



IAC-AH-DN-V1

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

Appeal Number: IA/38571/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower Birmingham**

**Decision & Reasons  
Promulgated**

**On 28<sup>th</sup> April 2016**

**On 13<sup>th</sup> May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FRENCH**

**Between**

**FAKHROLHAJYHE KAFAYRABBY  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss L Norman instructed by Aman Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant applies with permission against the decision of Judge of the First-tier Tribunal I Ross promulgated on 21<sup>st</sup> July 2015, following a hearing at Hendon Magistrates' Court on 17<sup>th</sup> June 2015. In that decision Judge Ross dismissed the Appellant's appeal against a refusal to grant leave on the basis of her private life in the United Kingdom and removal to Iran. The Appellant had not been present at that hearing and had not been represented.
2. The basis of the appeal to this Tribunal was that both the Appellant and her representatives had understood that the hearing was to take place on 18<sup>th</sup> June 2015 and had been prepared for a hearing on that occasion. The circumstances said to have led to the failure to attend the hearing on 17<sup>th</sup> June were that at an earlier hearing, on 15<sup>th</sup> May 2015 (before Judge of the First-tier Tribunal Flynn), the proceedings had been adjourned and a new date agreed of 18<sup>th</sup> June 2015. That was the date entered into the diaries of the representatives although subsequently a notice of hearing was sent out giving the date of hearing as 17<sup>th</sup> June 2015. Immediately after the hearing the appellant's representatives had written to the Tribunal on 19<sup>th</sup> June 2015 pointing out the error and the reason for it and enclosing statutory declarations both from the solicitor having conduct of the matter and from the advocate who had appeared on 15<sup>th</sup> May 2015 and had been due to appear on 18<sup>th</sup> June 2015. In that letter the representatives requested that the Judge of the First-tier Tribunal reconvene on a new hearing date but it appears that no action was taken upon that request and accordingly the judge's decision was promulgated.
3. The statutory declaration from the advocate sets out that following adjournment of the hearing on 15<sup>th</sup> May he personally had gone to the listing offices in Taylor House to relist the appeal for a date when he was available and the appeal had been listed for 18<sup>th</sup> June at Hendon Magistrates' Court, following his checking that he would be available on that date. He recited that the Tribunal's yellow sheet was completed by the judge at that time confirming that the hearing would take place on 18<sup>th</sup> June. He had not been sent a copy of any notice of a different date. On 17<sup>th</sup> June he had been in the High Court.
4. I checked the file and noted that the yellow sheet giving details of the adjournment and the date for the rehearing did indeed state that the date for the further hearing would be 18<sup>th</sup> June 2015 and that was initialled by a member of the Tribunal staff. That document was entirely consistent with the statutory declaration from the advocate.
5. Mr Mills accepted that there had clearly been confusion and agreed that there should be a rehearing of the appeal and it should be remitted to the First-tier Tribunal for this purpose. I did not need to call upon Miss Norman, who was of course in agreement with this course of action. Whilst in an ideal world action would have been taken upon the notice of hearing giving an earlier date than that agreed it is also the case that in

an ideal world there would have been no variation from the date originally agreed and certainly not an earlier listing without consent.

6. In the circumstances the only fair and appropriate course is for this appeal to be remitted for a further hearing under the provisions of the Practice Statement for this chamber of the Upper Tribunal 7.2(a) and Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007. As the Appellant lives in Birmingham the appropriate venue would be the Birmingham Hearing Centre of the First-tier Tribunal. I was informed that a Farsi interpreter would be required. There would be two witnesses and the time estimate would be three hours.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. The appeal is remitted for rehearing before the First-tier Tribunal sitting at Birmingham, no findings being preserved.

There was no request for an anonymity order and none is made.

Signed

Date 9 May 2016

Deputy Upper Tribunal Judge French