation provided by the Appellant in his witness statement of 21 April 2014 at paragraphs 61 and 62:

“I still find it hard to believe the way I was treated when I came to the UK. Fatima’s mother was behind all the trouble, but she wore Fatima down and emotionally blackmailed her and Fatima became more and more on her mother’s side against me.

I was insulted, humiliated, degraded and falsely accused. I was controlled in my behaviour even down to the smallest details. I was isolated from friends and family. I wasn’t allowed to go out and talk to people without having to explain myself or be insulted. My money was taken and I was not told any financial information. My family were insulted and falsely accused. I never knew where I stood, I got very depressed and had no self-confidence.”

8. In this context Mr Cutting directed my attention to the Respondent’s IDIs on ‘Victims of domestic violence’ – which were before the First-tier Tribunal (Appellant’s bundle at pages 141–148). In particular he identified passages whereby controlling behaviour could constitute domestic violence, and a perpetrator of domestic violence might include an in-law. In this regard I note the similar submission recorded in the decision of the First-tier Tribunal at paragraph 21, and the identification of the key issue by the Judge at paragraph 23: “...no allegations of physical violence... Rather the Appellant asserts that he was subjected to a form of abuse and psychological cruelty”.

9. I am persuaded that a combination of the following factors are sufficient to render the decision of the First-tier Tribunal flawed for inadequacy of fact-finding and reasoning.

(i) There are no clear findings in respect of the Appellant’s narrative of events. Whilst it is not incumbent upon a judge to make findings in respect of every aspect of a case, it is appropriate that there be clear findings on key issues. Although the Judge has stated a conclusion in respect of the cause of the breakdown of the marriage – which is a matter of secondary fact to be drawn from primary facts – there is no clear findings in respect of the primary facts asserted by the Appellant.

(ii) Related to this is an absence of any clear finding on credibility. The Judge's conclusions in substantial part implicitly involve a rejection of the Appellant's account. For example, at paragraph 26 the Judge was dismissive of the Appellant's assertion that he was 'kept in the dark' about matrimonial/domestic financial arrangements on the basis that the Appellant consented to a joint account and understood how a joint account operated. In so far as this constitutes an implicit rejection of the Appellant's assertions that he was not kept informed of expenditures and indeed was lied to in respect of the amount of the monthly mortgage payments, there is no clear reasoning as to why such aspects of the Appellant's testimony were rejected. Similarly it is not discernible on what basis any other aspect of the Appellant's account may have been rejected.

(iii) Further in this context, in so much as the Appellant's testimony may have been rejected in material part, circumstantial matters - such as it being an arranged marriage (paragraph 24), the mother-in-law already residing with the Appellant's partner (paragraph 24), the Appellant having no experience of the UK (paragraph 24), the Appellant not seeking the help of outside agencies (paragraph 28), the supporting witnesses not being direct witnesses of abusive behaviour (paragraph 29) - whilst relevant to an overall assessment are not reliable indicators of a lack of credibility, and do not form a proper basis for rejecting testimony. Absent these non-determinative factors, no clear reason is stated for rejecting the Appellant's evidence as to primary facts.

(iv) The concerns over the adequacy of the findings and reasoning are particularly pertinent and material in the context of the key finding stated by the Judge at paragraph 24: "*...the Tribunal concludes that the events the Appellant describes are manifestations of elements of the breakdown of the relationship, not the cause of the breakdown*". In the abstract, this is a very fine distinction to draw. On the facts of this particular case it is not, in my judgement, apparent on what basis the distinction has been drawn.

(v) The Judge appears to place adverse weight on the Appellant's failure to plead his case with reference to paragraph 289A in the letter of representation dated 21 February 2013 (Appellant's bundle at pages 35-38). The Judge's conclusion based on the contents of that letter that the Appellant "*was aware that he was not the victim of domestic violence*" is not sustainably supported in circumstances where the letter states in terms that the Appellant has been subjected to domestic violence by his mother-in-law, and refers to "*mental abuse*" as "*part of domestic violence*". (I note that Mr Duffy acknowledged that in isolation this paragraph would warrant conceding the issue of error of law, and only declined so to do because he maintained that the

reasoning in the rest of the determination was adequate - a submission that I reject for the reasons already given.)

10. Accordingly, in all of the circumstances I find that the First-tier Tribunal Judge materially erred, and that the decision of the First-tier Tribunal must be set aside.

Future Conduct of the Appeal

11. Given the basis of the decision in respect of 'error of law', it is not possible to preserve any aspect of the First-tier Tribunal's fact-finding. In such circumstances it is appropriate that the decision in the appeal be remade before the First-tier Tribunal with all issues at large.

12. No specific directions are required for the future conduct of the appeal: standard directions will suffice. The parties are to file and serve any further materials upon which they wish to rely at least 7 days prior to the next rehearing date.

Notice of Decision

13. The decision of the First-tier Tribunal contained material errors of law and is set aside.

14. The decision in the appeal is to be remade before the First-tier Tribunal, before any judge other than Designated First-tier Tribunal Judge Manuell, with all issues at large.

Deputy Judge of the Upper Tribunal I. A. Lewis 3 March 2015