



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/42099/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated
On 29 May 2015**

On 21 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS FERIAL FATTAHI
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr. C. Avery, Home Office Presenting Officer.

For the Respondent: Mr. O. Noor, Counsel.

DECISION AND REASONS

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal, with the Secretary of State referred to as “the respondent” and Miss Fattahi as “the appellant”.
2. The appellant is a citizen of Iran born on 14 May 1987. She appealed against a decision of the respondent dated 30 October 2014 refusing to

vary her leave to enter the United Kingdom and to remove her by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

3. The appellant arrived in the United Kingdom on 12 January 2010 with leave to enter as a Tier 4 (General) Student valid to 15 December 2012. She was subsequently granted an extension of stay in the United Kingdom until 31 October 2013 as a Tier 4 (General) Student and then, again subsequently granted an extension of stay in the United Kingdom until 20 October 2014 as a Tier 4 (General) Student. On 29 August 2014 she applied for leave to remain on the basis of her private life in the United Kingdom.
4. The appellant appealed the respondent's decision and following a hearing at Birmingham before Judge of the First-tier Tribunal James, and in a decision promulgated on 18 February 2015, the appellant's appeal was allowed.
5. The respondent sought permission to appeal which was granted by Designated Judge of the First-tier Tribunal Garratt on 16 April 2015. His reasons for so doing are:-
 - "1. The respondent applies in time to appeal against the decision of Judge of the First-tier Tribunal L James who allowed the appeal on human rights grounds against the decision of the respondent of 30th October 2014 to refuse to vary leave to enter and to remove by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
 2. The grounds contend that the judge failed to consider the public interest considerations now set out in Sections 117A and 117B of the Nationality, Immigration and Asylum Act 2002 (as amended). Further it is argued that the judge failed to resolve a conflict of fact by finding that the appellant would be at risk from the authorities on return to Iran but could, nevertheless, make short visits to the country. The grounds also contend that it is not clear whether the judge allowed the appeal outright under Article 8 or whether, in finding that the respondent's decision was not in accordance with the law, the application remained outstanding.
 3. All grounds are arguable. The relatively short findings of fact and conclusions in the twelve page decision do not show that the judge gave any consideration to the public interest issues now specified in Sections 117A and 117B of the 2002 Act, which was arguably wrong. It is also arguably perverse, in the legal sense, for the judge to have found that the appellant would be at risk from the authorities on return to Iran yet could visit the country for short periods without any such risk arising. The point in relation to the basis upon which the appeal was allowed is also arguable.
 4. Permission is granted."
6. Thus the appeal came before me today.

7. Mr Avery relied on three grounds. Firstly that the judge misdirected himself in law by failing to give particular regard to the public interest considerations in Section 117B of the Immigration, Nationality and Asylum Act 2002, secondly that he failed to resolve a conflict of fact in relation to potential risk the appellant would face upon return to her country of origin and finally the lack of clarity as to whether the appeal had in fact been allowed under Article 8 or whether the judge's finding was that the decision is not in accordance with the law and as such that the application remains outstanding until a further decision is made by the respondent.
8. For the moment, and for reasons that will become clear below, I will focus upon the first ground.
9. Mr Avery argued that not only was there no mention of Section 117 within the judge's decision but no attempt to address the public interest and that this in itself amounted to a fatal error. Quite simply the judge has not addressed the issues that fell to be considered under Section 117 and in particular there is no mention of the English language issue, financial independence issue or the precariousness of private life.
10. Mr Noor quite helpfully provided me with a skeleton argument which fully sets out his submissions and has been taken into account by me. Again, for reasons that will be clear below I shall once more focus upon the first of the respondent's grounds of appeal. Mr Noor brought to my attention the authority of **Dube (ss.117A-117D) [2015] UKUT 00090 (IAC)** and helpfully set out within his skeleton argument the main considerations within Section 117B relevant to this appellant's appeal. He emphasised that the judge heard evidence at a hearing lasting some three hours from a total of ten witnesses and was provided with extensive documentation thereby exposing him to a wide spectrum of considerations. He accepted that the issues of English language, financial independence and establishment of private life when immigration status was precarious had not been explicitly set out in the decision. Nonetheless he asserted that the judge was taken through all such factors throughout the course of the hearing.
11. Within his skeleton argument he does most helpfully set out the evidence in relation to these three issues that was put before the judge.
12. He also brought to my attention the authority of **Anoliefo (permission to appeal) [2013] UKUT 00345 (IAC)** and highlighted that where there is no reasonable prospect that any error of law alleged in the grounds of appeal could have made a difference to the outcome, permission to appeal should not normally be granted in the absence of some point of public importance that is otherwise in the public interest to determine.
13. He then went on to address me in relation to the other two grounds.

14. However, my consideration of the submissions of both Mr Avery and Mr Noor in relation to the second and third grounds is, in light of my decision in relation to the first ground, redundant.
15. This is a decision where the judge has materially erred as asserted by the respondent in the first ground. Not only is there no mention of Section 117, which would not have been fatal, but there is no consideration of the issues contained therein which fell to be considered. Consequently the judge's findings in relation to proportionality failed to take into account the public interest considerations required by the 2002 Act. The error is not only material but fundamental and goes to the heart of this decision.
16. I conclude that it infects the totality of the findings such that none can be preserved.
17. There is therefore no need for me to address the second and third grounds of appeal.
18. For all these reasons I find the decision of the First-tier Tribunal contains errors of law and has to be set aside in its entirety. All parties agreed that, in the circumstances, it was appropriate for the appeal to be remitted and all matters determined afresh by the First-tier Tribunal.

Notice of Decision

19. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7.2(b), before any judge aside from Judge James.
20. No anonymity direction is made.

Signed

Date 28 May 2015.

Deputy Upper Tribunal Judge Appleyard