



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02695/2020

THE IMMIGRATION ACTS

Heard at Field House
On 14 June 2021

Decision & Reasons Promulgated
On 24 June 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

AREZOO MOHAMMADBEIGI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Ali, Counsel instructed by M & K Solicitors
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.
2. The appeal (both in respect of error of law and re-making) was conceded by Ms Everett, and therefore my decision will be very brief.

3. The appellant is a citizen of Iran who entered the UK in June 2016 as a spouse. Her leave ended on 6 March 2019. On 4 March 2019 she applied for further leave, but this was refused. She appealed against that decision, but then withdrew the appeal on 5 November 2019 and made a new application on 26 November 2016.
4. In a decision dated 8 February 2020 the respondent accepted that the appellant satisfied all the requirements for leave to remain other than the requirement to have valid leave when the application was made.
5. The appellant appealed to the First-tier Tribunal where her appeal came before Judge of the First-tier Tribunal Andrew (“the judge”). In a decision promulgated on 11 February 2021, the judge dismissed the appeal. The judge found that the only reason the appellant did not satisfy the Immigration Rules was that that the application was made when she no longer had leave. The judge found that application was made seven days late, having regard to the period allowed by paragraph 39E of the Immigration Rules.
6. One of the issues before the judge was whether the appellant would be granted entry clearance as a spouse if she were removed from the UK and applied for entry clearance from Iran. The judge found at paragraph 34 that she could not be certain and this issue could only be decided with certainty if an application for entry clearance was in fact made.
7. Ms Everett conceded at the hearing that the judge’s approach to the question of whether the appellant would be granted entry clearance if she made an application from Iran was misconceived, because the judge did not have to be “certain” of this; she just had to be satisfied that, on the balance of probabilities, the appellant would be successful with such an application.
8. On the basis of this conceded error, I proceeded to re-make the decision. Ms Everett stated that she was unable to provide any public interest argument for dismissing the appeal. I agree with Ms Everett. The only relevant public interest in this case is the public interest in the maintenance of effective immigration controls. The appellant entered the UK lawfully as a spouse and sought to extend her leave as a spouse in time. A mistake with documentation regarding financial eligibility was made and the appellant submitted a new application which the respondent accepted established that the financial eligibility requirements were met. Given the absence of an adverse immigration history and the (prompt) efforts made by the appellant to comply with the requirements of the Immigration Rules, it does not promote the public interest in the maintenance of effective immigration controls to require her to leave the UK to make an application to re-enter which is, on the balance of probabilities, certain to succeed. I therefore allow the appeal as

there are not public interest considerations outweighing the appellant's right to respect for the family life she enjoys with her husband in the UK.

Notice of decision

9. The decision of the First-tier Tribunal involved the making of an error of law and is set aside. I re-make the decision by allowing the appeal.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 16 June 2021