



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/29295/2011

THE IMMIGRATION ACTS

Heard at Bradford
On 16 October 2013

Determination Promulgated
On 31 October 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

PARASTOO AHMADPOURTORKAMANI

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Mr C Cole, Parker Rhodes Hickmotts
For the Respondent: Mr M Diwnycz, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Parastoo Ahmadpourtorkamani, was born on 16 March 1988 and is a female citizen of Iran. The appellant had applied for entry clearance for settlement in

the United Kingdom with her father, Abbas Ahmadpoor Torkamany (hereafter referred to as the sponsor). The sponsor is a recognised refugee in the United Kingdom. The appellant's application was refused on 20 October 2011. She appealed to the First-tier Tribunal (Judge Saffer) which, in a determination promulgated on 22 May 2012, dismissed the appeal.

2. At the Upper Tribunal hearing at Bradford on 16 October 2013, Mr Cole, for the appellant, acknowledged (as had the grounds of appeal) that the appellant could not succeed under the Immigration Rules; the appellant is now 25 years old. Mr Cole also accepted that he could not maintain the submission made in the grounds at [2] that the appellant should be admitted to the United Kingdom under a family reunion policy of the respondent. Such provisions as previously existed in the respondent's policy have now been incorporated into the Immigration Rules. Mr Cole submitted that the appeal fell to be considered under Article 8 ECHR only.

3. Mr Cole's main submission in respect of Article 8 ECHR focused upon what the judge had said in his determination at [16]:

"I do not accept that [the appellant's] health problems are as severe as claimed. That is because of discrepancy within her mother's evidence as to whether she has attempted to commit suicide once or twice and whether she was in Iran on the most recent attempt or whether the last occasion was before she visited in March 2012. I accordingly place no weight on the medical evidence and am satisfied that this has been fabricated given the significant discrepancies in the mother's evidence".

4. The judge had before him three very short medical reports dating between June 2011 and May 2012. Those reports were written by one Dr Yousefi, a psychiatrist at the ETKA Specialty Polyclinic. It is not clear exactly where the polyclinic is situated in Iran. The reports discuss the appellant's "depression and anxiety" and later her "severe depression". In the last report, the doctor certified that the appellant "is suffering from major depression due to being away from her family and loneliness and has committed suicide (*sic*) once by using a lot of sedatives".

5. It is certainly arguable that Judge Saffer has taken too harsh a view of this evidence. The "significant discrepancies" in the mother's evidence have been addressed in the grounds of appeal and an explanation provided; it is not clear whether the point was taken in oral evidence before the judge and whether any explanation was provided then. In any event, it is arguable that the discrepancy would have to be significant before *no* weight is placed upon evidence.

6. However, I am not satisfied that, even if the judge did err in his assessment of the medical evidence, that a more measured approach would have led to a different outcome. The medical reports contain only scanty details relating to diagnosis, treatment and prognosis to say the very least. Possible causes for the appellant's illness other than her separation from her family are not discussed at all and I find that the evidence is strongly indicative of special pleading on behalf of an appellant unable to satisfy the provisions for entry clearance. Whilst Judge Saffer may have been too harsh in attaching no weight to the reports, it is difficult to see how any

judge would attach a very much deal of weight to this evidence in the Article 8 ECHR proportionality exercise. To allow the appeal would, in effect, allow this appellant to override the provisions of the Immigration Rules on the basis of a bare assertion by an Iranian doctor that the illness from which she claims to suffer may only be treated by the appellant being allowed to enter the United Kingdom to be with her family. Frankly, and in the absence of any other evidence weighing in favour of the appellant, I do not believe any Judge of the First-tier Tribunal could properly allow an out of country Article 8 ECHR appeal on that basis. There are further problems for the appellant. The evidence indicates that she has been offered accommodation by her uncle but she has refused it. I consider that Judge Saffer's observation at [15] that her refusal "shows she is independent and capable of living on her own as she wishes" is entirely valid. That evidence reduces the weight of the medical evidence which suggests that the appellant may need the support of others.

7. In conclusion, I find that, whilst Judge Saffer may have erred in law in his assessment of the evidence, any error does not require setting aside of his determination, the outcome of which is legally sound.

DECISION

8. This appeal is dismissed.

Signed

Date 30 October 2013

Upper Tribunal Judge Clive Lane