



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/10415/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 30 October 2013

Determination Promulgated
On 3rd December 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SARA FARAHKORDMAHALEH

Respondent

Representation:

For the Appellant: Mr S Spence, a Senior Home Office Presenting Officer
For the Respondent: Mr B Marshall, Barry Clark, Solicitor

DETERMINATION AND REASONS

1. The respondent, Sara Farahkordmahaleh, was born on 31 August 1979 and is a female citizen of Iran. I shall hereafter refer to the respondent as “the appellant” as she was before the First-tier Tribunal; I shall refer to the Secretary of State for the

Home Department as the “respondent”. The appellant had appealed to the First-tier Tribunal against a decision of the respondent to refuse her leave to enter the United Kingdom as the spouse of a British citizen under Appendix FM of the Immigration Rules. The respondent considered that the appellant’s spouse did not have the required annual income of £18,600. The First-tier Tribunal Judge (Judge Thorne) dismissed the appeal under the Immigration Rules but allowed it under Article 8 ECHR. At [31], the judge wrote that he was

not satisfied on the balance of probabilities that at the time of the ECO’s decision the appellant had a gross annual income of at least £18,600 from specified employment in the UK. The evidence is clear that at the material time the business of the appellant’s husband had an operating profit after expenses of only £1,528.

2. The appellant had entered the United Kingdom in September 2005 as a Tier 4 (General) Student. She had valid leave until 18 October 2012 and had applied, whilst in country, to vary her leave to remain as the spouse of a British citizen. The parties agreed that the appellant and her spouse enjoyed a family life in the United Kingdom and that the relationship was genuine. As the judge properly identified, the issue under Article 8 ECHR was one of proportionality. At [59], the judge found, having set out the various factors in favour of the respondent and the appellant, that “the human rights of the appellant (and her husband) are not outweighed by the public interest [concerned with her removal]”. The judge noted that there was no embassy in Iran at which the appellant might make an out of country application for entry clearance. If the appellant’s spouse accompanied her to Iran then the new business which he had built up in the United Kingdom would founder. The judge also noted that:

There was no dispute that at the time of the hearing the appellant would meet the financial requirements of the Rules as her husband’s business gave him an operating profit of over £20,000 a year. Therefore the husband is now in a position to support and maintain the appellant in the UK without recourse to public funds.

3. The grounds of appeal assert that “for a case to succeed on Article 8 grounds outside the Rules it is necessary for that case to be exceptional”. Replying to the grant of permission under Rule 24, the appellant relies upon *Chikwamba* [2008] UKHL 40.
4. I have considered both the oral and the written submissions carefully. I do not find that the judge has erred in law. There is no general test of “exceptionality” for the application of Article 8 ECHR outside the ambit of the Immigration Rules. A judge has adopted a proper and structured approach to the appeal on Article 8 grounds, helpfully setting out at [57 – 58] the various factors in favour of each party in the appeal. In light of the fact that the Secretary of State’s Presenting Officer appears to have accepted at the First-tier Tribunal hearing that an out of country application under paragraph 281 of HC 395 would now succeed, the judge properly applied the ratio of *Chikwamba*. His decision to allow the appeal was clearly a decision open to him on the evidence and by way of a proper application of the jurisprudence. I can identify no reason for me to interfere with it. In the circumstances, the appeal is dismissed.

DECISION

5. This appeal is dismissed.

Signed

Date 21 November 2013

Upper Tribunal Judge Clive Lane