



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06770/2018

THE IMMIGRATION ACTS

Heard at Field House
On 29th March 2019

Decision & Reasons Promulgated
On 1st May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

**MRS ZAHRA PEIVANDI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr I Hussain of Syeds Law Office, Solicitors
For the respondent: Mr. S Walker, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of Iran who came to the United Kingdom on 15 September 2015. She had entry clearance as the spouse of Mr Masoud Mahmondi, hereinafter referred to as her sponsor. They married on 24 August 2010 in Iran.

2. The sponsor is also from Iran. He came here 13 years ago as an asylum seeker. He was granted indefinite leave to remain on 4 March 2010 under the legacy scheme.
3. The appellant had entry clearance until 23 March 2018. On 7 March 2018 she applied for further leave to remain. This was refused the same day on the sole ground that she had not demonstrated by the proofs in appendix FM SE of the rules the necessary income of £18,600.
4. Her appeal was heard at Birmingham on 31 July 2018 before First-tier Tribunal Judge Broe. Consideration of the appeal was restricted to article 8 grounds. Her ability to meet the rules was relevant in assessing the proportionality of the decision.
5. In a decision promulgated on 6 August 2018 her appeal was dismissed. The only issue arising related to finance. Her husband had recently become a director of a company and worked in the business along with his wife. There was also a 2nd business they both worked in.
6. At paragraph 6 of the decision the judge referred to the appellant's evidence that she and her sponsor were employed by Coyan Limited and her income was £13,200 and his income was £6240, giving a total of £19,440. They both began work on 1 September 2017. On 20 October 2017 she began work also for a company known as Fuel Juice Bars Limited earning a further £9750.
7. The refusal decision noted the latter earnings. The appellant had provided payslips and personal bank statements showing earnings from Coyan Limited. However, she had not provided the specified documents in appendix FM SE. As the company was only incorporated on 7 September 2017 it was not possible to provide the evidential requirements covering a full financial year. The judge concluded that the application could not satisfy the evidential requirements of appendix FM SE.
8. By the time of hearing the sponsor had resigned as a director and payslips had been submitted from March to June 2018 but these did not satisfy the 6 months requirement in appendix FM SE.
9. The judge did not see insurmountable obstacles to family life continuing in Iran and found EX 1 did not apply. The judge noted that her sponsor had returned to Iran on several occasions. At paragraph 23 onwards the judge refers to the appellant's article 8 rights and accepted the existence of family life. At paragraph 27 the judge referred to the effect of a negative decision: likely, the appellant would have to return to Iran. The judge said her sponsor could travel with her or else support her from here. The judge concluded that decision was proportionate.

The Upper Tribunal

10. Permission to appeal to the Upper Tribunal was granted on the basis it was arguable, given the absence of clear finding that the financial requirements was not met de facto, the judge erred in attaching excessive weight to the evidential requirements in the rules. The judge was considering the appeal from the point of view of article 8 albeit initially through the prism of the rules.
11. I have received a skeleton argument on behalf of the appellant which helpfully tabulates the income in respect of the period September 2017 to February 2018. The joint income amounted to £28,541: well in excess of the threshold. I was provided with a copy of the decision of Philipson (ILR-not PBS: evidence) India [2012] UKUT 00039 which made the point at paragraph 22 that when considering article 8 the new evidence was relevant. It was necessary to look behind the aim for the financial threshold.
12. Mr Hussain for the appellant submitted that the judge should have considered whether in reality the financial threshold was met. He submitted the outcome was not proportionate. The appellant had arrived in the United Kingdom for the purposes of settlement. Whilst her husband can visit Iran it would cause significant disruption.
13. The presenting officer accepted that the judge materially erred by not considering the joint incomes and the reality of whether the financial threshold was met.
14. Both representatives were in agreement to my finding a material error of law and setting the decision aside. In the circumstance it was suggested I remake the decision allowing the appeal. Bearing in mind the only issue in dispute this is the appropriate course

Decision.

The decision of First-tier Tribunal Judge Broe materially errs in law and set aside. I remake the decision allowing the appeal.

Francis J Farrelly
Deputy Upper Tribunal Judge.
30 April 2019