



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/16115/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

Promulgated

On 19 June 2019

On 04 July 2019

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

M I O

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Iengar of Counsel

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born in 1982. Her immigration history is that she entered the UK with leave as a student in January 2011. She was granted further leave as the spouse of a British citizen in December 2013. She made an in time application for indefinite leave to remain as a spouse in December 2015. That application was refused on 7 June 2016.
2. The basis for the refusal was that the appellant had been invited for interview on 4 May 2016 by the respondent but had failed to attend. Medical evidence to confirm that the appellant had been in hospital was accepted by the respondent and an alternative interview date of 8 June 2016 was stated to have been notified. The appellant did not attend. On that basis the application was refused with reference to paragraphs

322(10) and 287(a) of the Immigration Rules. Also, under paragraph 276ADE. Further, there was no basis to find that there were exceptional circumstances whereby leave should be granted on Article 8 grounds outside the Rules.

3. She appealed.

First-Tier Hearing

4. Following a hearing at Taylor House on 8 December 2017 Judge of the First-tier Tribunal Buckwell, having heard evidence from the appellant, dismissed the appeal. His findings and reasons are at paragraph [21]ff. In summary, (at [21]) he stated:

“Subsequent to the appellant’s application it is clear that the relationship between the appellant and her husband has completely broken down. Indeed it does not appear to be in contention that the appellant was the victim of domestic violence and that her relationship with her husband no longer subsists. Indeed, she is not aware of his location following police action.”

5. He went on to note that the application was refused on the ground that the appellant failed to attend for the rescheduled interview on 8 June 2016, the respondent claiming that no contact had been received from her about that. The judge added: *“... somewhat surprisingly the respondent then decided the application on 7 June 2016.”* [22]
6. The judge then found that the respondent had failed to show that notice was given to the appellant about the rescheduled interview date and that the decision under paragraph 322(10) was wrong. Also, that the respondent should have considered the substantive provisions for ILR.
7. He went on to state that it was clear from the appellant that the application was no longer that of a spouse. The marriage was not subsisting. Advancing to consider domestic violence he found that the appellant *“did not adduce any third party statements or correspondence in relation to the claimed domestic abuse. She provided a narrative during her evidence as to police involvement but there is no specific confirmation in that regard.”* The judge, accordingly, did not find that *“it has been established that the appellant can in the alternative meet the requirements of the Immigration Rules in relation to domestic violence.”* [27]
8. He, in conclusion, found that Article 8 was not engaged in respect of any private life outwith the Rules and even if it was it was not disproportionate to expect the appellant to return to her home country.
9. She sought permission to appeal which was granted on 7 November 2018.

Error of law hearing

10. At the error of law hearing before me on 11 December 2018 it was agreed by both sides that the judge's decision showed material error of law such that the decision must be set aside to be remade. The judge had given inadequate consideration to the domestic violence claim, indeed, what findings were made were contradictory. Thus, at [21], as indicated, he stated that it did not appear to be in contention that the appellant was the victim of domestic violence and that her relationship with her husband no longer subsisted. Yet at [27] he criticised the lack of evidence produced in support of that claim concluding that it had not been established that she met the relevant requirements of the Rules.
11. It was agreed that the case would have to be reheard. Mr Kandola, who appeared for the respondent on 11 December 2018, noting that the application had changed from that of a spouse to a domestic violence claim consented to that being a "new matter" (s85 Nationality, Immigration and Asylum Act 2002).
12. The case was put down for a resumed hearing before myself. Following an adjournment on 20 March 2019 to allow the appellant more time, to which there was no objection, the matter finally came before me again on 19 June 2019.

Resumed Hearing

13. At the hearing the appellant gave evidence. There were three bundles of documents before me. She adopted two statements (8 March 2019 and 11 June 2019).
14. In cross-examination she was asked about the breakdown of her relationship with her husband. She said she has a son born in 2014 by another man. Her husband knew it was not his child and felt shameful. The biological father who now lives in Canada, urged her to try and work it out with her husband. However, the relationship broke down. The incident just before the first interview date in May 2016 occurred after she had dropped off her son. He pushed her downstairs. Although he later apologised she no longer felt safe and it was not good for her son. She asked him to leave and he eventually did so. His relationship with the child did not continue because he had been warned by the police not to return. Also, she changed her number.
15. Asked if there had been any involvement with child services she said they had sent a letter mentioning domestic violence in the house and saying that if it happened again the child would be removed. It was because she feared that her child would be removed that she had not mentioned earlier incidents of violence and abuse to the authorities.
16. She said no witnesses had attended the hearing. Although there were letters from several, one had just had a baby, another was abroad.

17. In brief submissions Ms Everett said there was no litmus test to establish whether domestic violence had occurred. She suggested it was odd that neither of the claimed witnesses to violence had attended and questioned whether there were other issues which might have contributed to the breakdown of the marriage. These matters apart she essentially left the matter for me.
18. In reply, Miss Lengar said that there appeared to be no dispute that the incidents of 3 May 2016 and 15 June 2016 occurred. There was medical and police evidence in the bundles. As for causality the evidence of the appellant was that when the police called in May 2016 and arrested her husband, the domestic violence had been going on for several years getting worse after the birth of her child by another man. It was significant that the divorce petition raised by the appellant stated that it was on the grounds of domestic violence and that her husband offered no defence to it.

Consideration

19. It was agreed that the appropriate legal provisions were Section DVILR: *"indefinite leave to remain (settlement) as a victim of domestic violence"* which reads:

DVILR.1.1 *"The requirements ... are that -*

(a) the applicant must be in the UK;

(b) the applicant must have made a valid application for indefinite leave to remain as a victim of domestic violence;

(c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability - indefinite leave to remain; and

(d) the applicant must meet all the requirements of Section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic violence."

20. It was noted that the appellant's application, although valid, had been as a spouse, not as a victim of domestic violence. However, Ms Everett in light of the concession made by Mr Kandola at the error of law hearing that consent was given by the respondent to the new matter, namely the change in the nature of the application, did not seek to argue that DVILR.1.1 (b) was in issue.
21. Nor was suitability in issue.
22. The remaining legal issue is Section E-DVILR (Eligibility) the relevant section being E-DVILR.1.3 which reads:

"The applicant must provide evidence that during the last period of limited leave as a partner of a British citizen or a person settled in

the UK under paragraph D-ECP.1.1, D-LTRP1.1 or D-LTRP.1.2 of this Appendix the appellant's relationship with their partner broke down permanently as a result of domestic violence."

23. It is clear that the appellant had limited leave as a partner of a British citizen. I find that the relationship was subsisting at the start of the last grant of leave as a partner in December 2015. No suggestion was made otherwise. There is evidence, through the tenancy agreement, bills and a joint bank account that they were living together at the same address in Purfleet. I find that the relationship was continuing during the last period of leave.
24. As for the claim that she suffered domestic violence during that period of leave I find to the civil standard that she did. She provided two witness statements (8 March and 11 June 2019) in which she set out the domestic abuse and violence which she claimed to have received from her husband. She also mentioned it in an earlier statement (30 November 2017). In these accounts she set out how the abuse and violence started about a year after their marriage in 2013. A factor was his drinking with matters getting worse when he learned of her affair which resulted in the birth of another man's child in 2014. I believed her evidence that she did not report such incidents and remained in the relationship because she still loved him and hoped that even with the child they would have a brighter future. I may say that she came across in oral evidence as patently truthful.
25. She gave specific detail about two incidents, the first on 3 May 2016 after which she attended the casualty department of the local hospital, the second on 15 June 2016 when the police were called.
26. The following documentary evidence was before me. In respect of the incident of 3 May 2016 a report from Queen's Hospital A & E Department (first bundle P11). It notes a self-referral by the appellant on that date. It comments "*fell down 4-5 steps today approx 7pm*". Her claim is that her husband pushed her down the stairs. There is some support for that from a letter (7 March 2019) in the third bundle (P32) from the Advanced Nurse Practitioner at her GP practice who after noting that the appellant had been registered with them since 2014 stated "*(she) was a victim of domestic abuse and attended A & E on 3.5.16 having sustained a back injury from being pushed down several steps.*" I found entirely plausible her claim in her statement (8 March 2019) that the starting point of that incident was when they were discussing the pending Home Office interview set for the next day when her husband "*got agitated, he said he loves (the child) as his own but he doesn't want anyone asking him questions about his birth as it reminds him of (her) infidelity.*"
27. As for the incident on 15 June 2016 there is a police risk assessment (first bundle P12). Apart from stating that the police called on that date it gives no further pertinent information. However, there is more information in the police report (second bundle P99). It confirms the date, the location, namely her address, and that it involved a claim of assault in the context of domestic abuse investigation. It includes a brief statement given by the

appellant narrating that her husband who had been spending time away, came back, there was an argument, he pulled at her top and then pushed her on the chest causing a mark. She did not wish a prosecution but only wanted him to stay away which is why she called the police. She was asked a number of questions by the officer. Her answers included that she was *“frightened after being assaulted today”*; that the abuse was getting worse; that her husband *“accuses her of cheating and gets jealous”*. There is a brief statement by the officer noting that she attended in response to a 999 call, and the appellant was *“visibly upset and crying”*. She said she had been grabbed by the t-shirt and pushed to the chest. When the officer returned later that day the small red mark on her chest had disappeared.

28. There is also a letter from Victim Support (26 July 2016) in the first bundle (P14) in which it is indicated that she had been sent a personal alarm.
29. Further, there is a letter from Children’s Services, Thurrock Council (7 July 2016) in the second bundle at P112 stating they had been made aware by the police of the *“domestic abuse incident of 15/6/16”* and would be taking no further action but reminding her of her duty as a parent to ensure that her child is not exposed to domestic violence.
30. I note also the child’s birth certificate in which the father’s name is not given.
31. In addition, I note the divorce application by the appellant (third bundle P9) in which under *“Reason for the divorce”* she stated: *“My husband was violent to me. He hit me. My husband was verbally abusive.”* Her husband in his response stated he did not intend to defend the case.
32. Finally, in respect of the evidence there are various letters (third bundle). One (at P17) is from a woman who lives in Norwich who is a friend and who claimed to have witnessed an incident in March 2016 when she called at the appellant’s house, heard raised voices, her screaming, her husband shouting and when the door opened her husband left and she was *“crying uncontrollably”* and had a red eye. She said she had been punched.
33. As indicated I found the appellant in her evidence before me to be a truthful witness. She satisfies me that the incidents of May and June 2016 occurred in the manner claimed. I accept also that there were other earlier incidents of abuse and violence. While it would have been helpful if the witness to the incident in March 2016 had attended to support her statement, I note she lives in Norwich and I see no reason to doubt the claim that her non-attendance was due to her having had a baby recently. I give weight to her statement.
34. The Home Office *“Victims of domestic violence and abuse”* document which was before me, defines *“Domestic violence and abuse”* as *“Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or*

sexuality. This can include, but is not limited to, the following types of abuse: psychological, physical, sexual, financial, emotional.”

35. Whilst the onus is on the appellant to show on the balance of probabilities the relationship broke down due to domestic abuse the Immigration Rules do not specify which documents should be provided. On the basis of all the evidence before me I find that there was a pattern of incidents of physical and emotional abuse by her husband which looked at cumulatively reached the threshold of her being a victim of domestic violence or abuse. I also find that the evidence clearly supports the claim that the reason the relationship broke down was because of domestic abuse and violence, and that following the incident in June 2016, after which he left the house for good, the relationship had broken down permanently with divorce later resulting.
36. In conclusion the appellant satisfies the requirements of the Immigration Rules which are designed to be compliant with Article 8. Accordingly, there is no public interest in refusing leave. The appeal succeeds.

Notice of Decision

37. The decision of the First-Tier Tribunal shows material error of law. It is set aside and remade as follows:-

The appeal is allowed.

Order regarding anonymity

Unless and until a tribunal or court directs otherwise, the appellant in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any of her family. The order applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 02 July 2019

Upper Tribunal Judge Conway