



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

**Appeal Number IA/00733/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28<sup>th</sup> March 2018**

**Decision and Reasons Promulgated  
On 4<sup>th</sup> April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PARKES**

**Between**

**MUBASHIR MEHFOOZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E Daykin (Counsel, instructed by Western Solicitors)  
For the Respondent: Mr S Kandola (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant entered the UK in 2009 as a student. He subsequently obtained leave to remain (LTR) as a spouse until the 25<sup>th</sup> of January 2015. The Appellant sought further LTR on the basis that he was the victim of domestic violence. That application was refused for the reasons given in the Refusal Letter of the 22<sup>nd</sup> of January 2016. The Appellant's appeal against the decision was heard by First-tier Tribunal Judge Cameron at Taylor House on the 11<sup>th</sup> of October 2017 and dismissed for the reasons given in the decision promulgated on the 30<sup>th</sup> of October 2017.
2. In that decision Judge Cameron discussed the history and the evidence relating to the events of the 26<sup>th</sup> of January 2014. Following the discussion in which medical records, the Appellant's complaint to the Police, the Appellant's conviction and sentence and supporting witness statements were considered the Judge indicated that after the Appellant's wife had been burnt she left the house never to return. The principal findings were set out in paragraph 64 where the

Judge found that the Appellant “did assault his wife and caused her to be burnt by the iron for which he was convicted and sentenced to a suspended sentence of imprisonment... the Appellant was then assaulted by her brother and cousin as a result of which he had to receive hospital treatment.”

3. In paragraph 75 of the decision the Judge rejected the argument that the marriage could not be said to have broken down in the 3 hours after the Appellant's wife left the matrimonial home following his assault on her. The Judge found that notwithstanding the family meeting it was clear that she never had any intention of returning to the family home or the marriage itself. In paragraph 78 the Judge found that it was the Appellant's assault on his wife that was the cause of the breakdown of the marriage, the assault on the Appellant was not the cause of the breakdown.
4. The grounds of application to the First-tier Tribunal argue that the Judge erred in finding that the marriage ended with the assault by the Appellant on his wife as it is asserted that that is inconsistent with the subsequent family meeting where the relationship was discussed. Secondly it is argued that the Judge did not consider that the assaults could have cumulatively caused the marriage to break down. Thirdly it is argued that the judge did not give sufficient reasons for finding that the marriage broke down on the Appellant's wife leaving the matrimonial home.
5. The application was first considered by First-tier Tribunal Judge Ford who refused permission to appeal in a decision of the 24<sup>th</sup> of November 2017. Judge Ford rejected the suggestion that the assault on the Appellant by his wife's brother and cousin could amount to domestic assault and that there was no arguable error. On renewal of the grounds to the Upper Tribunal permission was granted in short order by Upper Tribunal Judge Storey on the 6<sup>th</sup> of February 2018.
6. At the hearing Ms Daykin relied on the grounds and submitted that the Judge had drawn an artificial line having accepted the core aspects of the claim. The Appellant was a victim of domestic violence, grounds 1 and 2 were interlinked. The 2 incidents were 3 hours apart and followed by the family meeting. It was not clear when the Appellant's wife's mind was made up, given he was victim of domestic violence they could not be separated. Finally no reasons had been given for finding when she had made her mind up other than her refusal to withdraw her complaint against him.
7. For the Home Office it was submitted that it was difficult to decipher the error of law. The Judge had been presented with a conundrum and when he had broken it down was entitled to find that the marriage had broken down as he found. He was entitled to make the findings and they were not irrational. The grounds were a mere disagreement with the decision.
8. Before Ms Daykin replied I asked where the evidence was to show that the actions of the Appellant's wife's brother and cousin were operative on her decision compared to his state of mind. Ms Daykin replied that it was not possible to separate out the final positions from when she failed to withdraw her complaint. It was suggested that his wife could have concluded that the marriage was irretrievable because of the assault on the Appellant by her brother and cousin. The fact that the family were involved in the process of attempting reconciliation suggested that she was open to the idea.

9. At the hearing I indicated that I found that there was no error of law in the decision and that I would not be setting the decision aside. At that stage the decision was reserved and the reasons for that finding follow.
10. Whether or not the Appellant can be characterised as a victim of domestic violence or not does not assist in assessing the outcome in this case. The Judge considered that as an aspect of the decision from paragraph 68 and accepted that the Appellant could be regarded as a victim of domestic violence but concluded that the assault on him was not a cause of the breakdown. As the Judge found in paragraph 77 there was a clear difference in the attitude of the Appellant and his wife with the Appellant wishing the marriage to continue whereas his wife did not. That was exemplified by their different actions with regard to the complaints each had made to the Police about being assaulted. Also from paragraph 77 the Judge found that it was after he had been convicted of the assault on his wife that the Appellant “after a period of time” decided that the marriage was at an end.
11. The Judge was clearly troubled by the Appellant's failure to reinstate his complaint as discussed in paragraphs 65 to 67. The Judge expressly considered whether the assault on the Appellant could be regarded as having led to the breakdown of the marriage and considered this in paragraphs 74 to 78.
12. The Judge was entitled to conclude that it was the assault by the Appellant on his wife that caused the marriage to breakdown. That the Appellant eventually came to accept that it had broken down appears to have come somewhat later than his wife's view on the subject. The analysis of the Judge that the assault on the Appellant was not a causal factor in the breakdown of the marriage was open to him for the reasons given.
13. There is nothing in the evidence that suggests that the assault on the Appellant had any effect on the attitude of the Appellant's wife and it is clear that it was her actions that finally led the Appellant to conclude that the marriage was over. It is clear that the Appellant's wife regarded the marriage as over well before the Appellant did and her actions in giving evidence against him leading to his conviction demonstrate that. The domestic violence that preceded that was by the Appellant on her and there is no evidence to show that her brother and cousin's actions had any bearing on her approach or attitude.
14. For the appeal to have succeeded a very large measure of speculation would have been needed to make findings that would have been favourable to the Appellant and there was no basis for such an approach. The suggestion that the 2 assaults could not be separated is an unrealistic submission not supported by any evidence. They were separated by 3 hours, and in the incident involving the attack on the Appellant there was no evidence to show that his wife was involved in any way.
15. The Judge gave clear and reasoned consideration to the claim by the Appellant that the marriage had broken down as a result of domestic violence perpetrated on him. The Judge was entitled to find that that was not the case and gave sustainable reasons for that finding. The decision was open to the Judge for the reasons given and for the reasons given above the decision was not affected by any error of law.

## CONCLUSIONS

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

I do not set aside the decision.

### Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

### Fee Award

In dismissing this appeal, I make no fee award.

Signed:

A handwritten signature in black ink, appearing to read 'M. Parks', written in a cursive style.

Deputy Judge of the Upper Tribunal (IAC)

Dated: 28<sup>th</sup> March 2018