Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/26823/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
On 15 August 2014	**On 17 September 2014**
Decision given orally	

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

GHASEM HEYDARI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vassiliou
For the Respondent: Mr Young, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The issue in this case is whether the judge of the First-tier Tribunal erred in concluding that there were no insurmountable obstacles to a British citizen partner of an Iranian national living with him in Iran where the parties could not otherwise meet the requirements of the Rules in force after 9 July 2012.

2. The appellant was born in Iran on 19 October 1987 and on 17 September 2009 entered the United Kingdom illegally claiming asylum the same day. His appeal was dismissed by an Immigration Judge of the Asylum and Immigration Tribunal for reasons given in her determination dated 14 December 2009. In essence she did not believe the appellant's claim which was based on a fear of harm from adverse interest in him for political activities.

3. On 3 July 2012 the appellant lodged an application for leave to remain on Article 8 grounds based on his family life with Samantha McNolty, a British citizen. The respondent refused the application for reasons given in her decision dated 12 June 2013. That refusal was in respect of the new Immigration Rules and Article 8. In essence the Secretary of State considered that there were no insurmountable obstacles to the relationship continuing in Iran.

4. The appellant and his partner gave evidence before First-tier Tribunal Judge Farrelly. He heard evidence that the appellant had met Ms McNolty in early 2011 and they began cohabiting in her house at the Bridge of Don, Aberdeen that summer. Ms McNolty's family are supportive of the relationship. The appellant was baptised a Christian in March 2012 at the Church of Scotland in Aberdeen. Ms McNolty explained that she could speak a little Farsi which she had learnt from Iranians in her home area. She could not move to Iran because she is close to her own family who live nearby. She is a Christian and is not experienced in the social mores in Iran.

5. The judge also heard evidence from Ms McNolty's mother and her partner who spoke about their support for the relationship. He also had before him numerous other testimonials from friends including an offer of employment of Mr Heydari. The grounds of challenge to the judge's decision which was that the Secretary of State's decision would not breach Article 8 can be summarised as follows:

   (i) In considering the practical difficulties of relocation the judge had made a number of errors based on insurmountable obstacles being clearly stated to concern the practical difficulties of relocation with reference to the decision of the Tribunal in *Gulshan (Article 8 – new rules – correct approach) Pakistan* [2013] UKUT 640 (IAC).

   (ii) The finding that Ms McNolty should adopt Islamic customs in order to enjoy her family life in Iran was unreasonable and the judge had failed to give sufficient weight to the practical difficulties for a white Christian British female in conforming to the standards of behaviour required in an Islamic state.

   (iii) The judge failed to give sufficient weight to evidence from the Foreign and Commonwealth Office regarding travel advice to British citizens in respect of Iran dated 17 February 2014.

   (iv) The judge had expressly acknowledged that there are practical difficulties for family life continuing in Iran and had erred by failing to apply the law to his findings of fact.

(v) The judge had failed to consider the Article 8 rights of Ms McNolty in his assessment that she should conform to standards of behaviour expected in Iran as unreasonable and an interference with her private life.

6. Mr Vassiliou helpfully took me through Appendix FM in its form in force at the time the Secretary of State reached her decision. In particular he explained how section EX operated in the particular circumstances of this case which aside from suitability requirements which are not in issue, refers to eligibility requirements at E-LTRP.1.2 to E-LTRP.1.12 if –

> "The applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK".

Mr Young accepted that this was a correct approach under the Rules in the light of the absence of any assertions of unsuitability.

7. Dealing with the first ground of challenge, at paragraph 24 of *Gulshan* (Article 8-new Rules-correct approach) [2013] UKUT 00640, Cranston J expressed his conclusion on the current state of the authorities and in particular as to what is to be understood by insurmountable obstacles:

> "(c) The term 'insurmountable obstacles' in provisions such as Section EX.1 are not obstacles which are impossible to surmount: *MF (Nigeria)*; they concern the practical possibilities of relocation. In the absence of such insurmountable obstacles, if removal is to be disproportionate it is necessary to show other non-standard and particular features demonstrating that removal will be unjustifiably harsh: *Nagre*. "

8. Mr Vassiliou also referred me to the Secretary of State's guidance which is set out in paragraph 13 of *Gulshan*. It is précised and quoted as follows:

> "'Insurmountable obstacles' are dealt with in paragraph 3.2.7(c) of the Guidance. This states that the decision-maker should consider the seriousness of the difficulties which the applicant and their partner would face in continuing their family life outside the United Kingdom, and whether they entail something that could not (or could not be expected to) be overcome, even with a degree of hardship for one or more of the individuals concerned. It is said to be a different and more stringent assessment than whether it would be 'reasonable to expect' the applicant's partner to join them overseas. For example, a British citizen partner who has lived in the UK all their life and speaks only English may not wish to uproot and relocate halfway across the world, ' but a significant degree of hardship or inconvenience does not amount to an insurmountable obstacle'. The decision maker is advised to look at whether there is an inability to live in the country concerned. The focus should also be on the family life which would be enjoyed in the country to which the applicant would be returned, not a comparison to the life they would enjoy were they to remain here. As to cultural barriers, the guidance explains that these might be relevant in situations where the partner would be so disadvantaged that they could not be expected to live in that country. 'It must be a barrier which either cannot be overcome or would present a

> very high degree of hardship to the partner such that it amounts to an insurmountable obstacle'."

9. Thus the question is not the practical difficulties of relocation but the practical possibilities of relocation as observed by Cranston J in the context of the guidance. The judge directed himself in connection with *Gulshan* which was relied on by Mr Vassiliou and quoted in his determination at paragraph 41 of *Nagre* as well as the above extract from paragraph 24 of *Gulshan*. I am satisfied that the judge correctly understood the test which he was required to apply to the facts of the case on which he reached the following findings:

   (i) The appellant had entered the United Kingdom unlawfully. His asylum claim had been rejected on credibility grounds and he is appeals rights exhausted.

   (ii) He and Ms McNolty had entered into the relationship in the full knowledge of his precarious status.

   (iii) Ms McNolty is a British citizen and it was accepted that she had close family ties in Scotland but was leading an independent life.

   (iv) There was a genuine bond between the appellant and Ms McNolty. They have no children. They have indicated the wish to marry and to start family when circumstances permit then.

   (v) Ms McNolty appeared not to have seriously contemplated the possibility of joining her partner in Iran.

10. The judge went on to consider that possibility of Ms McNolty joining appellant in Iran and observed that life there would be very different from what she is used to. He noted the most apparent feature was the influence of Islam and the application of religious rules and custom. He also noted significant differences in relation to the status of women in Iran from women in the United Kingdom and reached this conclusion at [25]:

> "She could conform to the standards of behaviour expected in Iran. Although Islam dominates, Christianity is tolerated. I do not see particular features indicating religion is a particularly strong issue for her or that she has any wish to proselytise. She has the advantage of knowing some Farsi which would help transition to life in Iran."

11. This leads to the second ground which argues that these conclusions are unreasonable and that there was a practical difficulty associated with relocation of family to Iran. That is not the correct test as I have observed above. The judge appears to have been aware of the differences and thus potential difficulties that Ms McNolty would encounter but I do not accept that his conclusion on that she could adapt to life there were not properly open to him.

12. The next ground of challenge relates to the dangers for British citizens associated with travel to Iran. The only country information before the judge was the report I have referred to above from the Foreign and Commonwealth Office. That states that

British travellers to Iran face greater risks than nationals of many other countries due to high levels of suspicion about the UK and the UK government's limited ability to assist in any difficulty. The risk identified is that British nationals could be arbitrarily detained in Iran despite their complete innocence and there is reference to incidents in 2010, 2011 and of a risk of this re-occurring. There is also reference to a group of eight Slovak paragliders having been arrested in May 2013 and three US hitchhikers arrested near the Iraqi border in 2009.

13. I am satisfied that the judge gave adequate reason for finding that notwithstanding this advice it was nevertheless open to Ms McNolty to live in Iran. His reasons it has to be said are brief but were properly open to him. She would not be a tourist but the partner of an Iranian national and living with him.

14. The next ground I consider to be misconceived as it raises again the issue of practical difficulties. Mr Vassiliou has not addressed the relatively demanding requirement of the rule with regard to insurmountable obstacles, having regard to the authorities on this aspect. A feature of this case is that the judge observed at [9] that Mr Vassiliou had confirmed the appeal solely related to Article 8. His contention before me is that he addressed the judge on the Rules, hence the judge's approach. I do not think anything material turns on this. The judge quite correctly approached the circumstances of the case through the Rules and reached a conclusion on insurmountable obstacles which, had it been favourable to the appellant would have resulted in the appeal being allowed under the Rules.

15. The final ground of challenge relates to Article 8. It is submitted again that the expectation Ms McNolty should conform to the standards of behaviour expected in Iran is unreasonable and constitutes an interference with her private life. I do not consider this ground has any merit. The judge addressed the possibilities of relocation and concluded that it was reasonable for Ms McNolty to adapt to life in Iran; he did so without error.

16. For these reasons the appeal is dismissed.

Signed Date 16 September 2014

Upper Tribunal Judge Dawson