**Upper Tribunal**
**Immigration and Asylum Chamber** **Appeal Number: IA/27413/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House**
**On 23 July 2013**

**Promulgated on:**
**On 25th July 2014**

**Before**

**Upper Tribunal Judge Kekić**

**Between**

**S T**

**Appellant**

**and**

**Secretary of State for the Home Department**

**Respondent**

# Determination and Reasons

**Representation**
For the Appellant: Mr S Canter, Counsel
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Details of appellant and basis of claim**

1. This appeal comes before me following the grant of permission on 5 June 2014 by Judge Deans in respect of the determination of First-tier Tribunal Fletcher-Hill who dismissed the appeal following a

hearing at Hatton Cross by way of a determination promulgated on 15 May 2014.

2. The applicant is an Iranian national born on 20 February 1987. She entered the UK as a student and submitted an application to remain as the spouse of an Iranian refugee whom she married here in July 2012. Her claim was refused on 19 June 2013 on eligibility grounds and also because her relationship had broken down due to domestic violence. The appellant claims that she would be at risk on return because of her marriage to a political refugee.

3. In granting permission to appeal, Judge Deans expressed the view that the judge did not properly assess any risk of serious harm to the appellant returning to Iran as the estranged wife of an Iranian refugee in the UK.

4. The appeal came before me on 23 July 2013. The appellant was present and I heard submissions on whether or not the First-tier Tribunal Judge made an error on a point of law.

5. At the conclusion of the hearing I reserved my decision which I now give.

**Findings and Reasons**

6. Four grounds are put forward by Counsel in his criticism of the determination. I deal with each of these in turn.

7. The first complaint is that the judge failed to have regard to a material matter when assessing proportionality; i.e. the appellant's near ability to meet the requirements of the rules for indefinite leave to remain as the victim of domestic violence, it being the case that had her application been decided sooner or had her husband been British or settled here, she would have qualified for indefinite leave to remain. No disrespect to Mr Canter is intended, but this argument is so weak that it is not deserving of consideration. Firstly, it mattered not when the application was decided because even if it had been decided on the spot, the appellant would not have qualified for leave as she did not meet the eligibility requirements of the rules. Secondly, her husband was not a settled resident or a British national. He currently has discretionary leave and when that comes to an end, he will need to make an application for further status. It is not the case that he was about to qualify for settlement or nationality but did not have such status when the application was made. That may have been described as a near miss, although even then the eligibility requirements were not met. Thirdly, as there was no valid "near miss" argument whatsoever, the judge made no error in failing to address it. Ideally, she should have dismissed it as being wholly unmeritorious, but her failure to do so has no impact on the

outcome of the appeal. At the hearing, Mr Canter argued that the appellant might have applied as a Post Study Worker had she not got married but that sounds like a "what if" argument rather than a near miss. The judge cannot be expected to consider all possibilities. That would be wholly speculative.

8. The second argument is that the judge failed to determine all the grounds of appeal raised. It is maintained that the appellant alleged that her return to Iran would breach Articles 2, 3 and 8 but that the judge only dealt with the Article 8 appeal as is confirmed by her dismissal of the appeal on Article 8 grounds without any reference to Article 2 and 3. I have had careful regard to the grounds of appeal. They appear in the respondent's bundle and consist of two pages. Essentially they cite various cases with regard to Article 8. No specifics of the appellant's case are set out and there is no reliance anywhere on Articles 2 and 3. It is, therefore, wholly erroneous to maintain that the judge failed to consider points raised in the grounds of appeal.

9. The third ground argues that the judge failed to apply anxious scrutiny to the appellant's case in that she did not show that "every factor which might tell in favour of an applicant had been properly taken into account". It is maintained that she devoted only one sentence to the appellant's claim to be at risk. This, it is argued, makes the reasoning inadequate because it was accepted that the appellant had come to the attention of the authorities and that she was married to a political activist who was an Iranian refugee. It is argued that the Operational Guidance Note indicates that an individual perceived as being involved in opposition politics who had come to the attention of the authorities would be at risk.

10. On this point I would firstly refer to the recent judgment of the Tribunal in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) in which Mr Justice Haddon-Cave observed that it was "generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case". An explanation in "brief terms" for their decisions was acceptable.

11. The appellant's claim that she would be at risk of persecution or execution by the authorities was raised at the hearing of her appeal. There is no mention of it to the respondent or in her grounds of appeal (as confirmed above) and there has been no asylum claim because she claimed she "could not decide what to do". Mr Canter relied on the cumulative effect of several factors which, he submitted, caused the appellant to be at risk. Each of these factors is summarised by the judge when she sets out the appellant's evidence.

12. I appreciate that the cumulative factor was stressed however in order to do so, one still has to consider the merits of each point. With regard to the claim that she had "previously come to the attention of the authorities", I note this refers to a visit the appellant made to Iran in 2011 when she claimed to have been questioned at the airport about her activities. Having presumably satisfied them of her bona fides, she was permitted to go unharmed. There have been no repercussions of that event and she does not claim to have faced further questioning whether she left Iran to return here. It should be noted that this visit was some years after her claim to have attended a political protest in Iran. Plainly, the authorities have no record of her having attended a protest and have no interest in her. The description of her having come to their attention is rather misleading in the circumstances. She has not been involved in any political activities here so there is nothing that could lead to a sur place claim. There was reference to the appellant having participated in an art exhibition sponsored by an Israeli organisation which may put her at risk but this really is a far fetched submission. The event was not a protest or demonstration of any kind, as accepted in evidence. It entailed artists from all over the world, including the Middle East and Palestine, drawing/writing peace messages on envelopes. It is not credible that the Iranian authorities would have monitored such an event just on the off chance that some of their citizens may have attended.

13. It is alleged that the appellant's father was asked questions about the appellant's activities but that too does not appear to have led to any further incidents and plainly he is able to travel without hindrance as his trip to attend the appellant's engagement party shows.

14. The appellant maintains that the authorities would know about her marriage and that as it was a civil ceremony and not a religious wedding, she would be executed. The only evidence supporting her claim of the risk of execution is an unsigned letter from the Iranian and Kurdish Women's Rights Association in Finsbury Square which states that the marriage was not an Islamic one and according to Iranian law *"the punishment for any relationship outside the Islamic way is execution"*. No specific law is cited and there is no reference to any other source of information which would confirm that civil marriages are unacceptable or that those who enter into them face a risk of execution. Had this been the case, I would have expected the appellant to make put this forward promptly however it is absent from her grounds of appeal and from the skeleton argument and was not mentioned until her appeal was heard. There is nothing to suggest that the authorities would know of the marriage in any event or that, given that it has ended, it would cause any problems for her. The appellant still uses her maiden name; I see no

documents in which she is referred to by her husband's name and the claim that he would inform the authorities about her is, as the judge found, wholly speculative. Given that he himself has fled the Iranian authorities, the suggestion that he would then contact them voluntarily is frankly not believable. Nor is it clear how he would make contact or what he would tell them.

15. It is maintained that the appellant would also be at risk because of her relationship to a political activist. This is another matter that is absent from the skeleton argument and was raised for the first time at the hearing. The only evidence that the appellant's former husband has any involvement in politics is the appellant's evidence and, as can be seen from the determination, she herself was unsure about his activities and appeared to be making assumptions. The claim that he might be involved in activities against the Iranian authorities is pure speculation on her part. Additionally, there was no evidence to indicate the basis on which he obtained his refugee status. It may not even have been for political reasons. In any event, the judge was not referred to any documentary evidence to suggest that family members of refugees are at risk. Certainly the former husband's parents appear to be able to travel freely as they also attended the engagement party and it is not suggested that they have had to flee Iran or that they have had problems because of their son. It should also be noted that the appellant returned to Iran after she had commenced her relationship with her former husband. Had the authorities been monitoring her movements via Facebook as she feared or by other means, this relationship would have been known to them. However, no questions about it were put to her when she was questioned.

16. The fourth and last complaint is that there was a three month delay in the determination of this appeal which renders it unsafe. In fact the determination witness statement prepared one day short of three months after the hearing so technically the three month rule of thumb had not passed by. Why there was a delay in promulgation is not known but it is not the judge's fault and cannot impact upon the determination. It is argued that the judge would have had difficulty recalling the evidence because she prepared the determination late but I find no merit in this argument. There is a full Record of Proceedings, bundles of documentary evidence both from the appellant and the respondent and a skeleton argument. Moreover, as Mr Melvin pointed out, there was no suggestion that the judge had omitted any part of the evidence when summarising it in her determination. I would also note that the Tribunal's country guidance cases are invariably promulgated over three months after the hearings yet this does not invalidate the substance and findings of those judgments.

17. At the hearing before me, Mr Canter sought to take issue with the adequacy of the Article 8 findings and the proportionality assessment, raising issues about the appellant's moral and physical integrity but other than the first ground, which I have dealt with above, there is no other criticism in the grounds for permission of Article 8 and Mr Canter did not seek leave to amend his grounds. I would also note that there were no submissions made at the hearing before the First-tier Tribunal on the basis of the appellant's health, whether mental or physical, nor was any oral evidence called in that respect.

18. Having considered the case and the determination with care, I conclude that the challenge to the judge's findings and conclusions are not made out. Whilst the findings could certainly have been fuller, they are adequate given the weak claim that has been put forward. The judge made it plain that whilst the appellant had established a private life here, her removal would be proportionate, that she had completed the studies she came here for and could be expected to return to Iran where she has spent the vast majority of her life. The judge was entitled to find that the appellant's expressed fears of harm were wholly speculative and unsupported. That plainly relates to the Article 2 and 3 even if not particularly identified as such. The point I am making here is that despite the concise findings, the judge gave clear enough reasons as to why she dismissed the appeal and the weak claim did not merit more detailed consideration.

19. The appellant is clearly a talented and hard working young woman who would, as the judge found, prefer to make her life here. She does not however meet the requirements of the rules and does not qualify for leave to remain on human rights grounds. The judge dealt adequately with the appeal.

## Decision

20. The First-tier Tribunal did not make any errors of law. The decision to dismiss the appeal on all grounds is upheld.

## Anonymity

21. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

**Signed:**

**Dr R Kekić**
**Judge of the Upper Tribunal**

24 July 2013