



Neutral Citation Number: [2020] EWHC 326 (Admin)

Case No: CO/2367/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/02/2020

Before :

MR JUSTICE JULIAN KNOWLES

Between :

**THE QUEEN ON THE APPLICATION OF
WALEED SULIMAN**

Claimant

- and -

**SECRETARY OF STATE FOR THE
HOME DEPARTMENT**

Defendant

Mr Ahmed and Mr Mughal (instructed by K M Solicitors Ltd) for the Claimant
Mr Adams (instructed by GLD) for the Defendant

Hearing dates: 11 February 2020

Approved Judgment

Mr Justice Julian Knowles:

1. This is an application for judicial review with the permission of Upper Tribunal Judge Coker. It began life in UTIAC but was transferred to the Administrative Court because there was a *vires* challenge to the relevant Immigration Rules. In the event, that argument was not pursued by Mr Ahmed.
2. The Claimant is a national of Sudan who was born on 13 July 1987. He has been granted permission to challenge the Defendant’s decision of 19 November 2018 which refused his application for indefinite leave to remain in the UK as a victim of domestic violence. The decision was maintained in an administrative review.

Factual background

3. The Claimant entered the UK in July 2005 and unsuccessfully applied for asylum. He was removed from the UK to Sudan on 19 September 2010. During his time in the UK he met Leanne Hoyte, who was at that time studying at Manchester University. The Claimant married Ms Hoyte in Sudan in 26 October 2010. After initially being unsuccessful the Claimant was granted entry clearance in November 2012 and came to the UK in January 2013.
4. The essential chronology for determining the present case is as follows:

Date	Event
25.11.2012	Claimant granted entry clearance as a spouse of a British Citizen (BC) or person with settled status until 25.2.2015 (under Part 8 of the IRs)
10.4.2015	Claimant granted further limited leave to remain (LLTR) as spouse of a BC or person with settled status until 10.4.2017 (under Part 8 of the Immigration Rules (IR))
21.9.2015	Claimant asserts that his marriage broke down
6.3.2017	SSHD notified that the Claimant’s marriage had broken down
18.3.2017	Claimant applies for LLTR on the basis of his private life and exceptional circumstances
17.11.2017	SSHD refuses application for LLTR on private life and exceptional circumstances grounds and certified claim under s 94 of the Nationality Immigration and Asylum Act 2002
27.11.2017	Claimant applies for LLTR outside IRs under the Destitution Domestic Violence Concession (DDVC)
7.12.2017	SSHD grants LLTR under DDVC until 6.3.2018
6.3.2018	Claimant applies for indefinite leave to remain (ILTR) as a victim of domestic violence

19.11.2018	SSHD refuses the application for ILTR as a victim of DV
24.12.2018	SSHD maintained that refusal on AR

The decision under challenge

5. In summary, the decision letter said:

“D-DVILR 1.3 with reference to paragraph DVILR 1.1 of Appendix FM of HC395 (as amended).

You have never been granted leave to enter or remain as a partner under Appendix FM of the Immigration Rules, and you have failed to demonstrate that you were subjected to domestic violence which caused your marriage to break down.”

6. The letter went on to explain that the Claimant’s application of 6 March 2018 fell for consideration under para DVILR of Appendix FM of the Immigration Rules. DVILR1.1 provides:

“Section DVILR: Indefinite leave to remain (settlement) as a victim of domestic abuse

DVILR.1.1. The requirements to be met for indefinite leave to remain in the UK as a victim of domestic abuse 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 abuse;

(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 of the requirements of Section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic abuse.”

7. The letter went on to accept that the Claimant satisfied paragraphs (a), (b) and (c) of this Rule. However, it concluded that the Claimant did not meet paragraph (d) because he could not meet the requirements of E-DVILR 1.2 and 1.3.

8. E-DVILR.1.1 provides:

“To meet the eligibility requirements for indefinite leave to remain as a victim of domestic abuse all of the requirements of paragraphs E-DVILR.1.2. and 1.3. must be met.”

9. E-DVILR 1.2 provides:

“E-DVILR.1.2. The applicant’s first grant of limited leave under this Appendix must have been as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen, a person settled in the UK, or a person with refugee leave, under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix or as a partner of a refugee granted under paragraph 352A, and any subsequent grant of limited leave must have been:

(a) granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen, a person settled in the UK, or a person with refugee leave under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix; or

(b) granted to enable access to public funds pending an application under DVILR and the preceding grant of leave was granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen, a person settled in the UK, or a person with refugee leave under paragraph D-ECP.1.1., DLTRP.1.1. or D-LTRP.1.2. of this Appendix; or

(c) granted under paragraph D-DVILR.1.2.”

10. The letter said that the Claimant had never been granted leave as a partner and so he was unable to meet the requirements of this paragraph.

11. Paragraph E-DVILR.1.3 specifies that:

“The applicant must provide evidence that during the last period of limited leave as a partner of a British Citizen, a person settled in the UK, or a person with refugee leave under paragraph D-ECP.1.1., DLTRP.1.1 or D-LTRP.1.2 of this Appendix or during their only period of leave under 352A, the applicant’s relationship with their partner broke down permanently as a result of domestic abuse.”

12. The letter concluded that the Claimant was unable to meet this condition because:

“... you have never been granted leave as a partner under Appendix FM of the Immigration Rules and so your application cannot meet the requirements of paragraph E-DVILR 1.3 of the Immigration Rules.”

13. None of this analysis was, in the end, challenged by Mr Ahmed on behalf of the Claimant. His submissions focussed on the next paragraph, where the decision maker said this:

“However, it is acknowledged that you had been granted leave to enter and leave to remain in the UK as the spouse of a settled person and so consideration has therefore been given as to whether you have demonstrated that your relationship broke down due to domestic violence.”

14. Mr Ahmed submitted that this was the Secretary of State considering whether to grant ILR outside the Rules on the basis that the Claimant was the victim of domestic violence. He said the Secretary of State’s analysis of the evidence of domestic violence which the Claimant had supplied was flawed, and therefore that her decision could not stand. I will consider this evidence later.
15. On behalf of the Secretary of State Mr Adams submitted that this was not what the decision maker was doing, but she was simply considering the last part of E-DVILR.1.3.
16. The point at issue between the parties was therefore, in the end, quite a narrow one. In granting permission, Upper Tribunal Judge Coker said that it did appear that the Secretary of State had considered whether to exercise his discretion outside the Rules, and she does not appear to have taken full account of the evidence.

The Claimant’s evidence of domestic violence

17. In his letter of 5 March 2018 which accompanied his application for ILR the Claimant set out the troubled history of his marriage. He said his wife would drink to excess and become violent and rowdy. In 2013 he was hit by her on the head with a piece of metal. He had to go to hospital to have his head sutured. He did not report it to the police because his wife threatened to have him deported. On another occasion she poured hot coffee over his hand. He did not tell the truth about this to health professionals because he was ‘cowardly’ because of his ‘manhood’. The relationship ended in September 2015 when he discovered she had cheated on him. He says she blackmailed him for money and threatened to have him deported. The Claimant also set out a number of examples of emotional abuse, eg, that she would always shout at him and would lock him out in the rain. He says he was treated like a slave.
18. There was also a letter from Victim Support from April 2018 concerning an allegation of assault; a record from Manchester Royal Infirmary from 2013 when the Claimant attended with a head injury; a medical record referring to an assault; and a record of a burn on wrist and hand from 2014.

The decision letter’s assessment of the evidence

19. The relevant section of the letter set out the 2013 definition of domestic violence as including coercive or controlling or violent or threatening behaviour. Plainly if the Claimant's wife behaved as he alleged then this was domestic violence.
20. After summarising some of the evidence which the Claimant had submitted the decision maker said, '... nowhere in these notes is any explanation given for these injuries in that your wife caused them.'. In effect, therefore, the Secretary of State whilst accepting that the Claimant had attended hospital with injuries that are consistent with his account, refused to conclude that the Claimant's wife caused them. The letter concluded:

“As stated above, you have never been granted leave as a partner under Appendix FM of the Immigration Rules and so your application cannot meet the requirements of paragraph E-DVILR 1.3. In addition, consideration has been given to the documents you have submitted in the round, to determine whether you were subjected to domestic violence which caused you marriage to break down, and it is concluded that you have failed to demonstrate this. It is therefore concluded that your application fails to meet the requirements of paragraph E-DVILR 1.3 of Appendix FM of the Immigration Rules.”

Discussion

21. Like the single judge who granted permission, I am satisfied that the Secretary of State intended to, and did, consider the Claimant's case as an alleged victim of domestic violence outside of the Rules. That is the natural and ordinary meaning of the paragraphs of the letter that I have set out, in particular the paragraph I quoted at [13] above. I reject Mr Adams' submission to the contrary. He accepted that a determination that the Claimant had been a victim of domestic violence was relevant to the exercise of discretion outside of the Rules, and that if the Secretary of State was going to go down that route then she had to get it right.
22. The relevant Home Office Policy is the *Victims of domestic violence and abuse* (Version 14.0, February 2018). This states at p20:

“All evidence submitted must be considered and a conclusion drawn as to whether there is sufficient evidence to demonstrate that, on the balance of probabilities, the breakdown of the relationship was as a result of domestic violence.”
23. Mr Ahmed contended for a lower standard of proof – he suggested something akin to ‘a reasonable degree of likelihood’. I reject that submission. In my judgment the Secretary of State was entitled to set the bar at the level of balance of probabilities in the formulation of the policy to be applied.
24. I am quite satisfied on the evidence that, on the balance of probabilities, the Claimant suffered the injuries that he said he did and that he received the treatment for them that he said he did. Indeed, the decision letter does not suggest otherwise. The key question is how they were caused.

25. I satisfied that the Secretary of State's determination that she was not satisfied these injuries were caused by the Claimant's wife is flawed and cannot stand. That is firstly because the Secretary of State did not address or deal with the reasons explained by the Claimant why he was reluctant to tell the police or the medical authorities. These were, variously, his own sense of shame; 'cowardness'; his residual love for his wife despite her behaviour; and his fear of losing her or getting her into trouble. If the Secretary of State was going to deal with matters fairly then this evidence needed to be confronted and a conclusion reached. I am bound to say that these explanations all strike me as being inherently plausible and the fairly typical response of an abused partner in a relationship. They provide at least an equally convincing explanation for why the Claimant said nothing at the time as the one reached by the Secretary of State, ie, that he had not been assaulted by his wife. Fairness required the Secretary of State to address it.
26. That conclusion is sufficient to require this application to be allowed.
27. Secondly, the Secretary of State left entirely out of account the witness evidence of the two men who attended hospital with the Claimant after he had received his head injury and who witnessed him being threatened by his wife if he told the police. I take Mr Adams' point that these were not before the decision maker when the 19 November decision was taken. These were submitted during the pre-action protocol and at least one of them appears to have been submitted as part of the Administrative Review process.
28. Khalid Ahmed wrote about going to the Manchester Royal Infirmary where he saw the Claimant with a bandage on his head and blood on his shirt. He wrote:
- “Another friend of Waleed also came to the hospital who was also a black male. He was also asking him about his injuries. The nursing staff there was attending the other patients when suddenly Leanne came forward on the face of Waleed (sic) and angrily said to him that if he tell anybody about this she will get him deported whether it is police or hospital.”
29. Another friend, Tajjdine Abdullah also attended the hospital and wrote:
- “While I was standing along the bed of Mr Waleed his wife came there and in my presence she threatened him that if he tell police or hospital or anybody else anything she will get him deported.”
30. This was plainly highly material evidence. It directly supported the Claimant's case. If the Secretary of State was going to deal properly and fairly with the evidence then she needed to reach a conclusion about it

Conclusion

31. This claim is allowed and the decision quashed.