



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/01504/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 30<sup>th</sup> July 2015

Decision & Reasons Promulgated  
On 14<sup>th</sup> August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MRS S A B Z  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Behbahani  
For the Respondent: Mr Bramble

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 4<sup>th</sup> March 1971 is a citizen of Iran. The Appellant was represented by Mr Behbahani of Counsel. The Respondent was represented by Mr Bramble, a Presenting Officer.

### **Substantive Issues under Appeal**

2. The Appellant had come to the United Kingdom on 13<sup>th</sup> August 2013 on a visit visa with her three children and on 10<sup>th</sup> October 2013 claimed asylum. The Respondent had refused the Appellant's application for asylum on 14<sup>th</sup> January 2015. The Appellant had appealed that decision and her appeal was heard by First-tier Tribunal Judge Ferguson sitting at Taylor House on 20<sup>th</sup> May 2015. He had allowed her appeal on asylum grounds and under Article 8 of the ECHR.
3. The Respondent had made application for permission to appeal and such had been granted by First-tier Tribunal Judge Grant-Hutchison on 19<sup>th</sup> June 2015 on the basis that it was arguable that the judge had erred in law by finding that the exclusion of the Appellant's children from all but the poorest schools and denial of university and education did not cross the threshold amounting to persecution and that sufficient weight had been placed on Section 117B of the 2002 Act in terms of Article 8 of the ECHR.

### **Submissions on behalf of the Respondent**

4. Mr Bramble relied upon the Grounds of Appeal and submitted that the judge had relied on a principle within Iran called Gozinesh but that did not amount of persecution and in any event the question of university given the ages of the children was entirely speculative. It was submitted that Section 117B of the 2002 Act had not been the starting point nor properly examined in terms of Article 8.

### **Submissions on behalf of the Appellant**

5. Mr Behbahani submitted that the judge had made findings and although the Respondent disagreed with those findings the judge was entitled to conclude that what was said to potentially take place amounted to persecution. He referred me specifically to the Gozinesh process or principle as outlined within documents in the Appellant's bundle and in particular referred me to page 140.
6. At the conclusion I reserved my decision to consider the documents and evidence and I now present that decision with my reasons.

### **Decision and Reasons**

7. The judge had allowed this appeal on asylum grounds namely that there was a reasonable likelihood the Appellant and her children aged between 3 and 10 at the time would suffer persecution for a Convention reason if returned to Iran.
8. The background to such claim was that the Appellant's father-in-law was granted asylum in 1979 because he had been a cleric at the Royal Palace during the Shah's regime, and had been well-known and imprisoned at the time of the Iranian Revolution.
9. The Appellant's husband and father of the three children had indefinite leave to remain in the UK probably granted as noted by the judge at paragraph 20(iii), under family reunion Rules following his father's grant of asylum.

10. The Appellant's own father and brothers were involved in anti-revolutionary activities but following release from a short period of detention in 1994 they had remained in Iran although reported to the authorities (paragraph 20(iv)).
11. The Appellant's husband although he had been granted indefinite leave to remain in the UK had clearly returned to and spent time in Iran following evidence noted by the judge at paragraph 20(vii) to (x).
12. The judge noted that there were limited factual disputes in respect of the claim (paragraph 35). The judge found it likely the Appellant's husband had made unsuccessful attempts to recover land owned by his father, and confiscated in about 1979 by the Iranian Government. The judge had found an insufficiency of evidence to suggest the Appellant's own telephone calls were being monitored as claimed but that women's meetings she held may have been monitored.
13. Having analysed the evidence the judge found at paragraph 43 that there was no evidence the Appellant or her family would suffer harm, detention or physical ill-treatment as a result of family connections. She had done nothing personal critical of the regime and that judge found that by simply claiming as there was no particular risk for her on return. He had further noted at paragraph 44 that neither the Appellant nor her husband had been arrested or detained as a result of connections to the Appellant's father-in-law nor had the Appellant's own father or brothers suffered any ill and the Appellant faced no risk through a connection to those individuals.
14. Against those findings the factors the judge had looked at and concluded amounted to persecutory treatment were:
  - (a) The Appellant's difficulties in holding women's meetings.
  - (b) A difficulty in getting her children into better schools and potentially university because of the policy known as Gozinesh.
15. The judge had concluded the above factors were borderline, but concluded it amounted to persecution (paragraph 48). However she had further concluded at paragraph 49 that she agreed with the Respondent that point (a) above (monitoring of meetings) did not without more amount to persecution.
16. Thus the judge's conclusions that the Appellant and her children were at risk of persecution in Iran was based essentially on the education factor referred to in point (b) above.
17. The evidence relating to the policy of Gozinesh as before the judge was contained in an Amnesty International Report dated June 2003 within the Appellant's bundle. It is a general report covering a number of countries and presented to the 91<sup>st</sup> session of the International Labour Conference in June 2003. The relevant section relating to Iran begins at page 137 of the Appellant's bundle and refers to the process of Gozinesh asserting that the process "impairs equality of opportunity or treatment in employment or occupation for all those who seek work in the public and parastatal sector and reportedly in some instances in the private sector".

18. Page 139 sets out the scope of the process and is aimed at those seeking employment. At page 140, which Mr Behbahani specifically directed me to there is set out the criteria for employment as a teacher. At page 141 the report notes the Gozinesh process is most vigorously applied to prospective university students.
19. The judge had noted and accepted the evidence of the Appellant's husband that as an academic he had not been able to get employment in academia and potentially other work. That was accepted as a feature that would not make it reasonable for him to relocate to Iran when the judge considered the case under Article 8 of the ECHR.
20. However the judge had allowed the appeal on asylum grounds in the first instance and that related to the finding that a return of the Appellant and her three children would place them at reasonable risk of persecution for a Convention reason. The judge had conceded that the risk did not devolve to the Appellant. It was solely based on the findings that as a result of the Gozinesh process as indicated within the papers the children could not access other than basic schools and would not be able to access university. Whilst the judge had the benefit of hearing from the witnesses and assessing the evidence a material error of law was made in concluding that this amounted to persecution for the following reasons:
  - (a) There was no suggestion that the children would be deprived of education merely that they may not be able to access the better schools. It is difficult to see how that crosses the threshold from potential discrimination to actual persecution.
  - (b) The evidence relating to the Gozinesh process principally the report referred to above and drawn to my attention in submissions in fact makes no reference to educational discrimination below university level at all. It is dealing throughout with potential discrimination in public sector employment.
  - (c) Whilst there is clear reference to potential discrimination for university entry, the Appellant's children are aged 3 to 10 and accordingly any potential access to university is at least eight to fifteen years in the future. It further is dependent upon a number of speculative features including:
    - (i) The academic abilities of the children.
    - (ii) Their desire in any event to go to university.
    - (iii) It ignores potential university education in other countries.
21. It was a material error of law to regard the factors above as amounting to persecutory treatment such that the family could not return to Iran and required international protection.
22. Whilst the judge had separately considered Article 8 of the ECHR it is tainted by her findings on asylum grounds and by a reliance upon a commentary from the UNHCR noted at paragraph 58 and a failure to give proper weight to Section 117B of the 2002 Act.

**Notice of Decision**

23. There were material errors of law made in this case such that the decision of the First-tier Tribunal needs to be set aside and remade.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Lever