



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: OA 02979-13

THE IMMIGRATION ACTS

At **Field House**
on **21.03.2014**

Decision signed: **22.03.2014**
sent out: **26 March 2014**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Arezou DOLATIPOUR

appellant

and

Entry Clearance Officer, ISTANBUL

respondent

Representation:

For the appellant: *Alexis Slatter* (counsel instructed by Geo Immigration)

For the respondent: Mr Chris Avery

DETERMINATION AND REASONS

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Paul Brenells), sitting at Taylor House on 6 January, to allow a wife's appeal by a citizen of Iran, born 7 August 1982. The judge did so on the following basis:

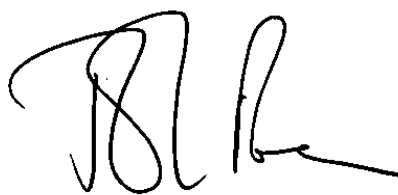
- (a) the sponsor, though now a British citizen, had previously been recognized as a refugee from Iran, so couldn't be expected to live with his wife there, and there was no evidence that they could do so anywhere else, so her continued exclusion from this country would be disproportionate to the legitimate purpose of immigration control; and
- (b) although the sponsor could only show an annual income of £16,300, falling short of the £18,600 required by the Rules, Blake J had taken the view in *MM* [2013] EWHC (Admin) 1900 that an appropriate figure would have been about £13,400.

2. Since the correctness or otherwise of *MM* is presently under expedited consideration by the Court of Appeal, I invited argument in the first place only on (a). The Home Office's challenge to the judge's decision on that point is quite simply that he gave no consideration to the line of authorities, following *MF (Nigeria)* [2013] EWCA Civ 1192, which require that there should be some 'exceptional' or 'compelling' circumstances to justify departing from the Rules, before general consideration is given under article 8 of the European Convention on Human Rights to the proportionality of expulsion or, in this case, exclusion.
3. Mr Slatter's case on that is that, taking the sponsor's difficulty in returning to Iran together with the Home Office's failure to show any other country where he and the appellant could live together as husband and wife, any consideration at all by the judge would have been bound to lead to a finding of 'exceptional' or 'compelling' circumstances. *Izuazu* (Article 8 – new rules) [2013] UKUT (IAC) 45.
4. The difficulty with this submission is in the opening words of appendix FM to the Rules:

GEN.1.1. This route is for those seeking to enter or remain in the UK on the basis of their family life with a person who is a British Citizen, is settled in the UK, or is in the UK with limited leave as a refugee or person granted humanitarian protection (and the applicant cannot seek leave to enter or remain in the UK as their family member under Part 11 of these rules).
5. Part 11 relates to those eligible for leave to enter under the Refugee Convention, and is no longer available to this appellant, now that the sponsor is a British citizen. The words set out make it clear that the funding and other requirements which follow are to apply to dependants of persons here with limited leave as refugees, just as they do to British citizens. In very many, if not most cases, these will be spouses left behind in the sponsor's country of origin, from which he has been granted asylum, and where it may well not be reasonable to expect them to live together; but the funding requirements are still to apply.
6. For this reason, I regard it as essential that there should be a decision on the basis of the Court of Appeal's view of the funding requirements, as to whether the individual circumstances of this appellant's case are indeed 'exceptional' or 'compelling'. Since there is not yet any indication of when that view will become available, I shall deal with this appeal by ruling that, because of the judge's failure to consider the question of whether there were circumstances of that kind, his decision was wrong in law and needs to be re-made. This will take place following a hearing by another judge of the First-tier Tribunal, on both points (a) and (b), by which time the Court of Appeal's decision on appeal from *MM* should be available.

Home Office appeal allowed: first-tier decision set aside

Decision to be re-made following fresh hearing in First-tier Tribunal, not before Judge Brenells.



(a judge of the Upper Tribunal)