



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

Appeal Number: OA/20205/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 27 June 2013**

**Determination
Promulgated
On 4 July 2013**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

BANAFSHEH MANI

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs M Gore, Counsel, instructed by J Benson Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who was born on 28 December 1980, is a national of Iran. She applied under the Immigration Rules for leave to enter the UK as the spouse of Mr Ojhangir Noori, who is a British citizen.

2. This application was refused by the respondent on 1 October 2012, for a number of reasons. For the purposes of this determination, it is not necessary to recite these reasons in full.
3. The appellant appealed against this decision and her appeal was heard before First-tier Tribunal Judge Seelhoff, sitting at Hatton Cross on 2 April 2013. The appellant was represented by Mrs Gore on that occasion, and her husband, the sponsor, Mr Noori, gave evidence. At the hearing, Mrs Gore apparently accepted that the appeal could not succeed under the Immigration Rules, but submitted that it should be allowed on Article 8 grounds (at paragraph 7 of Judge Seelhoff's determination).
4. In a determination promulgated on 10 April 2013, Judge Seelhoff dismissed the appellant's appeal.
5. The appellant now appeals against this decision pursuant to permission granted by First-tier Tribunal Judge Robertson on 16 May 2013.
6. The appeal was listed before me on 27 June 2013 and I heard submissions on behalf of both parties. These submissions have been recorded in the Record of Proceedings and so I shall refer below only to such of the submissions as are necessary for the purposes of this determination. I have, however, had regard to everything which was said to me during the course of the hearing as well as to all the material contained within the file.
7. In the grounds, it was asserted in robust terms on behalf of the appellant, that there were clear errors of law in Judge Seelhoff's determination. It has been accepted on behalf of the respondent that there is some force in some of these submissions. In the respondent's Rule 24 response it is conceded (at paragraph 3) that Judge Seelhoff's determination "could have been a little clearer in its reasoning", while at paragraph 4 it is conceded further, with reference to the judge's consideration of the appellant's Article 8 claim, that at paragraph 14, Judge Seelhoff had "erred in finding no interference in refusing the application". The highest the respondent's case could be put in the Rule 24 response was that "the judge's small errors in the determination are not material to the outcome of the appeal". Before me, although Mr Avery, on behalf of the respondent, sought to argue that the errors in the determination were not material, because the judge had proceeded to consider the appeal on the basis that there would be interference in the family relationship if the sponsor did not go to Iran, he did accept that when considering proportionality, the judge did not mention any other factor beyond financial reasons.
8. In my judgment, there has been a failure to consider the appellant's appeal insofar as it is founded on her Article 8 rights, properly. As accepted on behalf of the respondent, the assertion at paragraph 14 that "the appellant" (by which Judge Seelhoff presumably meant the spouse) "could simply move to Iran" is inadequately reasoned. The finding (in

respect of a British citizen with a son who lives here) that his “connections to the UK are limited” – essentially because he is not currently employed – is clearly not adequately reasoned; there is no mention in the determination of his medical condition and nor is there any proper consideration of his personal circumstances.

9. Judge Seelhoff sets out his finding that “the sponsor’s connection to Iran as someone of Iranian origin are in many ways as strong as his connection to the UK”, but in the absence of any proper consideration either of the appellant’s circumstances in this country or of what his circumstances would be in Iran, this finding is not sustainable.
10. Further, having appeared to find at paragraphs 15 and 16 that the financial basis justifying exclusion is at best marginal, the judge's finding at paragraph 19 that “on the basis of the financial evidence I am satisfied that the interference is proportionate” does not suggest that the judge has given proper (or any) consideration to all the relevant factors when considering proportionality.
11. Although, as was argued before me on behalf of the respondent, it may well be that following full and proper consideration of all the factors, the appellant's appeal should still be dismissed, but without considering these factors properly, it cannot be said that this result would have been inevitable. Further, the appellant was, and remains, entitled to have her case properly considered, which in my judgment, it was not. For these reasons, I consider that Judge Seelhoff's errors were material ones.
12. Having regard to paragraph 7 of the Practice Statements for the Immigration and Asylum Chamber of the Upper Tribunal, I consider that the effect of the errors contained within the determination is that this appellant was effectively deprived of a fair hearing. I also consider that the nature and extent of the judicial fact-finding which will now be necessary in order for the decision to be re-made is such that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal, which I shall order. I shall also make directions with regard to this re-hearing.

Decision

I set aside the determination of Judge Seelhoff as containing a material error of law.

I direct that this appeal be remitted for a re-hearing by the First-tier Tribunal, sitting at Hatton Cross, to be put before any judge other than First-tier Tribunal Judge Seelhoff.

Signed

Date: 3 July 2013

Upper Tribunal Judge Craig