



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-001129
UI-2023-001130
First-tier Tribunal Nos: HU/51514/2022
HU/51517/2022
IA/02407/2022
IA/02419/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
19th September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

AC (First Appellant)
MH (Second Appellant)
(ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellants: Ms Munro Kerr, Counsel
For the Respondent: Mr Lindsay, Home Office Presenting Officer

Heard at Field House on 16 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court. The order is made because of the dependent minor children.

DECISION AND REASONS

1. These Iranian Appellants appeal with permission granted in the Upper Tribunal, the decision of First-tier Tribunal Judge Row, promulgated following a hearing on 1st February 2022. The judge dismissed the Appellants' appeals against the refusal of entry clearance on the basis that they did not meet the requirements of the Immigration Rules and that the refusal did not breach Article 8 ECHR taking account the failure to meet the rules and finding that the refusals did not result in unduly harsh consequences for the Appellants when taking into account the factors relevant to the assessment of proportionality by virtue of Section 117B of the Nationality, Immigration and Asylum Act 2002.
2. The factual circumstances of the appeal were not substantially disputed. The Appellant and her two children and Sponsor have a longstanding family life together. The Sponsor gained status as an Iranian refugee. He has a British passport issued on 16 April 2016. The couple have travelled to third countries to meet. There are two children, one born in 2009, and the last born in May 2022, and so after the sponsor became British. There had been an earlier refusal of an application for entry clearance upheld on the basis of the difficulties about the reliability of the marriage certificate provided, and because of what the Appellant asserts is a mistaken reference to his being single on arrival in the UK. It was trite that had the appellant been able to show that she was a partner of the sponsor as defined under the rules i.e. through marriage or through the alternative of 2 years co-habitation, she would have succeeded because the respect granted to such relationships is such that the financial difficulties can exceptionally be excused where a couple cannot live together in the country abroad. There was no dispute that there is family life and the refusal a significant interference with the development and enjoyment of the same so that Article 8 rights are engaged. The judge found the difficulties concerning the marriage had not be satisfactorily resolved in the evidence before him as he would have expected the Iranian registry to confirm the history of claimed errors on the certificate. The appellant's financial circumstances, including reliance on Personal Independence Payments (PIP) meant that the family could not satisfy the financial requirements.
3. I was assisted in the hearing by the representatives engaging in a discursive way with the grounds, the grant of permission, and the documentary evidence. The grounds before me were prolix and unsatisfactory in their reliance on explanations offered for the difficulties identified with the marriage certificate which had not been set out before the First-tier Judge, and could not therefore give rise to any error in his consideration. I am grateful to Mr Lindsay for his succinct exposition of the position in respect of the financial requirements which clarified, following the lunch adjournment that a further ground in respect of the financial circumstances of the Sponsor erroneously mistook the specified evidence requirements and exceptions thereto for the substantive requirement to provide adequate maintenance in the context of an income including PIP which met the income support threshold. So it was that following submission the nub of this application reduced to the issue of the judge's approach to Gen 3.2 and the issue of whether the refusal resulted in unjustifiably harsh consequences such as to be a breach of Article 8, commonly referred to as the assessment outside of the Immigration Rules.
4. The grant of permission in the Upper Tribunal recognised a difficulty arose in connection with the judge's assessment of proportionality as the judge had recognised that family life cannot be established in Iran because of an insurmountable obstacle; the Sponsor gained his status here on a refugee basis and also it was in the best interests of the two children for the family to be able

to live together here. The judge none the less found the decision proportionate on the basis that the Appellant could be expected to rectify the formal evidential requirements in relation to the marriage, and improve their position financially, and so be able to bring themselves within the Rules and apply again.

5. I find merit in this part of the grounds. In short in the context of a longstanding relationship, which has given rise to two children the eldest being 13, and the youngest being British, a disabled Sponsor receiving Personal Independence Payment (PIP), the judge's gauging the inability to continue their family life to be answered by the assertion that the Appellants will have the opportunity to make an application when they meet the requirements of Appendix FM fails to properly take into account the severity and degree of interference arising on that family life matrix from the Sponsor's history as a refugee and disability.
6. I canvassed with the parties that in the event I concluded the decision of the First-tier Tribunal is vitiated by the error identified, and I set it aside to remake it in the Upper Tribunal it would be to remake the decision to allow the appeal.
7. Mr Lindsay sought to persuade me that I should relist the matter for a further hearing to give the opportunity to the Respondent to take instructions and consider whether to develop an argument that the Appellant, children and the Sponsor could all relocate to a third country in order to continue their family life there. He pointed out that there had been sufficient resources to fund the family meeting abroad and it might be arguable that they could live somewhere accordingly. Mr Lindsay sought to add to the attractiveness of that position by reflecting that this would give the Sponsor an opportunity to do more to show what additional funds he would be entitled to receive in the event of the arrival of the Appellants in order to establish whether they would be adequate in the context of meeting the public funds threshold relevant to the Immigration Rules, and to have a new hearing would allow opportunity for the improvement of the position around the difficulties on the marriage certificate and bring themselves within the rule. I find that that is not sufficient to persuade me that the case needs to be relisted for further hearing. Not least the point put forward by Mr Lindsay is outwith the basis of refusal.
8. On the on the particular circumstances here including the character and quality of family life enjoyed by the Appellant, the two children and the Sponsor, and taking into account the best interests of the children to be brought up in a stable environment with both parents, and the inability of the family life to continue and develop in Iran in the context of the Sponsor's earlier grant of refugee status and disability, I conclude the refusal to grant entry clearance results in more than mere hardship or difficulty, inconvenience or harshness, but in unjustifiably harsh consequences on the family in the context of Gen 3.2 of the Immigration Rules. It follows that in those circumstances there is no public interest in the refusal and the Respondent's decision is not a proportionate response to those circumstances and is a breach of Article 8.

Notice of Decision

9. The decision of the First-tier Tribunal is set aside and I remake the decision to allow the appeal on Article 8 grounds.

E M Davidge

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Appeal Numbers: UI-2023-001129 (HU/51514/2022)
UI-2023-001130 (HU/51517/2022)

04 September 2023