



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

**Appeal Number: HU/11696/2019(P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34  
On 10 July 2020**

**Decision & Reasons Promulgated  
On 23 July 2020**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**MARJAN GHARLEGGHI  
(ANONYMITY ORDER NOT MADE)**

Appellant

**-and-**

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

Respondent

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Respondent is a national of Iran. She was granted leave to remain in the United Kingdom, as the wife of a British citizen, on 13 March 2013 and she was granted a further period of leave in this capacity on 17 June 2016. She applied for indefinite leave to remain, as the spouse of a British national, on 21 November 2018. Her application was refused on 24 June 2019.
2. She appealed and First-tier Tribunal Judge Easterman dismissed her appeal in a decision promulgated on 25 October 2019. The Appellant appealed against this decision and on 27

February 2020 First-tier Tribunal Judge Povey granted her permission to appeal to the Upper Tribunal.

3. The error of law hearing was listed for 6 April 2020 but was postponed on 19 March 2020, due to the restrictions imposed on account of the Covid-19 Pandemic. Upper Tribunal Judge Smith gave further directions on 20 March 2020. She said that it was her preliminary view that it would be appropriate to determine whether there had been an error of law on the papers. The parties were invited to make further submissions in relation to the substance of the appeal and to indicate whether they considered that a hearing was necessary.
4. The Respondent filed and served written submissions in response on 23 April 2020, but the directions were not sent to the Appellant's correct home address. Therefore, I directed that the directions be sent to her at her correct home address and that time be extended for her to respond to them. On 9 July 2020 she filed and served a document containing her written submissions and her reply to the Respondent's submissions.
5. Her direct access counsel submitted that the hearing could proceed on the papers unless the Upper Tribunal considered that there had not been an error of law. In which case an oral hearing was requested. The Respondent did not express any opinion on the type of error of law hearing that she preferred. Having carefully read both sets of written submissions, it is clear that the error of law hearing would turn on the legal submissions and that the parties' written submissions had addressed the relevant legal issues in the appeal. I have reminded myself of the need to ensure that the proceedings are conducted in a fair and just manner and that unnecessary delay is avoided. I have also taken into account the Respondent's human rights and the effect of further delay on her private and family life. Having considered all of this, I have decided that it is lawful and proper to proceed without a hearing.

## **ERROR OF LAW DECISION**

6. It had been submitted on behalf of the Appellant that she was entitled to leave to remain under paragraph 276ADE(1)(vi) of the Immigration Rules, as there were very significant obstacles to her re-integration into life in Iran after an absence of a period of eight years. First-tier Tribunal Judge Easterman purported to consider whether she was entitled to such leave in paragraphs 48 to 51. However, when doing so, he did not refer himself to any case law relating to the correct meaning of the phrase "very significant obstacles" and referred himself

in the text of paragraphs 48 and 49 to two other different tests; namely whether there were “insurmountable obstacles” or “really significant difficulties or great hardship” which would prevent her from integrating there. The Respondent submitted that First-tier Tribunal Judge Easterman had applied the substance of the test, albeit not accurately naming it.

7. However, there is substantial case law which indicates that the precise test contained in paragraph 276ADE(1)(vi) requires careful and precise analysis. (See, for example, Treebhowan v Secretary of State for the Home Department [2017] UKUT 12 (IAC) and Parveen v Secretary of State for the Home Department [2018] EWCA Civ 932.) In addition, the consideration of the evidence provided by First-tier Tribunal Judge Easterman was very short and unfocused.
8. Furthermore, if First-tier Tribunal Judge Easterman had properly directed himself to the correct legal test and relevant case law he may have come to another conclusion. This gave rise to a material error of law; see IA (Somalia) v Secretary of State for the Home Department [2007] EWCA Civ 323)
9. Furthermore, First-tier Tribunal Judge Easterman’s decision did not contain any explicit reference to any test for the grant of leave outside the Immigration Rules on private life grounds. The Respondent submitted that it could be inferred that the Judge had applied the correct test but rolled it up with his consideration of paragraph 276ADE(1)(vi). This is a difficult assertion in the context of the Judge even failing to apply the correct test in relation to paragraph 276ADE.
10. In addition, there is no explicit reference to any entitlement to leave outside the Immigration Rules and no attempt to apply the necessary fact-sensitive approach approved in GM (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1630.
11. For all of these reasons I find that there were errors of law in First-tier Tribunal Judge Easterman’s decision.

## **DECISION**

- (1) The Appellant’s appeal is allowed.

- (2) First-tier Tribunal Judge Easterman's decision is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Easterman or Povey.

*Nadine Finch*

Signed  
Upper Tribunal Judge Finch

Date 10 July 2020