



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

Appeal Number: AA/04359/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 October 2014**

**Decision & reasons  
Promulgated  
On 7 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**MS MOLAVINIA NARJES  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Mr T Hodson of Counsel

For the respondent: Mr Whitwell, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant born on 21 April 1972, a citizen of Iran appealed against the decision of the respondent dated 5 June 2014 to grant her asylum and humanitarian protection in the United Kingdom. First-tier Tribunal Judge James said that the appellant has leave to remain in the United Kingdom until 2015 and therefore she has no right of appeal and that he has no jurisdiction to hear her appeal against the respondent's decision to remove from the United Kingdom.
2. The Judge erred when he concluded that the appellant had valid leave to remain until 2015. The reasons for refusal letter refers only to leave until 16 May 2012 and to the subsequent removal decision made on 13 June 2014 and to the earlier determination of Judge Roonarine-Davies in March 2013 which also refers to the appellant having leave until 16 May

2012. Mr Hodson stated that he cannot confirm that the appellant has leave until 2015. The Judge fell into material error when he found that the appellant had leave until 2015. He therefore erred when he stated that he has no jurisdiction to hear the appeal.

3. At the hearing it was agreed between the parties that the appellant does have an in country right of appeal and that the Judge erred when he stated in his determination that this was not a statutory appeal and that the appellant had extant leave in excess of one year. It was also agreed that the appeal be sent back to the First-tier Tribunal for findings of fact to be made.
4. I find that the respondent's decision to remove the appellant in June 2014 gave rise to an in country right of appeal to the appellant.
5. Both parties agreed that the appeal ought to be sent back to the First tier-Tribunal so that findings of fact can be made. I agreed that this was the proper course of action to take in this appeal in accordance with section 7. 2 (b) (i) the Senior President's Practice Statement of 25 September 2012 as I was of the view that the appeal requires judicial fact-finding and should to be considered by the First-tier Tribunal.
6. The re-making of the decision on appeal will be undertaken by a First-tier Judge in the First-tier Tribunal other than by First-tier Tribunal Judge James on a date to be notified.

### **Decision**

7. The appellant's appeal is allowed and the determination of First-tier Tribunal Judge James is set aside. The case is remitted to the First-tier Tribunal for determination.

Signed by

Mrs S Chana  
2014

Dated this 5<sup>th</sup> day of November

A Deputy Judge of the Upper Tribunal