



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

Appeal Number: HU/02255/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 24 April 2019**

**Decision & Reasons Promulgated
On 13 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

**MR MD MASODUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Iengar, Counsel instructed by Evolentlaw

For the Respondent: Ms A. Everett, Home Office Presenting Officer

DECISION AND REASONS

1. As I set out in my reasons for finding that the determination of the First-tier Tribunal Judge disclosed a material error of law and should be set aside, the crucial element of the appellant's claim is that he is married to a British citizen, Ms [ZK]. The issue is whether paragraph EX.1 applied.
2. In order to meet the requirements of the Rules, the applicant was required to demonstrate that this exception applied in his case. The relevant words of EX.1 are that the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen settled in the UK and

there are insurmountable obstacles to family life with that partner continuing outside the UK.

3. It was conceded by the Secretary of State that the applicant was in a genuine and subsisting relationship with his partner but it was not considered there were insurmountable obstacles to that relationship continuing outside the United Kingdom. The reasoning that was provided for this is contained in the decision letter at page 5 of 9:

“You undertook a valid marriage in the United Kingdom in November 2013. From the evidence you have provided it has been accepted that your marriage is genuine and that it continues to subsist. You have told us that your wife is in employment in the United Kingdom. You have also told us that your wife suffers from endometriosis and that she relies on you for assistance and support. You have provided a letter from your wife’s GP which states that her medical problems are having a negative impact on her life and that she needs support from you as her main carer. The letter further states that your wife has severe endometriosis and fibroids giving her intermittent pelvic pain, heavy menstruation and problems trying to conceive. She suffers from back pain, low mood, stress and anxiety, pains in the soles of her feet, poor mobility, allergy to fruit and nuts and hypertension.”

The applicant’s wife is aged 43. The decision maker, having looked at the availability of medical treatment, took the view that there were no insurmountable obstacles. On the material before the Secretary of State, his conclusion was correct. The list of ailments including endometriosis and problems trying to conceive, although highly distressing to the appellant and his wife, could not rationally amount to insurmountable obstacles. They were matters which affected them equally wherever they may be and they had to live with the consequences of that condition however sad that might be to them. Similarly back pain, poor mobility and allergies, with their attendant effect upon both her, and perhaps both, her sense of well-being and psychological health have to be borne as being part of the situation in which this couple are placed without them amounting to *insurmountable obstacles to family life with that partner continuing outside the UK.*

4. One of the reasons for finding an error was the judge’s approach to a report from Dr Lawrence, a Consultant Psychiatrist. He found that the appellant’s wife was suffering from a major depressive episode secondary to PTSD resulting from the mistreatment that she suffered during the course of her first marriage. The judge notes in paragraph 32 that the respondent did not challenge the appellant’s mental and psychological condition nor the evidence concerning her first marriage nor the help and assistance that the appellant gives his wife. The judge concluded:

“I therefore found all those facts proved.”

5. Dr Lawrence’s report concluded that the impact on her mental health, if deprived from her current family support structure in the UK and NHS treatment and counsellor, would be a catastrophic deterioration and may result in hospital admission.

6. I was satisfied that the medical evidence of Dr Lawrence was not properly taken into account, that is, factored into, the First-tier Tribunal Judge's determination. In paragraphs 31 and 32 the judge accepted the evidence of Dr Lawrence but did not deal with its impact on his consideration of insurmountable obstacles.
7. The expression '*insurmountable obstacles*' is now defined by paragraph EX.2 as meaning '*very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.*'

Her statement

8. It is a central plank of the appellant's claim that his wife is suffering from the consequences of her first unhappy marriage. In a long statement dated 28 September 2017 she describes her first husband's behaviour towards her since she first arrived in the United Kingdom in August 2004. Her husband's family offered her no support. She describes his controlling behaviour including restricting her access to her own family, not allowing her to go outside the home and preventing her returning to Bangladesh to see her family there. Separately, she also refers to financial abuse, refusing to support her financially and removing funds from her account. The statement also continues with acts that were designed to humiliate her as well as coercive behaviour which he found particularly degrading. The statement also describes physical violence.
9. Unsurprisingly, this led to a deterioration in her mental health. She began suffering from anxiety and panic attacks which sometimes reduced her to being unable to carry out simple day-to-day tasks. This resulted in increasing isolation from her friends and others including her family who might support her. After an initial separation in 2008 she left her husband finally in 2009 to live with her sister. She obtained a non-molestation order against her husband who eventually divorced her in Bangladesh.
10. Ms [K] commenced counselling in December 2008 attending weekly sessions and, at the time of writing, continued attend to attend counselling each week.
11. In paragraph 68 of her statement, she described by far the biggest positive influence was the presence and support provided to her by her elder sister, [A]. She lived with her until December 2010. [A] is married with two children and has provided Ms [K] with substantial support.
12. She also describes the support provided to her by her husband. This support would, of course, continue were the couple to relocate to Bangladesh.
13. Her current support network includes both her husband and her sister and family but also includes healthcare provided to address her various difficulties both physical and mental. She claims that those would be lost to her were she to return to Bangladesh. In particular, she states that her family members in Bangladesh know nothing of her mental health

problems which are matters generally stigmatised there. Additionally, her gynaecological problems have resulted in her being unable to have children.

14. Ms [K] suffers from polycystic ovaries, a severe level of endometriosis, plantar fasciitis which causes pain throughout her body. She has undergone five operations to treat her endometriosis.

Her sister's statement

15. Her sister, in a statement also dated 28 September 2017, dates the commencement of Ms [K]'s mental health problems to her first marriage. She confirms her first husband's abusive behaviour and the steps he took to prevent her from speaking to Ms [K] during the period in which Ms [K] was living with her (March 2009 until Ms [K] period of deep psychological trauma. She describes how her two daughters played a positive role in her sister's recovery. Whilst Ms [K] moved out of her sister's home in December 2010, her sister maintained a very close relationship with her.

Dr Lawrence's report

16. Dr Lawrence assessed Ms [K] for over two hours on 12 June 2017 at his clinic in Harley Street for the purpose of preparing a full psychiatric history and mental state examination. Ms [K] was accompanied by her niece who acted as her interpreter. He described Ms [K] and her niece as intelligent. Ms [K] was described as both objectively and subjectively depressed but did, on one occasion, smile.
17. In the course of her describing her experiences at the hands of her first husband, Dr Lawrence records that she had a full-blown PTSD reaction. She started breathing fast, developed palpitations and became pale. His observation, as an expert, was that this was a full-blown PTSD reaction characterised by low blood pressure, fast heart rate and a sense of breathlessness. It is similar to a panic attack. His opinion was based on his own observation of the physical signs which were a consistent reflection of the underlying biological mechanism.
18. He describes how she is clinically depressed. Dr Lawrence described her as a very sad old (cf aged 43) lady. During the course of the examination, she was tearful, repeatedly distressed and very anxious, describing feelings of helplessness and hopelessness. Reverting to her full-blown PTSD response, he stated that the symptoms were almost impossible to simulate. He described her as a woman of quite high intelligence functioning below that level, fearful of what would happen to her if her husband were not allowed to stay. Dr Lawrence stated

“She told me she feels sad all the time and views the future as hopeless and will only get worse. She feels a total failure as a person. She gets very little pleasure from the things that she used to enjoy. She told me that she feels guilty all of the time and she feels as though she is being punished. She is disappointed in herself and blames herself for everything bad that happens. It is hard to get interested in anything and she has trouble making decisions. She feels more worthless than other people and does not have enough energy to do very much.”

19. He described the symptoms as all completely classical of a major depressive illness. It is, therefore, unsurprising that he described her as suffering from a major depressive episode secondary to PTSD. She had not been given proper psychological or reasonably appropriate pharmacological treatment. He suggested that she receives antidepressants and recommended she be referred to a psychiatrist working within a specialist clinic with expertise in PTSD and depression. This is a treatable condition in the UK but would not be fully effective, given the situation where she is still afraid of returning to the source of threat.
20. In answer to the various questions posed by the appellant's solicitors, Dr Lawrence stated that it was vital for her mental health that '*she remains within her sister's home and that she continues to live with her husband upon whom she is utterly dependant.*' This was not, of course, an accurate statement of her current domestic arrangements. She has not lived in her sister's home since 2010, although she continues to have a strong relationship with her. She met the appellant in November 2011 and married in November 2012. They have remained together ever since in accommodation they will acquire the right to purchase in 2022.
21. Dr Lawrence was asked to assess the impact that there could be on her mental health if she were deprived of her current family support structure in the UK, NHS treatment and counselling. He stated

"This would cause a catastrophic deterioration and may result in hospital admission. Her psychomotor retardation will get worse, her capacity to engage in any of the normal activities of daily living would be impeded. Her catastrophic expectations would lead her to believe that she would never be reunited with her husband ever again, - this could result in an impulsive suicidal act."
22. This answer presupposes, of course, that she would remain in the United Kingdom whilst her husband would return to Bangladesh in order to apply for entry clearance. This is not a likely outcome. The couple do not meet the requirements for entry clearance. Since she has elected to make a home together with her husband and to leave her sister's household, the more likely outcome is that she would join her husband in Bangladesh rather than end the marriage and remain in the United Kingdom. The alternative outcome cannot be excluded; namely that the combined support provided by her sister (with whom she has not lived for the past nine years), the NHS and her counselling would act as sufficiently strong benefits such as to outweigh the actual or potential support (emotional, physical, practical, financial, social and domestic) that her marriage with the appellant would afford in Bangladesh. However, were she to abandon her marriage, there must necessarily be the *insurmountable obstacles to family life with that partner continuing outside the UK* or else she would not do so.

Additional material

23. I was also invited to consider the letter of Dr Iris Popa at pp. 111-2 dated 10 February 2017. She described many of the matters to which I have

earlier referred. Reference is also made to Carpel Tunnel Syndrome affecting her wrists, treated by injections, for which she was referred to an orthopaedic surgeon. Dr Popa recorded that the support of the appellant and continuous counselling has allowed her to recover sufficiently to bring back some normality to her day-to-day life. Dr Popa referred her, in 2017, to a psychologist.

24. In a supplementary bundle served under cover of a letter dated 10 April 2019, there is evidence that the appellant (born 15 August 1967, now aged 51) suffered what was described in the Discharge Information Summary dated February 2019 as 'an acute coronary syndrome', a heart attack, following a 5-day period of chest pain as a result of which further investigations were ordered.
25. In the same bundle, Ms [K] is shown to have resumed part-time work for Primark. A letter from the Respiratory Unit of Barts NHS Trust records her visit to the clinic on 18 April 2018 to address her ongoing respiratory symptoms: '*She remains unwell but there has ben some slight improvement.*' The letter wonders whether '*there may be an element of asthma*' but there was '*an ongoing infection*'. The follow-up in December 2018 recorded that her chest was then clear on examination but that the main problem was cough variant asthma, relatively well-controlled by medication but not '*quite right*'.

Analysis and conclusions

26. The physical symptoms of which Ms [K] complains are numerous and, treated separately, provide little support for the finding that each amounts to an insurmountable obstacle to family life with that partner continuing outside the United Kingdom. However great the couple's sadness may be that they are unable to have children, that is the position in which they find themselves. Similarly, Carpal Tunnel Syndrome and respiratory symptoms amounting, probably, to a form of asthma do not meet the threshold. Their significance, however, arises cumulatively as contributing to her psychological state. I do not think that Dr Lawrence's description of her as a 'very sad old lady' when Ms [K] is 43 years old amounts to a clerical error. Rather, it seems likely that, given her overall appearance and history, he was treating her as someone prematurely aged as a result of her past experiences and current condition. If so, it provides a valuable insight into her vulnerability.
27. The diagnosis made by Dr Lawrence, which is not contested, contains several strands within it which, combined, present a portrait of Ms [K] as suffering from a significant level of mental health difficulties. The overall picture is one of an individual who is experiencing vulnerability and frailty. I am not persuaded that her condition can properly be described as simply an individual who is suffering from Post Traumatic Stress Disorder. There are numerous cases of individuals who suffer from PTSD whose condition does not establish an insurmountable obstacle to family life continuing outside the United Kingdom. The degree and of her disability (as it may properly be described) may be inferred from the evidence of the effect

upon her of her first disastrous marriage. It is also authoritatively established by Dr Lawrence's personal assessment as an expert of a full-blown PTSD episode during the course of his meeting with her. There is, therefore, no question of Ms [K]'s vulnerability being established merely by reason of a label being attached to her that she suffers from PTSD; rather, it is the underlying evidence that establishes her as being particularly vulnerable.

28. In this assessment I have taken into account the fact that she has resumed her work. This is not, perhaps, indicative of a significant mental illness. Furthermore, it is the nature of the evidence in this appeal that some of the recommendations made by Dr Lawrence have not been the subject of supplementary reporting. I have also taken into account the fact that she will continue to have the support of the appellant were she to accompany him to Bangladesh.
29. However, what is lacking in any consideration of the consequences of her leaving the United Kingdom is the effect upon her mental well-being of the loss of the package of support mechanisms that currently operate in her favour. I acknowledge that Ms [K] has not lived in the same household as her sister since 2010. I also readily acknowledge that the presence of other family members in the UK rarely prevents an individual from removal. Nevertheless, it cannot be denied that her sister played a vital role in supporting Ms [K] during a difficult period of her life and continues to offer support in a variety of ways, including the simple presence of her family. The package of support also includes counselling which is unlikely to be replicated in Bangladesh in the same way that it is provided in the United Kingdom.
30. It is unquestionably the case that these factors amount to obstacles. As I have set out in the earlier parts of this decision, that is not the issue. The real issue is whether these obstacles, these difficulties, these differentials amount to the *very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which...would entail very serious hardship for the applicant or their partner*. I am unable to marginalise the professional opinion of Dr Lawrence that it is important for her to continue to have access to the support mechanisms which currently exist for her benefit. I accept that the support provided by her husband will continue but such support is only part of the package she currently enjoys and that the absence of the support mechanisms as a package would entail serious hardship to Ms [K] that can properly be described as very serious.
31. In reaching this conclusion I accept that this must be a value judgement and is not capable of absolute certainty. I am, however, satisfied that the decision I reach must be made on a case-by-case basis as I have sought to do. Accordingly, I conclude as a matter of fact and of law that the appellant has established insurmountable obstacles within the meaning of EX.1.

DECISION

- (i) I find the decision of the First-tier Tribunal Judge discloses an error of law and should be set aside for the reasons previously given.
- (ii) I re-made the decision allowing the appeal of the appellant against the decision of the Secretary of State.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
Dated 09 May 2019