



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

Appeal Number: OA/13216/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 1 August 2014
Prepared 1 August 2014**

**Determination
Promulgated
On 22 August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LEILA HAGHANI

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Presenting Officer
For the Respondent: Mr S Harding of Counsel instructed by Bhogal Partners
Solicitors

DETERMINATION AND REASONS

1. In this determination the Respondent is referred to as the Claimant and the Appellant is referred to as the Secretary of State.

2. The Claimant, a national of Iran, date of birth 24 February 1974, appealed against the Respondent's decision dated 20 June 2013 to refuse an application to settle as a pre-flight family member under paragraph 352A of the Immigration Rules (as amended)(The Rules) and under Article 8 of the ECHR. The appeal came before First-tier Tribunal Judge Amin (The Judge) who on 8 May 2014 allowed the appeal under Article 8 of the ECHR.
3. Permission to appeal that decision was given by First-tier Tribunal Judge C Andrew on 6 June 2014.
4. The Secretary of States' first ground is essentially that the judge should have, having concluded that the Claimant did not meet the requirements of paragraph 352A(ii) of the Rules, gone on to consider whether the Claimant could meet the family life requirements contained within Appendix FM of the Rules, presumably on the category of E-LTRPT. The fact of the matter, as was accepted in argument, was that the Claimant could not have succeeded because EX.1 did not exempt her from the requirements of E-LTRPT in relation to English language and financial requirements. Accordingly the first ground takes the matter no further.
5. In submissions before the judge it was accepted by the Respondent's representative and the Claimant's could not succeed under the Rules and there was no other specific provision to apply to her to obtain entry under the Rules. It may be that an application could be made under paragraph 281 of the Rules as the grounds now argue but that was not how the Respondent's case was put to the judge. It was argued by the Claimant that in those circumstances there were evidently compelling or exceptional circumstances which were not sufficiently recognised by the new Rules and justified considering an Article 8 ECHR claim outside the Rules. The judge agreed in the determination at paragraphs 26-30, 32-35 having accepted there was a genuine, subsisting marriage and the parties to it intended to remain together.

6. The judge's analysis of the Article 8 ECHR issues was a matter for him given the Iranian nationality of the Sponsor and the Claimant, the fact that the Sponsor is a refugee, the fact that they may have holidayed in Turkey on more than one occasion really does not show that the Claimant and Sponsor can go and have a family life together in Turkey, as the Secretary of State argued; particularly when both are nationals of Iran and have no entitlement to reside in Turkey.
7. There was nothing to indicate, even though they did meet in Istanbul that there is any basis for the Appellant and Sponsor to return to live there. They have met there from time to time during the marriage because there was nowhere else where they may do so.
8. It cannot be seriously argued that it would be reasonable to require them to return to Turkey where neither of them has any status to make their life there. The judge was perfectly entitled to reject the submission that they should do so. The judge plainly had in mind the differential position between spouses whose marriages pre-dated and post-dated the flight of the spouse, later granted ILR, and the different way in which they are respectively treated under the Rules.
9. In the circumstances, although the reasoning should have been better presented, the relevant cases of Nagre and MF(Nigeria) as they applied should have been referred to but I conclude that there is nothing to indicate that the judge made a material error of law in the assessment of compelling circumstances not sufficiently recognised under the rules; particularly when the evidence did not show another country where they could establish a family life. It is to be noted that the Secretary of State did not challenge the judge's findings on Article 8. It would have been better for the judge to have fully set out the Article 8 issues following the cases of Razgar and Huang.
10. The original Tribunal decision stands.
11. The appeal of the Secretary of State is dismissed.

Signed

Date 19 August 2014

Deputy Upper Tribunal Judge Davey