



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

Appeal Number: OA/08762/2015

**THE IMMIGRATION ACTS**

**Heard at: Columbus House,  
Newport  
On: 22 January 2018**

**Decision & Reasons Promulgated  
On: 22 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**ARMINA NIKOUBAKHT  
(anonymity direction not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: Ms S Alban, Fountain Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

**DECISION**

1. This is an appeal against the decision of First-tier Tribunal Judge Fowell in which he dismissed the appeal of the Appellant, a citizen of Iran, against the Entry Clearance Officer's decision to refuse entry clearance as the child of the Sponsor Cyrus Persia who holds refugee status in the United Kingdom. The appeal before the First-tier Tribunal engaged both the Immigration Rules (paragraph 352D) and Article 8 ECHR grounds.

2. The Appellant applied for entry clearance on 24 February 2015. Her application was refused by the Entry Clearance Officer on 29 April 2015. The Appellant exercised her right of appeal against the decision and the appeal was heard before Judge Fowell on 21 February 2017 and dismissed by virtue of both the Immigration Rules and Article 8 ECHR. The Appellant applied for permission to appeal and her application was refused by First-tier Tribunal Judge Alis on 12 September 2017 but on renewal to the Upper Tribunal was granted by Upper Tribunal Judge Finch on 23 October 2017 in the following terms

“It is arguable that the Appellant did continue to enjoy a family life with her father and that this should have been given greater weight when considering the evidence of a family unit.

It is also arguable that her best interests were not fully explored as a primary consideration.

As a consequence, it is arguable that First-tier Tribunal Judge Foxell’s (sic) decision contained arguable errors of law and, therefore, it is appropriate to grant the Appellant permission to appeal.”

## **Submissions**

3. At the hearing before me Ms Alban appeared on behalf of the Appellant and Mr Richards appeared for the Entry Clearance Officer. The Appellant filed an appeal bundle including a skeleton argument. No additional documents were filed by the Respondent.
4. For the Appellant Ms Alban referred to the skeleton argument. The Judge failed to make a finding of fact as to the current living conditions. In paragraph 32 the Judge finds it in the Appellant’s favour that her grandmother is no longer able to care for her, but this does not sit well with paragraph 33 where the Judge finds that the absence of medical evidence about the grandmother’s condition gives no basis to find in her favour. There is no mention of the statement from the Appellant’s mother stating that the grandmother can no longer care for her daughter. There is a factual error in paragraph 34 in that it implies that the Sponsor has waited 8 years before sponsoring his daughter’s application. It was not possible for him to sponsor her application before. The Judge has failed in his consideration of Article 8 and proportionality, he has failed to consider the Appellant’s welfare, failed to consider that the Sponsor (as a refugee) cannot visit and failed to consider that the Appellant will not get a visa to visit the Sponsor. The Judge has looked at other factors and not at the strength of the relationship. He has erred in his consideration of section 55 in paragraph 37 of the decision. The starting point should have been that the Sponsor is the only person who can look after the Appellant. The Judge failed to consider her emotional needs and stability and failed to give enough weight to the enjoyment of family life. So far as paragraph 352D of the Immigration Rules is concerned the Judge failed to give due weight

to the continuing relationship of the Appellant and her father when considering whether she was part of the family unit when he left Iran.

5. For the Respondent Mr Richards said there was nothing in the grounds to challenge the finding that the Appellant was not part of the family unit. The First-tier Tribunal made it clear that there was a family unit (paragraph 24) with the mother. In relation to Article 8 the best interests of the child are dealt with adequately by the Judge. Paragraph 32 is not a finding, it puts the Appellant's case and the second sentence has a significant "however". It is correct that there was no medical evidence as to the grandmother's condition. A best interests finding is made at paragraph 39. The Judge was clearly mindful of the fact that the Appellant is not a young child. Proportionality is adequately reasoned. There is no arguable error of law.
6. Ms Alban responded to say that the Judge has failed to consider that the Appellant could be part of both her mother's and father's family units. Although no medical evidence was produced the Judge failed to consider the evidence from the Appellant's mother concerning the grandmother's medical condition.
7. I reserved my decision.

## **Decision**

8. At the time of her application the Appellant was a 16-year-old child living with her grandmother in Iran. Her father, the Sponsor, was divorced from her mother when the Appellant was three years old and after the divorce he was allowed, according to her statement, "very limited access". This situation pertained for the next seven years until 2008 when the Sponsor left Iran and came to the United Kingdom. Sometime after the Sponsor came to the United Kingdom the Appellant left her mother's home and began living with her maternal grandmother and at the time of the application this is where she remained. The Appellant last met the Sponsor in Turkey in about 2016. Full details of the contact between the Appellant and the Sponsor are contained in their witness statements and in addition the Sponsor gave oral evidence to the First-tier Tribunal.
9. The statement of reasons shows that the Judge carefully considered the evidence. In doing so it is clear that he considered the existence of a family unit and correctly self-directed to BM and AL (352D(iv); meaning of "family unit" Colombia [2007] UKAIT 00055. He considered the possibility of the Appellant being part of both her mother's and father's family unit and in doing so clearly examined the facts (at paragraph 24). Having done so the Judge reached the conclusion that the Appellant was part of her mother's family unit. It is a clear and well-reasoned conclusion and, in my judgment, reveals no error of law. This conclusion meant that the Appellant did not meet the requirements of the Immigration Rules. It is a

conclusion that must also be factored into the proportionality assessment under Article 8.

10. In dealing with Article 8 the Judge again properly self-directed. At paragraph 32 he puts forward the Appellant's case, he does not make findings. So, contrary to Ms Alban's submission there is no inconsistency between paragraphs 32 and 33 of the statement of reasons. The Judge finds that although it is asserted that the Appellant's grandmother is no longer able to look after her there is no medical evidence to support this assertion. The Judge, again contrary to Ms Alban's submission, does refer to the statement from the Appellant's mother noting that "there is little evidence beyond (this)". The conclusion that "in the absence of any such medical evidence there is really no basis on which to find in her favour" is reasoned and was manifestly open to the Judge to make.
11. The Judge goes on to consider section 55 and the best interests of the child. Again, he properly self directs and, at paragraph 37, reaches a clearly reasoned conclusion. He takes into account the Appellant's age, the long separation from her father and her current living conditions. It cannot be said that this is anything other than a careful and well-reasoned consideration. In my judgment there is no error of law.

### **Conclusion**

12. The decision of the First-tier Tribunal does not involve the making of a material error of law.
13. The appeal is dismissed, and the decision of the First-tier Tribunal stands.



**Signed:**

**Date: 16 February 2018**

**J F W Phillips  
Deputy Judge of the Upper Tribunal**