



IAC-FH-AR-V2

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

Appeal Number: AA/00344/2015

THE IMMIGRATION ACTS

Heard at Newport
On 2 November 2015
Prepared 2 November 2015

Decision & Reasons Promulgated
On 19 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RM

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr I Richards, Senior Presenting Officer

For the Respondent: No appearance

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant did not appear at the hearing. Notice was served at her last known address at 82 [-]. There is nothing on the file to show notices were returned. The same address was one at which the Appellant was living at the time of the original hearing. There was nothing to indicate that there was any change of address and although her representatives Albany Solicitors at some stage ceased to act, there was nothing on the file to confirm that. I was satisfied that it was appropriate, just

and fair, applying the overriding objective, to proceed in the absence of the Claimant who had voluntarily absented herself from the process and failed to keep in touch with the IAC.

3. The Claimant, a national of Iran, date of birth 23 September 1993, appealed against the Secretary of State's decision to make removal directions following the refusal of a Refugee Convention claim.
4. The appeal against that decision came before First-tier Tribunal Judge Barcello who, on 8 May 2015, dismissed the appeal on Refugee Convention grounds but allowed it under Appendix FM of the Immigration Rules HC 395 as amended.
5. Permission to appeal was sought by the Secretary of State on 14 May 2015 and was granted by First-tier Tribunal Judge Pooler on 27 May 2015. The Claimant claimed that her removal put her at risk on return to Iran and in addition interfered with her family life under the provisions of Appendix FM as well as Article 8 of the ECHR.
6. The judge concluded that the Claimant met the requirements of paragraph R-LTRPT of Appendix FM and concluded that it was not possible for K, her UK national son, date of birth 12 August 2014, to remove with her to Iran leaving behind his father, formerly an Iranian national, and a half-brother, by the name of D. The judge did not apparently ask how old D was but by reference to photographs cautiously estimated him to be of 6-9 years old. D had a close relationship with his father, that is the Claimant's husband, as well as with K. The position was that K lived with his mother but had regular contact with his father. Similarly his father took an active part in K's upbringing.
7. On the face of it under paragraph EX1 the judge assessed whether it was reasonable to expect the child K to leave and did so by reference to the case law set out at paragraphs 55 to 59 of the decision. The judge did not go on to consider EX2 explicitly but it is fair to say that at paragraphs 59, 60 and 61 the judge assessed the practical realities and difficulties faced by the separation of K from his father and the role his father played in the development and upbringing of D.
8. Those were fact specific matters which the judge found, or in effect found, in the decision. The Secretary of State's challenge does not address the finding that the Claimant fell within Section R-LTRPT of Appendix FM, nor the view that the judge took of the interference were the Claimant's husband to return with her to Iran and essentially attacked the general reasons which the judge gave from the relationship between D, his father and K. As Mr Richards properly pointed out, the judge did not explicitly refer to EX2. However, I concluded, weak as the reasoning was, the fact is the judge considered the implications of the removal of the Claimant from her child, D, the separation from her husband and its implications which meant it was not reasonable to expect him to leave the United Kingdom, bearing in mind there was no prospect of K and his mother removing to Iran.
9. It seemed to me that if the judge had gone on to more fully and explicitly set out EX2 and its consequences, the very same result would have been reached: As it would by any other tribunal considering those circumstances. The brief of reasons and failing to explicitly deal with EX.2 of Appendix FM were unlikely to result in a different tribunal, properly considering the issues, reaching a different decision.

10. In those circumstances I am not satisfied that the Original Tribunal's error was a material error of law

ANONYMITY ORDER

11. Given the age of the respective children an anonymity order is appropriate.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

NOTICE OF DECISION

12. The Original Tribunal's decision stands.

The appeal of the Secretary of State is dismissed

Signed

Date 13 November 2015

Deputy Upper Tribunal Judge Davey