



Domestic Violence Judgment

4th June 2007

At the end of April, the Court of Appeal gave judgment in *AI (Pakistan) v SSHD* [2007] EWCA Civ 386. The judgment relates to Home Office requirements for evidence in support of applications for indefinite leave to remain (ILR) under the Domestic Violence Rule.

The Domestic Violence Rule

This is paragraph 289A of the Immigration Rules. This rule applies to victims of domestic violence if:

- the person has been allowed to enter or stay in the UK because of their relationship with a person who is present and settled in the UK; and
- the relationship has broken down because of domestic violence

What is meant here by 'relationship' is either marriage or relationship akin to marriage. It includes civil partnerships (registered relationships between same-sex couples) and unmarried partnerships.

A person is settled in the UK if they are British or have ILR.

The Rule is to assist individuals, who have come to the UK lawfully on the basis of their relationship and with a view to settling here. It allows someone who would have expected to receive ILR if the relationship had not broken down because of domestic violence, to nevertheless still receive ILR. It particularly assists women caught in violent relationships to seek to escape that violence without the worry of losing the entitlement to ILR they would otherwise have.

Substance of the case

The issue before the Court of Appeal was what evidence could be relied upon in order to prove that a relationship (in this case a marriage) had broken down because of domestic violence.

The Home Office produce Immigration Directorate Instructions (often called IDIs). These are available on the Border and Immigration Agency (BIA) website at: <http://www.ind.homeoffice.gov.uk/lawandpolicy/policyinstructions/idis/>

The IDIs provide guidance to decision-makers. Chapter 8, Section 4 of the IDIs gives guidance on deciding applications made under the Domestic Violence Rule. This sets out particular, documentary evidence that should be accepted as showing that a relationship has broken down.

AI did not have documentary evidence of the breakdown of her marriage. Her application for ILR under the Domestic Violence Rule was refused, and she appealed to the AIT. She gave oral evidence of the breakdown of her marriage; and the immigration judge accepted her evidence as true. He allowed her appeal.

The Court of Appeal decision

Before the Court of Appeal, the Home Office argued that IA's appeal should be dismissed, because she did not have the particular, documentary evidence. They argued there were good reasons to restrict the Rule to such evidence, because it was easy for someone to allege that he or

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she had been the victim of domestic violence. Someone who did not have the appropriate evidence should simply ask the Secretary of State to exercise his discretion.

The Court of Appeal rejected that argument. The Rule required that the relationship had broken down because of domestic violence. An applicant for ILR under the Rule would need to show that his or her relationship had broken down in this way. It was not lawful to restrict the Rule to particular types of evidence.

As regards the IDIs, these were not unlawful. The IDIs provided important guidance, but should not be interpreted inflexibly.

Generally

This judgment is significant in relation to the IDIs and other policy instructions generally. Dyson LJ gave the judgment of the court, and he said (at paragraph 41):

“...it is obviously highly desirable that[BIA] caseworkers should be given clear guidance as to how they should perform the difficult tasks that they have to perform. But for the reasons I have given, I do not consider that they can be given inflexible instructions which have the effect of depriving them of the right to consider what evidence they should require when they consider the question of domestic violence in an individual case.”

Of course, if the Rules themselves require a specific type of evidence, an applicant will have to provide that evidence unless the particular Rule can be shown to be unlawful. What this judgment shows, however, is that Home Office instructions or guidance should not be able to restrict the Immigration Rules by requiring particular types of evidence in order to satisfy a condition in the Rules.

A copy of the Court of Appeal judgment is available at <http://www.bailii.org/ew/cases/EWCA/Civ/2007/386.html>