



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

Appeal Number: AA/10353/2012

THE IMMIGRATION ACTS

Heard at North Shields

On 23rd June, 2013

Determination

Promulgated

On 4th July 2013

Before

Upper Tribunal Judge Chalkley

Between

BEHNAZ BOROOMAND

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown of counsel

For the Respondent: Mr C Dewison, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran, who was born on 28th April, 1979. She, her husband and their son are all present in the United Kingdom. The appellant's husband and son are her dependants. On 4th December, 2012, the respondent refused to vary leave and decided to remove the appellant.

2. In a notice dated 4th December, 2012, addressed to the appellant the Secretary of State said:

“On 19th April, 2011 you were granted leave to enter the United Kingdom until 16th May, 2012 as a Tier 4 (General) dependant partner. You applied on 26th November 2011 under paragraph 327 of HC 395 as amended the Immigration Rules for variation of your leave to enter or remain in the United Kingdom on the grounds that it would be contrary to the UK’s obligations under the United Nations Convention and Protocol relating to the status of refugees for you to be removed from or required to leave the United Kingdom but I have refused your application under paragraph 336, your claim for asylum has been recorded as determined on 29th October 2012. I have considered whether you should be granted asylum in the United Kingdom in accordance with paragraph 334 but I am not satisfied that you meet the criteria. I also consider whether you should be granted humanitarian protection in the United Kingdom in accordance with paragraph 339C but I am not satisfied you meet the criteria and have also refused your application under paragraph 339F. Your application has been recorded as being determined on 29th October 2012.”

3. The appellant appealed that refusal to the First-tier Tribunal and First-tier Tribunal Judge Mark-Bell heard her appeal on 17th December, 2012. In his determination promulgated on 3rd January, 2013, he dismissed the appellant’s appeal on asylum grounds, humanitarian protection grounds, and on human rights grounds and under the Immigration Rules.
4. The appellant's husband applied for a Tier 4 (General) Student visa on 19th April, 2011, in Abu Dhabi and on the same date the appellant and her son also applied for visas as dependants on her husband's application. All three were granted a one year visa from 29th May, 2011, to 16th May, 2012, and left Iran on 12th June, 2011, arriving in the United Kingdom on the same day. They travelled on Iranian passports which had been issued with leave to enter visas which allowed them to enter and reside in the UK for twelve months.
5. The appellant subsequently claimed asylum on 23rd September, 2011, and her son and her husband were dependants. The reasons why the appellant claimed asylum are set out at some length in the Secretary of State's letter addressed to the appellant dated 29th October, 2012. She qualified as a lawyer in Iran and became associated with an organisation known as “*Defending Prisoners’ Rights*” and as a consequence, she was involved in what the Iranian authorities regarded as being, political cases. As a result, she was on two occasions called to security officers and was warned not to involve herself in such cases in the future. She was threatened that her husband and her son may come to harm and her office may be closed down, should she ignore that advice. The appellant responded by indicating that she would continue to take on such cases.
6. While she was in the United Kingdom she contacted a former colleague, who is a prominent human rights lawyer in Iran, who told her that the media agent of *Defending Prisoners’ Rights* had been arrested and confessed to having been a member of the Mujahedeen Khalid organisation, and that the authorities in Iran had evidence that she was involved with him. She decided to claim asylum.

7. At the hearing before the First-tier Tribunal Judge, the judge appears to have assumed that the appellant represented a client called 'Gambari', a political prisoner, and assumed that she appeared in court on his behalf. The Immigration Judge makes various findings in relation to credibility based on this assumption.
8. There were two challenges to the judge's determination. The first relates to the alleged misunderstanding of the evidence before him in respect of the appellant's role with the political prisoner Mr Gambari, and the second alleges that there was an error in that issues were raised during the course of the hearing about the quality of the interpretation being provided by the interpreter.
9. At paragraphs 11 and 12 of the determination, the judge deals the quality of the interpretation being provided by the interpreter. He points out that Counsel had informed him that a friend of the appellant, who was in the hearing, was concerned that the interpreter may have inaccurately interpreted a phrase or words for qualification and graduation. The Immigration Judge had earlier received indications that dates being translated from the Persian calendar or the Gregorian calendar also contained errors and after hearing representatives he proposed and they agreed over a lunch time adjournment that they would identify the errors. The representatives, he records, were confident that they could do so. After the hearing resumed they identified what he described as being a small number of minor inaccuracies where the preceding month or the following month had been given. He recorded that he had noted the corrections in red in his notes and informed the representatives that he believed those errors to be minor and inconsequential.
10. Mr Brown appeared on behalf of the appellant and the Home Office was represented by Mr Clive Dewison. Mr Dewison told me that he accepted that there was evidence that the judge had misunderstood the evidence before him and that this amounted to a material error of law. Mr Brown invited me to remit the appeal to the First-tier Tribunal under the powers in Section 12(2B)(ii) of the 2007 Act and Mr Dewison was content that the matter be remitted to the First-tier Tribunal.
11. I am satisfied that this is a case which falls to be within paragraph 7 of the Senior President's Practice Statement, given the length of time the parties will have to wait for the matter to be relisted before me in North Shields or Field House and that it could conversely be heard relatively speedily by the First-tier Tribunal, and in view of the overriding objective informing the onwards conduct of the appeal I decided that the appeal be remitted to the First-tier Tribunal for hearing afresh **before a First-tier Tribunal Judge other than Judge Mark-Bell**. I have marked the file but it is important that **when the matter is reheard the Farsi interpreter should not be Mrs Pourmirza the interpreter** who appeared previously.

A handwritten signature in black ink, appearing to read "Chalkley", with a long horizontal flourish extending to the right.

Upper Tribunal Judge Chalkley