



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

Appeal Number: HU/18613/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 12th November 2018**

**Decision & Reasons Promulgated
On 25 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**MRS. SARVENAZ [N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. [RJ] and Mrs. [AA]

For the Respondent: Mr. Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge McClure promulgated on 21st May 2018. The FtT Judge dismissed the appellant’s appeal against the respondent’s decision of 15th June 2016, refusing her application for leave to enter the UK in order to join a parent who currently has refugee status.

2. The background to the application made by the appellant and the matters relied upon by the appellant are set out at paragraphs [17] to [40] of the decision of the FtT Judge. The appellant was born on 2nd July 1998, and is the daughter of Mrs. [AA] (“the appellant’s mother”). The appellant’s mother claimed that her relationship with the appellant’s father, was beset with violence, and she separated from the appellant’s father in 2001. The appellant’s mother claimed that following that separation, she and the appellant went to live with her mother. That is, the appellant’s maternal grandmother.
3. The evidence before the FtT Judge was that in or about January 2007, the appellant’s mother married Mr [RJ] (“the appellant’s step-father”). The appellant, her mother, her stepfather and her maternal grandmother, had been living together as a family unit in Iran for a period of about two years before that marriage. Because of events that occurred in March 2010, Mr [RJ] left Iran and travelled to the United Kingdom, where he has been recognised as a refugee. The appellant’s mother left Iran in or about 2011 to join her husband, leaving the appellant in Iran in the care of her maternal grandmother. Neither the appellant’s stepfather nor the appellant’s mother, made any reference to the appellant in the applications that they had made to the respondent.
4. Having heard evidence from the appellant’s mother and stepfather, the FtT Judge sets out his conclusions at paragraphs [41] to [60] of his decision. Having noted the evidence that the appellant had been living at her maternal grandmother’s home from about 2001 onwards, the Judge found, at paragraph [46] of his decision, that the appellant was living with her mother, her grandmother, and her stepfather during the period 2007 to 2010. The Judge also found that the appellant was living with her mother until her mother made an application to join the appellant’s stepfather in the United Kingdom. At paragraph [47] of his decision the Judge stated:

“I am not however satisfied that the mother has been responsible since that date in taking all the major decisions in the child’s life. There is no evidence of contact with any schools. There is no evidence of regular and significant money transfers. I am not satisfied that the appellant’s father has had no involvement in the appellant’s life including providing no financial support to the appellant.”

5. At paragraphs [56] to [60] of his decision, the FtT judge concluded as follows

“56. Much of what has happened in the intervening period of time has been as a result of choices that the mother and stepfather have taken. For the reasons set out I do not find that it has been proved that the father of the appellant [has] had no involvement in the appellant’s life. I take account of the fact that the appellant would be living in the same environment as she has always lived in. I take account of the fact that the appellant at the time of application was a minor but since that time has become an adult.

57. Taking all those factors into account clearly the mother of the appellant is in the United Kingdom and there is to that extent, family life between the appellant and her mother. The quality of their family life has been determined by the decisions made by the appellant’s mother and her stepfather. The decision to refuse entry clearance will clearly interfere with their family life that it is merely preventing a close family unit being established. It does not interfere with the form and quality of family life that has been chosen by the appellant’s mother and stepfather over the last few years. In the circumstances I am not satisfied that it is the decision of the respondent that interferes with family life rather it was the choices made by the mother and stepfather in the past.

59. If I am wrong in that regard, I am satisfied that the decision is in accordance with the law and it is for the purposes of maintaining immigration control.

60. Finally having taken all the factors set out above into account I find that the decision taken is proportionately justified. The appellant cannot meet the requirements of immigration rules with regard to family reunion and cannot otherwise meet the requirements of the rules under Appendix FM. There is nothing exceptional on the facts as presented. There is nothing that warrants consideration of Article 8 outside the rules.”

6. The Judge concluded that the decision to refuse entry clearance does not breach Article 8 and dismissed the appeal. In the grounds of appeal, the appellant claims that in reaching his decision, the FtT Judge, repeatedly refers to the delay until the appellant was almost 18 years old before making an application, as weighing against the appellant. The appellant

claims the Judge failed to consider the explanation provided in the witness statement's that were before the Tribunal, for that delay. An earlier application could not be made on behalf of the appellant because an application was not possible until the appellant's father provided his consent to the appellant having a passport, so that she can travel out of Iran. The passport was not issued to the appellant until September 2014. The appellant's stepfather confirmed in his witness statement that the appellant's father would not sign the necessary forms in order to obtain a passport. It was not until 2014 that the appellant's mother had been able to persuade the appellant's father to allow the appellant to get a passport, after she offered to give him money in exchange for his signature on the passport forms. Furthermore, an application for entry clearance had been made previously, but refused.

7. Permission to appeal was granted by Upper Tribunal Judge Plimmer on 18th September 2018. The matter comes before me to consider whether or not the decision of FtT Judge McClure involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
8. The Tribunal had received a letter from Miica Service dated 9th November 2018 stating that they no longer represent the appellant. At the hearing that before me, the appellant was represented by Mr. [RJ] and Mrs. [AA]. That is, the appellant's mother and stepfather. I explained to Mr [RJ] and Mrs [AA] that the appellant has been granted permission to appeal the decision of the FtT Judge because it is arguable that the Judge had failed to take into account the evidence explaining the delay in making an application for family reunion, when reaching his decision. I explained that that is not to say that there is an error of law in the decision of the FtT Judge, and that I would reach my decision after hearing from them on behalf of the appellant, and from Mr Diwnycz on behalf of the respondent.

9. On behalf of the appellant, Mr [R] submitted that he has a good emotional relationship with the appellant, but the appellant would have needed her father's permission to leave Iran. When the appellant's mother had come to the United Kingdom in 2011 they had asked for permission from the appellant's father, but at that stage, he would not agree to the appellant coming to the United Kingdom. He was prepared to accept that there was no evidence of any steps taken in 2011 to secure the permission of the appellant's father, at the hearing of the appeal before the FtT. He submits that although the FtT Judge states, at paragraph [47] of the decision, that there is no evidence of regular and significant money transfers, there was in the appellant's bundle before the FtT, evidence of money being sent to the appellant from the UK.

Discussion

10. It is uncontroversial that the appellant was left living with her maternal grandmother when the appellant's mother came to the United Kingdom in 2011. At paragraphs [26] to [27] of his decision, the FtT Judge refers to the evidence of the appellant's mother. The evidence was that she had been told by friends that there would be no point in applying for the appellant come with her to the UK in 2011, because her husband was not the appellant's natural father. The Judge noted, at [27], that the appellant's mother "*... has also mentioned that in order to take her daughter out of the country she would have needed the permission of the biological father. She claims that would have been impossible at the time. However she has given no indication that she sought to obtain that permission either at the time that she was applying to come here, or since.*".
11. In his witness statement, Mr [R] also confirms, at paragraph [10], that the appellant was not included in his wife's application for family reunion previously because "*... At that time we were told by Iranian friends in the UK that because [the appellant] is not my biological daughter there was*

no point in applying for her as she would be refused.”. At paragraph [11], he claims that there was also a problem in that the appellant’s father would not sign the forms so that the appellant could get a passport and that made it impossible for them to bring her to the UK.

12. I reject the claim that the FtT Judge failed to take into account the evidence explaining why the application for a family reunion was delayed. The Judge refers to the explanation provided by the appellant’s mother in his decision. It was open to the Judge to conclude on the evidence, as he did at paragraph [50] of the decision, that a conscious decision was taken not to apply for the appellant to come to the UK with her mother in 2011. As I have set out, the evidence of the appellant’s mother before the FtT Judge was that the appellant would have needed the permission of her biological father but there was nothing to suggest that she sought to obtain that permission at the time that she was applying to come to the United Kingdom or since. It was evidence that the Judge was clearly aware of.
13. In any event, the delay in making the application was but one factor that the Judge refers to in his decision, and in my judgement any failure to refer expressly to the explanation in his findings and conclusions, is immaterial. On any view, the appellant was an adult by the time of the hearing before the FtT and the Judge was bound to consider the Article 8 claim, on the facts as they were at the time of his decision.
14. I also reject the criticism made in the submissions before me, that the Judge erred at paragraph [47] of the decision, by saying that there is no evidence of regular and significant money transfers to the appellant. Paragraph [47] of the decision, must be read alongside paragraph [44] of the decision. At paragraph [44], the FtT Judge noted that *“There is very little evidence of financial support provided even taking account of pages 16 to 20 of the appellant’s bundle.”* The Judge plainly had regard to the evidence relied upon of financial support, in reaching his decision. The

Judge rejected the claim that the appellant's father had no involvement in the appellant's life, and took into account the fact that the appellant would be living in the same environment as she has always lived in, noting too, that at the time of her application, the appellant was a minor but she has since become an adult.

15. The only ground of appeal available to the appellant was that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. As to the Article 8 claim, the burden of proof was upon the appellant to show, on the balance of probabilities, that she has established a family life with her mother and stepfather, and that her exclusion from the UK as a result of the respondent's decision, would interfere with that right. It was then for the respondent to justify any interference caused. The Judge concluded that the interference with family life had arisen by the choices made by the appellant's mother and stepfather in the past.
16. The appellant's ability to satisfy the immigration rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative factor, when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control. Here, the Judge found that the interference is proportionate to the legitimate public end sought to be achieved.
17. Having carefully considered the decision of the Ft Judge and the submissions made before me by the appellant's stepfather and mother, in my judgment the findings made by the FtT judge are not irrational or unreasonable in the *Wednesbury* sense, or findings that are wholly unsupported by the evidence. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him.
18. It follows that in my judgment, the decision of the FtT does not contain a material error of law, and the appeal is dismissed.

Notice of Decision

19. The decision of the FtT Judge did not involve the making of an error of law and the appeal is dismissed.
20. No anonymity direction is made.

Signed

Date

13th January 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and there can be no fee award.

Signed

Date

13th January 2019

Deputy Upper Tribunal Judge Mandalia