



IAC-FH-NL-V1

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

Appeal Number: VA/06196/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 October 2015**

**Decision & Reasons Promulgated
On 4 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

ENTRY CLEARANCE OFFICER - ISTANBUL

Appellant

and

**MISS IRANDOKHT KEVEH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Ms Farhnaz Marzban

DECISION AND REASONS

1. The Respondent is a citizen of Iran whose date of birth is recorded as 3 March 1946. On or about 19 August 2014 she made application for a family visit visa in order that she might visit her daughter in the United Kingdom. On 5 September 2014 a decision was made to refuse the application. The Respondent brought an appeal in the First-tier Tribunal which was heard by Judge of the First-tier Tribunal Oakley sitting at Hatton Cross on 27 May 2015. The grounds, which were filed dated 30 September 2014, included at paragraph 9 reference to Article 8 of the European Convention of Human Rights. The judge however dealt with the

appeal as if it should be dealt with by reference only to paragraph 41 of HC 395 (as amended) of the Immigration Rules. The judge did not go on to consider, at any point within the Statement of Reasons the Respondent's human rights claim. The judge then allowed the appeal purporting to do so under the Immigration Rules.

2. Not content with that decision by Notice dated 16 June 2015 the Entry Clearance Officer made application for permission to appeal to the Upper Tribunal on the basis that changes in legislation within the Crimes and Courts Act 2013 restricted rights of appeal to various categories but for the purposes of the instant appeal to human rights, excluding the right to appeal under Rule 41. It follows that the judge materially erred in law and this decision cannot stand.
3. Having found an error of law I have to decide whether to remake the decision or remit the matter to the First-tier Tribunal. In this case it is not possible to remake the decision because the judge has not dealt with human rights at all and therefore there are no sufficient findings for me to consider whether or not there should be the same or some other outcome in the appeal. In the circumstances the proper course is for the matter to be remitted to the First-tier Tribunal where the matter will be heard afresh confined to human rights. The matter will be before a judge other than Judge Oakley and Notice of Hearing will be sent to the Respondent's representatives in due course.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law. The appeal to the Upper Tribunal of the Entry Clearance Officer is allowed. The decision of the First-tier Tribunal is set aside to be reheard by a judge other than Judge Oakley in the First-tier Tribunal, at Hatton Cross, on a date yet to be fixed.

No anonymity direction is made.

Signed

Date: 2 November 2015

Deputy Upper Tribunal Judge Zucker