Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09555/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 3 December 2019	**On 17 December 2019**

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

SC
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R de Mello, Counsel, instructed by Whitefield Solicitors Ltd
For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought with permission granted by the Upper Tribunal on 22 October 2019 against the decision of First-tier Tribunal Judge Buckley who following a hearing in Manchester on 25 July 2019 dismissed the appellant's human rights appeal. That appeal was brought in the context of the respondent's decision that the appellant should be deported from the United Kingdom as a foreign criminal. On 5 October 2018 the appellant was convicted of assault occasioning actual bodily harm on his wife, to be with whom he had come to the United

Kingdom, following marriage; and also possession of extreme pornographic images, including intercourse/oral sex with dead/alive animals.

2. The appellant was on 12 November 2018 sentenced to a term of 22 months' imprisonment for the assault offence and he received consecutively a sentence of six months' imprisonment for the possession of extreme pornography. A restraining order for a period of twelve months was also made against him in respect of contact with his wife.

3. The appellant's grounds of appeal were that his removal would be incompatible with the right to respect for his private and family life which he enjoyed in the United Kingdom, in particular with his children of the marriage; and also that it would be unduly harsh for those children to be expected to live in Pakistan.

4. The judge made a series of findings contrary to the appellant. Some of those findings relate to his relationship with his wife, to which I will return in due course.

5. The ground upon which permission was granted by the Upper Tribunal contends that the First-tier Tribunal had erred in law in declining to place any weight on the witness statement of the appellant's wife in drawing an adverse inference from her non-attendance at the hearing. It was said that on 19 June 2019 the appellant wrote to the First-tier Tribunal, asking for the hearing to be adjourned because his wife would like to give supporting evidence in relation to the matter. The request was made by a letter that suggested the adjournment should be until after the restraining order against the appellant was removed, as the evidence of the appellant's wife would be of significant importance.

6. On 3 July 2019, the First-tier Tribunal refused the adjournment application, saying that the wife could provide evidence via a witness statement and that the appeal was to proceed. This decision was taken by a Tribunal caseworker. The caseworker's decision referred to the right of the appellant to ask for the matter to be reconsidered by a judge.

7. On 4 July 2019, the appellant's solicitors sent a letter to the First-tier Tribunal, reiterating that the appellant's wife wished to give evidence and that it would be extremely important to his appeal. As far as I can see from the bundle and from the case file, there was no reconsideration of the refusal to adjourn before the hearing before the First-tier Tribunal Judge. Certainly, my attention has not been drawn to anything in that regard.

8. The judge's decision does not refer to any application to adjourn being made to him. In the light of what I have just said, that is of some significance.

9. The judge had this to say about the witness statement from the wife, in which she indicated a wish to reconcile with the appellant:-

> "40. It is in the context of this controlling and abusive relationship that I am unable to place any weight on the Appellant's wife's witness statement. It is noted that she did not attend to give evidence. Although the restraining

> order is in place, practical arrangements could have been made for the Appellant's wife to give evidence in the absence of the Appellant. However, the proposed plans to reconcile need to be considered in the context that the Appellant's wife is a victim of domestic violence, and sadly it is not uncommon for victims of domestic violence to seek reconciliation following incidents of control and abuse. Further, although it is the intention of the couple to reconcile and live as a family unit, it cannot happen upon release by virtue of the restraining order being in place until November 2018. In addition, the children have been deemed to be at risk of emotional harm by social services, as a consequence of the parental relationship and behaviour of the Appellant, and a child protection plan is in place. I do not have the details of the child protection plan, and neither did the Appellant, but this will be in place to safeguard the children from experiencing further incidents of domestic abuse."

10. The judge went on at paragraph 41 to note that the appellant did not have either a genuine and subsisting relationship with his eldest son or his wife. The appellant has yet to meet his daughter and no relationship, other than a biological one, currently existed there. The judge then found as follows at paragraph 42:-

> "42. In relation to the relationship with his wife, further to my findings above regarding the control and violence in the relationship, I agree with the Respondent that despite the couple's current intentions, it is not a subsisting relationship. The evidence confirms that the couple have only lived together for just over a year, throughout a nearly 7 year marriage. During the Appellant's time in the UK, I have found in accordance with HHJ Newell's sentencing remarks, that the marriage was a controlling one, which significantly impacted, for example, on the Appellant's wife's working abilities and attitude. Further, the restraining order is in place until November 2018 and no application has been made to reduce this time, and as such prevents the Appellant from having any contact with his wife."

11. The reference to the sentencing judge's remarks is a reference to this passage from them, quoted by the judge at paragraph 39:-

> "There was an argument between you (the Appellant and his wife) in the morning, it was heard by neighbours, it disturbed them and also which your father-in-law attended. The dispute turned to violence, there was barging and manhandling, punches thrown by you at your wife, she was dragged by her hair, put on the floor and strangled, there were kicks to the body and the stomach, a particularly aggravating feature, you (the Appellant) knowing that she was in the early stages of pregnancy…"

12. The grounds of challenge contend that, having refused to adjourn on the basis that the wife's evidence could be given by a witness statement, the First-tier Tribunal Judge was wrong in law to hold against the appellant the fact that his wife had not attended to speak to that statement. In particular, the judge said that practical arrangements could have been made for the wife to give evidence in the absence of the appellant. What the First-tier Tribunal Judge should have done, it is contended in the grounds, was to adjourn the hearing.

13. Mr De Mello, who appears for the appellant before me, was unaware of a letter dated 17 July 2019, sent by the appellant's solicitors. This letter does not find reference in the grounds, to which I have referred. The letter of 17 July 2019 said that the appellant had a scheduled hearing at the First-tier Tribunal on 25 July 2019. The First-tier Tribunal had, it seems, on 15 July sent the appellant's solicitors the notice of hearing and some *pro forma* directions. In those directions, the appellant was required to say whether an interpreter would be needed at the hearing. The letter of 17 July 2019 said that the writer was currently unaware that the appellant would be produced to give evidence at the hearing, but if he were produced, then he would require an interpreter in Punjabi. If the appellant was not produced, then an interpreter would not be required. It was then stated that the appellant's wife "also wishes to give evidence in support of her husband's appeal. She speaks fluent English and does not require an interpreter". The letter ended by hoping that it had provided clarification of the Tribunal's enquiry.

14. That letter's omission from ground 1 is in my view significant. It is significant because it was written after the application to adjourn and, indeed, after what appears to have been a request by the solicitors to have the caseworker's adjournment refusal reconsidered by a judge. There is no indication in the letter that there were any difficulties in producing the wife. On the contrary, the clear impression given was that the wife would be attending, presumably in some way compatibly with the order of the court.

15. Shortly before the hearing this morning, Mr McVeety, who appears on behalf of the respondent, filed and served on Mr De Mello the minutes of the hearing compiled by his colleague, Presenting Officer Zoe Young. Ms Young compiled her minutes on 29 July 2019, four days after the hearing. The minutes state as follows:-

> "The Rep asked if it was ok for the family members to come into court apart from the wife and the IJ asked if they were going to be witnesses and the rep said no. The IJ said well I can't object then. The wife did not come into the hearing as the A would have breached the Restraining order. The IJ did say there were ways around the restraining if the rep wanted to call the witness and he said he did not and would proceed without her evidence.
>
> There were no further preliminary issues."

16. Mr De Mello was given the opportunity by me of contacting his instructing solicitors regarding the letter of 17 July 2019 and the Presenting Officer's note. Having done so, Mr De Mello informs me that his instructing solicitors had made contact with the Counsel who had appeared on 25 July 2019 before the First-tier Tribunal Judge and that Counsel denied having spoken to the judge in the terms described by Ms Young and that, furthermore, the wife was not present at the hearing centre at all, let alone in the hearing room.

17. There has been no application before me to adjourn on the basis of what I have just described. Indeed, it does not seem to me to be appropriate in terms of the overriding objective for me to do so. The letter of 17 July 2019 gives, in my view, some credence to the description of the preliminary issues in Ms Young's note of 29

July 2019, in that the letter of 17 July 2019 at least suggests that the wife would be going to the hearing.

18. The Presenting Officer's note also in my view, importantly coincides with what the judge said in his decision, which would not have been available to the parties when Ms Young made her note. As I have noted, the judge observed that although a restraining order was in place, practical arrangements could have been made for the appellant's wife to give evidence in the absence of the appellant. That fits very closely with the terminology used by Ms Young.

19. I find on balance, on the state of the evidence, that Ms Young's note is more likely than not to represent the truth of the matter. In those circumstances, as Mr De Mello rightly acknowledged, the sole remaining ground of appeal is in difficulty.

20. However, I consider that a proper reading of the judge's decision discloses the following. The caseworker's refusal to adjourn on the basis that the witness statement of the wife could stand as her evidence, even if not affected by the events to which I have made reference, was plainly not an indication from the First-tier Tribunal that the wife's witness statement would be given material weight, irrespective of the totality of the evidence.

21. As we have seen from paragraph 40 of the decision, the judge noted that the appellant's wife had been the victim of domestic violence. It was often in the nature of such victims to seek reconciliation. There was also considerable reference made in the decision to the controlling way in which the appellant had treated his wife during the time that they were living together.

22. It seems to me that, properly read, the judge's decision is to the effect that the wife's evidence had to be read in the light of those highly important matters. It also had to be read in the light of the fact that the children had been deemed to be at risk of emotional harm by Social Services.

23. At paragraph 42, the judge did not doubt the couple's current intentions, which must in part have derived from the witness statement of the wife. The judge nevertheless found that the relationship was not subsisting.

24. For those reasons, even leaving aside the procedural matters to which I have referred, the judge has given adequate reasons for placing no material weight on the witness statement of the wife.

25. The sole ground of challenge therefore fails and this appeal is accordingly dismissed.

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

his 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.

Signed Date: 13 December 2019

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber