



IAC-FH-AR-V1

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

Appeal Number: IA/29383/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22 July 2015**

**Decision & Reasons Promulgated
On 24 July 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**NOSHIN KHOSRAVINEJAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Bazini, Counsel, instructed by Parker Rhodes
Hickmotts Solicitors

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Malone who, in a decision promulgated on 10 March 2015, dismissed her appeal against a refusal by the respondent to grant the appellant a further period of leave to remain and against a decision to remove her from the UK.

Background

2. The appellant is a national of Iran, date of birth 27 June 1993. She entered the United Kingdom in August 2009 as the minor dependent of her father who was also a citizen of Iran. Her father claimed asylum on entering the United Kingdom. This asylum claim was refused and a subsequent appeal dismissed. On 15 July 2010 the appellant was however granted Discretionary Leave to Remain in line with that of her father who had a serious medical condition. On 10 May 2011 she was granted further Discretionary Leave to Remain on the same basis until 9 May 2014. Her father died on 9 May 2011, a day before she was informed of the decision to grant her further Discretionary Leave to Remain.
3. In May 2014 the appellant applied for further leave to remain. This was on the basis of the private life she had established in the United Kingdom. This was refused by the Secretary of State on 30 June 2014 and a decision was made to remove her under Section 47 of the Immigration, Asylum and Nationality Act 2006. The appellant appealed this decision to the First-tier Tribunal.

The decision of the First-tier Tribunal

4. In his determination the judge stated:

“The appellant claims that, were she to be removed to Iran, she would be persecuted or subjected to serious harm or ill-treatment contrary to Article 3 of the 1950 Convention. I unable to deal with such allegations today. As I informed the appellant and Mr Mohamed, the appellant's proper course is to claim asylum at the Asylum Screening Unit in Croydon. The only matter I need address today is the appellant's private life claim under Article 8.”
5. The judge then went on to consider the appellant's private life claim. The judge inaccurately believed that the appellant failed to inform the Secretary of State immediately on the death of her father and of her change in circumstances. I am grateful to Ms Holmes for indicating, after review of the Home Office records, that in fact the Secretary of State did receive the death certificate and the letter from the appellant's representatives indicating the change of circumstances. The judge found the appellant to be an honest and reliable witness. The judge considered the Immigration Rules relating to private life and concluded that the requirements of those rules were not met. The judge considered Section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and concluded, having regard to the basis of the appellant's claim and the evidence before him, that the appellant had not established a private life to a sufficient degree that her removal would constitute a disproportionate interference with Article 8.

Whether the First-tier Tribunal made a material error of law

6. The grounds of appeal are twofold. The first ground maintains that, as the appellant specifically indicated in her Grounds of Appeal to the First-tier Tribunal that she feared persecution or Article 3 ill-treatment if removed to Iran, it was incumbent on the judge, pursuant to section 86 of the 2002 Act, to engage with this ground. I note that the appellant's bundle before the First-tier Tribunal contained a large number of human rights reports relating to Iran.
7. I am entirely satisfied that in failing to engage with the appellant's Article 3/asylum claim the judge erred in law. Reliance was placed by the appellant on the case of **Haque (Section 86(2), adjournment not required) Bangladesh [2011] UKUT 00481**, an authority which indicated that, pursuant to Section 86(2) of the 2002 Act, an Immigration Judge is obliged to determine any matter raised as a ground of appeal. The appellant specifically raised her fear of ill-treatment in Iran as a ground of appeal. The judge was therefore obliged to consider this ground. The judge's failure to do so constituted a material error of law.
8. The second ground relates to the judge's assessment under Article 8, specifically his taking into account the inaccurate factual basis that the appellant had failed to inform the Secretary of State of the death of her father.
9. I am concerned that this may have made a material impact on the judge's overall proportionality assessment. As the respondent was informed at the first opportunity of the death of the appellant's father she (the respondent) was entitled to curtail the appellant's leave. The failure of the respondent to curtail the appellant's leave arguably enabled the appellant to further establish her private life in the United Kingdom, a factor that may reduce the public interest in the appellant's removal.
10. I cannot safely say that the judge, properly directing himself on the law and taking full account of all material facts, including the failure by the respondent to curtail the appellant's leave when aware of the material change in the appellant's circumstances, would inevitably have reached the same conclusion. I am therefore satisfied that this also constituted a material error of law.
11. In circumstances where no consideration at all has been given to the appellant's asylum claim I regard it as appropriate to remit it back to the First-tier Tribunal to a judge other than Judge Malone to enable full consideration to be given to the appellant's asylum/Article 3 claim, and for consideration to be given to the fact that the appellant did inform the Secretary of State at the earliest opportunity of the death of her father.
12. It is appropriate to maintain the judge's findings in relation to the appellant being an honest and reliable witness. Those findings were

however made in the context of the appellant's Article 8 claim as the judge failed to engage with the asylum and/or Article 3 aspect of the claim.

Notice of Decision

A material error of law was made and the matter is remitted back to the First-tier Tribunal.

Direction

The appeal is to be heard by a Judge other than Judge of the First-tier Tribunal Malone.

No anonymity direction is made.



Signed

23 July 2015

Date

Upper Tribunal Judge Blum