Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/08931/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 1st August 2017	**On 9th August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

ZEINAB GHELICHKHANI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Janjua of Janjua & Associates
For the Respondent: Mrs R Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Atkinson made following a hearing on 29th March 2016.

2. The history of this matter is as follows. Judge Atkinson allowed the appeals of the appellant and her mother outside the Immigration Rules on Article 8 grounds. There was no challenge to the decision in relation to the

appellant's mother. His decision in relation to the present appellant was challenged by the Secretary of State and, on 12th May 2017, Deputy Upper Tribunal Judge Bagral found that he had erred in law and set aside his decision. A copy of her reasons for doing so is appended to this decision.

3. A transfer order was made and the resumed hearing came before me on 1st August 2017. The documentary evidence which I considered consists of the same bundles as were before the original judge. I also heard oral evidence from the sponsor, the appellant's father, Mohammad Reza Ghelichkhani, who confirmed that the written statement which he signed on 29th March 2016 was true and accurate and should be adopted as evidence in this hearing.

4. Mr Janjua, on the appellant's behalf, accepted that the appellant could not meet the requirements of the Immigration Rules in relation to dependent relatives and confirmed that the appeal was being brought on Article 8 grounds outside the Rules.

Background

5. The appellant is a citizen of Iran born on 5th November 1992. Her father came to the UK and applied for asylum on 7th November 2000. The application was refused on non-compliance grounds on 12th June 2001 and a subsequent appeal was treated as abandoned in his absence on 12th June 2001. The sponsor said that he had been put into NASS accommodation and moved from place to place and he had no knowledge of the appeal process at the time of the refusal and subsequent appeal. He sought permission to appeal against the decision but was refused on 10th May 2005. He then made a further application either in 2006 or early 2007 which was not dealt with until 2010 when he was granted indefinite leave to remain.

6. At that point he was given a Home Office travel document. He travelled to Iran in October 2010 and again in September 2011 and August 2012. The present application for entry clearance was made on 24th February 2014.

7. The sponsor said that he had always supported his wife and daughter financially and was currently paying her university fees. She is studying design.

8. The sponsor was asked why he had not applied for entry clearance before 2014. He said that he had been to a solicitor and had been told that he needed a good level of income in order to be successful. Mrs Petterson pointed out that the income levels only changed in July 2012 and he could have applied before then. He said that he was not aware of the Immigration Rules but he had had some financial problems and his account was overdrawn. In his statement he says that he had been working full-time since July 2003 and had taken a second job in July 2014 to bring his income over the required threshold.

9. He said that, following the issue of her visa, his wife had joined him for a week but then returned to Iran in order to look after their daughter who could not live alone. His wife has five siblings in Iran and he has three. Some of the cousins are in Canada and Australia, but some are in Iran.

Submissions

10. Mrs Petterson did not seek to challenge the sponsor's account of his immigration history and accepted that there had been some delay by the respondent of around four years in dealing with the application under the Legacy Scheme. However, she said that there was an equal delay by the sponsor in making the application for entry clearance. He could have done so at any point after September 2010. Prior to July 2012, he would not have had to meet the enhanced maintenance requirements set out in the new Immigration Rules. She accepted that by the time the Secretary of State had made the decision, the appellant was no longer a minor, but, had she made a timely application outside the Immigration Rules it might well have met with success.

11. She accepted that the sponsor was supporting his daughter financially and that she presently lived with her mother in Iran, and indeed that the cultural norms there would prevent her living on her own. However, there were other adult relatives available to support her. There was no family life to protect but, even if there was, given that the appellant could not meet the Immigration Rules, refusal would be proportionate.

12. Mr Janjua submitted that the sponsor's evidence was that he would not have been able to meet the requirements of the Immigration Rules at an earlier stage because his income was insufficient. He would have to show, even before July 2012, that his income was not only above the income support level, but also sufficient to meet his housing costs and council tax. It was the sponsor's evidence that he had been to see a solicitor and had been told that his income level was insufficient.

13. He submitted that it would be impossible for the sponsor's daughter to live alone in Iran and the fact that his wife was presently there showed that the extended family members could not provide effective support. The sponsor himself was fully integrated into UK society and it was not reasonable to expect him to return. The Secretary of State was at fault in failing to deal with the application under the Legacy Scheme until the appellant was over 18, which weighed heavily in favour of her argument that severing this family was wholly disproportionate.

Findings and Conclusions

14. This is an application made wholly outside the Immigration Rules. Compelling circumstances therefore need to be established in order for the appellant to show that refusal would be a breach of her Article 8 rights, given that the Rules are compliant with Article 8 of the ECHR.

15. The first question is whether there is family life in this case. The appellant was 22 years old at the date of application and is now 24. She was only 8 years old when the sponsor left for the United Kingdom, and has seen her father on three occasions since then, the last in 2012. However, it is quite clear that she has always been dependent upon her father financially and is still in full time education. Moreover, even though her mother has a visa to come and live in the UK, she chooses to stay with her daughter. I accept therefore that the Kugathas test is met and that there are more than the usual emotional ties between the parents and the adult child.

16. The refusal maintains the status quo. However, since this family is living apart, and the sponsor's wife remains in Iran apart from her husband to be with the appellant, it is an interference with the family's enjoyment of their family life together.

17. The refusal is lawful, since it is accepted that the appellant does not meet the requirements of the immigration rules.

18. The maintenance of effective immigration controls is in the public interest. Paragraph 117 of the 2002 Act sets out the public interest considerations to be taken into account in deciding whether the decision is proportionate.

19. So far as speaking English is concerned, there is no evidence that the appellant is able to speak anything other than Farsi. She is not financially independent, since her father is supporting her university studies, although she may as a graduate become so in the future.

20. There was a delay of around four years between the sponsor's application and leave being granted under the Legacy Scheme. During that period the appellant was a child and had the application been dealt with more expeditiously it would have been possible for her to have joined her father in the UK, subject to meeting the maintenance requirements of the Rules.

21. However, that significant delay is matched by an equally significant delay between the grant of the leave in September 2010 and the application for entry clearance in February 2014. Until July 2012 the maintenance requirements of the Rules were less onerous. It seems from the sponsor's statement that he has been in full-time employment since July 2003. Although his evidence was that he had some financial difficulties and was overdrawn on his bank account, he did manage to pay three sets of airfares to Iran and did not chose to take a second job until July 2014. It seems to me that the sponsor and his wife took their time to decide whether they wanted to make their home in the UK or not. The family had lived apart for many years. They clearly wanted to consider very carefully what they wanted to do when the option of making an application became available.

22. There do not appear to be any real barriers to the sponsor settling back in Iran. He said that he had no problems when he went there. I conclude that the reason why the application was not made until February 2014 was

because the family was genuinely undecided as to whether they wanted to settle in the UK together, or in Iran together, or continue the life which they had had over many years, that of living apart. Indeed there is some evidence that the appellant wanted to remain in Iran given that she has only been studying at her university for one year and four months. The decision to undertake studies there at a relatively late age must be an indication of her commitment to life in Iran. The delay in the application is an indicator that, so far as the appellant and her mother were concerned, the scales were reasonably finely balanced.

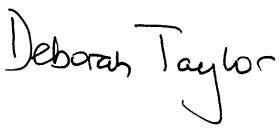
23. The appellant has a large number of close relatives in Iran. She would not be living alone as a single woman. Her mother has chosen to be with her pending the outcome of this appeal, but that is her choice.

24. I therefore conclude that the appellant has not established that there are exceptional or compelling circumstances which require a grant of entry clearance outside the Immigration Rules.

Notice of Decision

25. The decision of the original judge has been set aside. It is remade as follows. The appellant's appeal is dismissed.

26. No anonymity direction is made.



Signed Date 8 August 2017

Deputy Upper Tribunal Judge Taylor