



IAC-FH-AR-V1

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

Appeal Number: IA/34724/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2<sup>nd</sup> December 2015**

**Decision & Reasons Promulgated  
On 7<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

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

Appellant

**and**

**VKB**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Miss N Willocks-Briscoe, Home Office Presenting Officer

For the Respondent: No appearance by or on behalf of the respondent

**DECISION AND REASONS**

1. Although the Appellant in this case is the Secretary of State I refer to the parties as they were before the First-tier Tribunal.
2. There was no appearance at the hearing before me by or on behalf of the Appellant. I was satisfied on the basis of the papers before me that the notice of hearing was served on the representatives, A&M Immigration Solutions, who are the representatives on record since the notice of appeal was lodged with the First-tier

Tribunal. I was satisfied that it was proper to proceed under the Upper Tribunal Rules and I proceeded in the absence of the Appellant in these circumstances.

3. As this was the Secretary of State's appeal I heard submissions from Miss Willocks-Briscoe.
4. The background to this appeal is that the Appellant was granted entry clearance to enter the UK with leave to enter as a fiancée. She arrived in the UK on 21<sup>st</sup> January 2014 and her leave to enter expired on 6<sup>th</sup> July 2014. On 4<sup>th</sup> July 2014 she made an application for indefinite leave to remain in the UK as the victim of domestic violence. That application was refused. The background to that application is that the Appellant claims that she was married to her fiancé on 15<sup>th</sup> March 2014 and that after the marriage she went to live with her husband and his mother, brother and sister-in-law but was unhappy with the way that she was treated by the family. She claims that her mother-in-law, sister-in-law and brother-in-law insulted her and criticised her cooking, cleaning and dress and that she was verbally abused. It is the Appellant's account that she contacted her brother by telephone on 3<sup>rd</sup> April 2014 and told him how unhappy she was. She claims that her brother contacted the priests at the temple for help and advice. They came to speak to the family to try and resolve the issue but the family were angry with that intervention and insisted that the Appellant leave and called the police. The Appellant made no complaint of domestic violence to the police and hoped to return to the house and be reconciled with her husband. She was taken to London and was provided with accommodation by a member of the temple community. It is the Appellant's case that her brother and mother know that she is separated from her husband but they have not informed her father about the situation because of concerns about his health.
5. The First-tier Tribunal Judge considered the evidence. The judge noted that the Appellant does not satisfy the provisions of paragraph DVILR of Appendix FM of the Immigration Rules because she did not have limited leave to remain in the UK as a partner. The judge then went on to consider whether the Appellant was entitled to leave to remain in the UK outside of the Immigration Rules on the basis of her right to respect for private life under Article 8 of the ECHR. The judge considered paragraph 276ADE of the Immigration Rules firstly, and considered in particular paragraph 276ADE(1)(vi) which, at the time of the decision in this case, provided that the requirements to be met by an application for limited leave to remain are that the applicant:

“... is aged 18 years or above, has lived continually in the UK for less than 20 years ... but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK”.
6. The judge decided that it had been established by the Appellant that there would be very significant obstacles to her reintegration into India and allowed the appeal under the Immigration Rules. The judge went on to consider whether there were exceptional reasons for granting leave to remain under Article 8 outside of the Immigration Rules in the event that he was wrong in relation to the Rules. The judge considered Section 117B of the Nationality, Immigration and Asylum Act 2002 and

concluded that it was not proportionate to require the Appellant to return to India in the circumstances.

7. The Secretary of State contended in her Grounds of Appeal that the judge made a material error of law in the determination by failing to give adequate reasons for finding that there would be very significant obstacles to the Appellant's integration in India. It is contended that the judge reached the conclusion on the basis of the Appellant's claim that a woman separated from her husband would find it difficult to return to her home village but it is contended that the judge did not set out reasons for accepting this claim other than vague reference at paragraph 12 to the 'culture of her family and community'. It is contended that the judge has given wholly inadequate reasons for finding that the stringent test in paragraph 276ADE (1) (vi) is met on the facts of the case. It is contended that this is particularly true given that the Appellant's mother and brother were fully supportive of her and that the father had not been informed merely because of his frail health rather than because of any expectation that he would be unwilling to receive his daughter back into the family home. It is contended that there is a deficiency in the judge's reasoning in relation to Article 8 and that the decision to allow the appeal on this alternative basis is equally unsustainable.
8. First-tier Tribunal Judge Lambert granted permission to appeal on the basis that there is an arguable error of law.

#### **Error of Law**

9. I have considered the decision of the First-tier Tribunal. Having considered the application in the context of paragraph 276ADE(1)(vi) the judge noted the submission made by the Presenting Officer that there was insufficient evidence to support the assertions that the Appellant would be unable to return to her family and noting that the Appellant's mother and brother were supportive of her and there was nothing to say why her father would not be supportive of her if he were told. The judge went on to find
  29. I am satisfied that the evidence supports the Appellant's claim that she would have very significant problems returning to her home village, and that she would have very great difficulties in trying to establish an independent life of her own if she internally located within India.
  30. I am satisfied that these difficulties and problems are such as to be deemed very significant obstacles. I note the terminology and take into account in particular that the test is not one of insurmountable obstacles, used for example in paragraph EX1 of Appendix FM."
10. The difficulty here is that the judge has not stated at paragraph 29 what evidence he considers supports the Appellant's claim that she would have very significant problems returning to her home village. I have considered the evidence set out in the decision and considered by the judge. I note at paragraph 12 the judge says:

"The Appellant believes that she is unable to return to her home village in India in her situation as a woman separated from her husband. Such concerns are reasonable and understandable having regard to the culture of her family and community. She has

nowhere else to go. She is educated to year 10 level in school. She has very little experience of life outside her family home.”

11. The judge said at paragraph 16 that he found the Appellant's evidence to be plausible and credible and noted that the Appellant continued to be unsure whether she wishes to return to continue with the marriage.
12. The judge had a witness statement from the Appellant along the lines of that set out at paragraph 12. I note that in her witness statement dated 28<sup>th</sup> March 2015 the Appellant says that a divorce would bring shame on her family and she did not know how her family would manage if this was revealed in India. The Appellant said that she could not tell her father because he is suffering from ill health but does not specify what she says her father would do or how he would treat if her if he knew the truth. At paragraph 12 of her witness statement the Appellant said “I know eventually my father will come to know but I hope that in some years he is in better health and able to cope with everything.” She said that if anyone in the village found out they would endlessly taunt her family. The Appellant referred to people in her village but there is no background evidence to support any claim that the Appellant would suffer any specific consequence or any specific danger over and above village gossip.
13. The Appellant submitted witness statements from two priests from the temple who have supported her. In one of the statements it is said that it is unimaginably difficult for the Appellant coming from India to have a failed marriage. The other statement refers to the Appellant's father not being told because of health and says that the Appellant cannot return to her village. The Appellant’s brother made a statement in which he also said that the father was not being told because of his ill health but that if the Appellant returned everyone in the village would find out. He said that his father could not tolerate the shame in his village. The Appellant submitted a statement from the Appellant's friend and talks about the Appellant's father not knowing because of his ill health and that the Appellant is worried because her father might not forgive her for not telling him the truth. She talks about the help the Appellant has had from the Gurdwara and says that the Appellant would not be welcomed back by her family in the village.
14. There is no background evidence to support any of these assertions. I note that all of these people have supported the Appellant and that the only reason the father has not been told is because of his ill health and there is no background evidence to support the assertion that the Appellant would suffer any significant or specific consequences upon return to India.
15. In these circumstances I am not satisfied that the judge has given sufficient reasons for saying at paragraph 29 that he was satisfied that the evidence supports the Appellant's claim that she would have very significant problems returning to her home village. The evidence is simply not there to support that conclusion.
16. In these circumstances I am satisfied that the judge made an error of law in that he has given wholly inadequate reasons for finding that the test in paragraph 276ADE(1)(vi) has been met on the facts of this case. I am satisfied that the findings

in relation to Article 8 flow from the findings in relation to 276ADE in that the judge has not specified or given reasons in the Appellant's interests to weigh against the public interest of the maintenance of effective immigration controls. In these circumstances I set aside the decision in its entirety and remake the decision.

### **Remaking the Decision**

17. I am satisfied that the parties were served with standard directions advising them that in the event that an error of law was found at the hearing before me I would proceed to remake the decision. I have received no further documentary evidence or submissions on behalf of the Appellant in relation to remaking the decision. I heard submissions from Miss Willocks-Briscoe and proceeded to remake the decision.
18. I note that the Appellant cannot meet the requirements of the domestic violence provisions of Appendix FM as she does not have leave to remain as a partner.
19. I remake the decision under paragraph 276ADE(1)(vi). I must be satisfied that there would be very significant obstacles to the Appellant's integration in India upon her return. I note that the Appellant only came to the UK on 21 January 2014 and lived all of her life in India with her parents before that date. The Appellant's mother and brother have supported her in relation to this application. Whilst the Appellant claimed to have difficulties with her husband and in particular her in-laws, I note that the Appellant stated as recorded in the judge's determination that she is unsure whether she wishes to continue with the marriage and the statements reflect the possibility of the Appellant reconciling with her husband. In fact it is clear from paragraph 8 of her statement that the Appellant had been complaining to her brother about the difficulties she was having in her new home just to share her feelings without him doing anything about it and that she begged her in-laws to let her stay. I note that her brother and mother have supported her and that the only reason her father has not been told is because of his ill-health.
20. There is no background information to support the assertion that the Appellant will suffer any difficulties in India such as to amount to very significant obstacles to her reintegration there. With the support of her family the Appellant could go back and live again with her parents. There is nothing in the evidence to suggest that this would be an honour issue or that the Appellant would suffer any consequences in terms of a breach of the family's honour. In fact the appellant has had the active support of her brother. It is also clear from the evidence from the two priests from the temple that since the Appellant left her husband's home she has been the responsibility of the Gudwara and that she has been living with a member of the congregation. It is clear therefore that her religious community has been looking after her and there is no indication as to why that support could not be resumed if she returned to India. I also note that the circumstances in which the Appellant left her family home were at the instigation of her brother and of the priest from the temple and there is no reason to believe that they would not continue to support her. It was the Appellant's brother who approached the priest in the first place and who intervened in the Appellant's domestic situation.

21. In these circumstances I do not accept that it has been shown that there are insurmountable obstacles to the Appellant returning to India to resume living with her family there or to resume living there with the support of the Gudwara.
22. I have considered whether there are circumstances in this case not already cover by the Immigration Rules and I do not accept that there are any circumstances not already dealt with. I consider her private life in terms of the steps set out in R v SSHD ex parte Razgar [2004] UKHL 27. The Appellant has been in the UK for a very short period since January 2014. There is no evidence of significant links she has made in the UK. However I accept that she has established a private life in terms of her relationship with members of the Gudwara and that she has established friendships here. I accept that her removal would interfere with such private life. I consider the issue of proportionality and Section 117B of the Nationality, Immigration and Asylum Act 2002. There is no evidence that the Appellant speaks English. There is no evidence that the Appellant is financially independent. I note that there is no other evidence in relation to the Appellant's links in the UK. In these circumstances I am satisfied that the removal is proportionate and there would be no breach of Article 8 in removing the Appellant from the UK.

**Notice of Decision**

23. The decision of the First-tier Tribunal contained an error of law and I set it aside.
24. I remake the decision by dismissing the Appellant's appeal.

Signed

Date: 4<sup>th</sup> January 2016

Deputy Upper Tribunal Judge Grimes

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 4<sup>th</sup> January 2016

Deputy Upper Tribunal Judge Grimes