



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001846

First-tier Tribunal No: HU01473/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 February 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

FAK (Iran)
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr Woodhouse, HS Immigration Consultants

For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 15 August 2023

ORDER REGARDING ANONYMITY

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and her sponsor are granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant or her sponsor, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Iran. She is now 66 years of age. On 10 November 2020 she applied for entry clearance as an adult dependant relative. Her application was refused by the respondent for reasons set out in a decision dated 4 February 2021.
2. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Parkes for reasons set out in a decision promulgated on 24 November 2021. The appellant was granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Nightingale on 13 January 2022. The decision of First-tier Tribunal Judge Parkes was set aside by Upper Tribunal Judge Keith for reasons set out in his 'error of law' decision issued on 27 June 2023.
3. Upper Tribunal Judge Keith determined that it is appropriate to retain remaking in the Upper Tribunal. He issued directions for the filing of any further evidence that the parties rely upon. The appeal was listed before me to remake the decision.
4. The appellant has appealed the respondent's decision to refuse her application for leave to enter, under s.82 of the Nationality, Immigration and Asylum Act 2002 on the ground that the decision is unlawful under s.6 of the Human Rights Act 1998.

THE ISSUES

5. In her decision dated 4 February 2021, the respondent accepts;
 - a. The application for entry clearance does not fall for refusal on grounds of suitability under Section E-ECDR of Appendix FM.
 - b. The appellant is a parent aged 18 years or over. (E-ECDR.2.1 - relationship requirement)
 - c. The appellant is not in a subsisting relationship with a partner. (E-ECDR.2.2)
 - d. The sponsor is aged 18 years of over and is present and settled in the UK. (E-ECDR.2.3)
 - e. The appellant meets the eligibility financial requirement of paragraphs E-ECDR.3.1. to 3.2 of Appendix FM
6. The respondent did not accept the appellant can meet the requirements of E-ECDR.2.4 & E-ECDR.2.5 of Appendix FM in force at that time. That is:

"E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because-

(a) it is not available and there is no person in that country who can reasonably provide it; or

(b) it is not affordable."

7. In the appellant's skeleton argument (pages 1 to 4 of the appellant's bundle), the appellant accepts she cannot meet the requirements of the 'Family Reunion' rules at Part 11 of the Immigration Rules. The appellant claims the decision to refuse her application is contrary to Article 8.

THE EVIDENCE

8. At the outset of the hearing before me, Mr Woodhouse confirmed the evidence relied upon by the appellant is set out in a consolidated bundle comprising of 185 pages that was filed on 27 July 2023. That bundle includes, *inter alia*, witness statements made by the appellant, her two sons, and medical evidence addressing the health of the appellant.

9. The appellant's sons who I shall refer to as ALK and AFK attended the hearing before me and gave evidence. What follows below is a summary of their evidence.

ALK

10. ALK adopted his witness statement that is undated, but which is to be found at pages 8 to 12 of the appellant's bundle. He confirms that he has been recognised as a refugee in the UK and has leave to remain valid until 15 August 2024. He refers to the close relationship that he enjoyed with his mother in Iran and the impact that separation from her has had upon his own mental health. He refers to the impact that his conversion to Christianity has had upon his mother in Iran, where she is now isolated within her own community. He states people are unwilling to care for his mother because of the stigma of her being the mother of an apostate. He states he left Iran because his own life was in danger and it is impossible for him to return.

11. In cross examination ALK confirmed that he arrived in the UK in March 2019. He claims that when he left Iran he did not know where he was going and he did not tell his mother he was leaving. She was left with nobody to care for her. He said that his mother does not have anyone to care for her and she gets dressed, does the cleaning, cooking, washing and carries out her daily activities by herself with some difficulty. An old neighbour, who now lives some 30 to 35 km away assists her every two weeks or so, to help her buy food. None of her immediate neighbours want to help her. The medical reports and letters that are relied upon by the appellant were sent to ALK by that individual. ALK said that he speaks to his mother regularly although contact is sometimes difficult. They

speak, sometimes daily, but at other times once or twice a week. He last spoke to her two days ago. ALK confirmed his brother, AFK, also maintains contact with their mother but his sister is unable to do so because her husband is a deeply religious person. ALK does not know when his sister last had any contact with her mother. When asked whether he could meet with his mother in another country, ALK said that because of her health, travel is very difficult for her. ALK said that he has been suffering from nightmares and anxiety since his arrival in the UK, and when he was living in a hostel he contacted a psychologist. He is currently unable to work because of his health and is supported by his brother and public funds. He is prescribed mirtazapine and amitriptyline, but is not receiving any ongoing treatment. He confirmed he has never worked in the UK.

12. ALK was referred to the appellant's bank statement that is at page 55 of the appellant's bundle. The statement shows a 'transferring credit' of 3,000,000 Iranian Rial into the account on 9 February 2023. The appellant said he did not know about that credit. When pressed about where his mother receives income from, ALK said that she receives a rental income from a house that she has, and that she also receives an income from his father's pension. ALK said his mother also has substantial savings and receives income from those savings. He is not aware whether the appellant is sent any money by his brother, AFK. ALK explained that he has made enquiries in Iran about the care required by the appellant and the outcome of those enquiries is set out in the letters that she has provided in support of this appeal.

13. At page 29 of the appellant's bundle there is a letter from Dr S Nawaz in support of the appellant's application. Dr Nawaz confirms ALK suffers from severe anxiety and depression and that the main trigger of his symptoms is his worry about his mother in Iran. Dr Nawaz confirms ALK continues to take antidepressants and pain relief medications regularly.

AFK

14. AFK adopted his witness statement dated 27 July 2023 which is to be found at pages 13 and 14 of the appellant's bundle. In cross-examination he confirmed that he arrived in the United Kingdom in 2001 and claimed asylum. He has always remained in contact with his mother. He provides her with emotional support but no financial support. He said that his mother suffers from depression and physical issues with her heart and back, that she has to deal with on her own. He said that his mother could not continue living on her own because of her mental and physical health. He said that he and his brother have tried to find someone suitable to care for their mother but because of his brother's conversion to Christianity, no one is willing to assist. He confirmed that he last visited his mother in Iran about two years ago and stayed with her for two weeks.

OTHER SUPPORTING EVIDENCE

15. The appellant relies upon a 'Medical Certificate' dated 17 June 2023 provided by Dr Liaghat who confirms the appellant is being

treated for severe osteoarthritis in both knees and spinal canal stenosis in numerous parts of the vertebrae. He states treatment has not had much of a positive effect, and that she requires the care and help of her family members and caretakers with her personal activities due to her inability to perform daily 'heavy and medium activities'. The appellant has also provided a previous medical certificate provided by Dr Liaghat dated 25 September 2021.

16. The appellant also relies upon a 'Medical Certificate' dated 18 July 2023 provided by Dr Sabeti. Dr Sabeti refers to the appellant having been diagnosed with tachyarrhythmia hypertension and valvular heart disease for which she is on a 'high dosage of medication'. Dr Sabeti claims the appellant's condition is worsening due to 'disorderly referral for medication examination and inaccessibility of her medication'. Dr Sabeti does not explain what medication is 'inaccessible' or the reasons for that. It is said the appellant should be provided with a normal and stable life with peace beside her family away from stress and anxiety. The appellant has provided a previous medical certificate provided by Dr Sabeti dated 29 September 2021.
17. The appellant's bundle also includes a 'Medical Certificate' dated 22 July 2023 provided by Dr Motlagh, a neuropsychiatrist. Dr Motlagh claims the appellant has not been "effectively treated" for a variety of reasons. It is said that she was diagnosed as suffering from phobia and stress, and her symptoms have got worse. Dr Motlagh states the appellant should have been hospitalised on multiple occasions but due to her not having any next of kin to accompany her, she has been unable to receive treatment. It is said that the appellant will benefit from a family atmosphere and return to normal life with a reduction of stress. The appellant has provided a previous medical certificate provided by Dr Motlagh dated 30 September 2021.

REPORT OF DR MOHAMMAD KAHKI

18. The appellant also relies upon a report prepared by Dr Mohammad Kahki, who was instructed to produce an expert report, and in particular, to comment on the general situation pertaining to women living alone in Iran and whether an individual in the appellant's circumstances, as a widow living alone with physical and mental health conditions, would be able to sustain the burden of societal pressures and associated risks, in the patriarchal society of Iran, particularly in the absence of her sons to provide support. Dr Kahki was also instructed to discuss the availability of health care in Iran, and to comment on the consistent availability of medical care and treatments/medications in the context of the impact of international sanctions on the country.
19. Dr Kahki refers to the core features of Iranian familial relationships and at paragraph [8] of his report he expresses the view that it is understandable that the appellant is facing substantial difficulties in her everyday life without the support of [ALK] to assist her, particularly in view of the absence of any other close male family member to take on responsibilities. As far as healthcare in Iran is concerned, Dr Kahki states

the availability of medication and care has been greatly affected due to the sanctions on the banking system which have massively impacted Iran's ability to order supplies, including medicines, produced abroad. He claims the ongoing issues with shortages and costs has not only been attributed to the impact of international sanctions, but also chronic mismanagement at the state level resulting in the suffering of ordinary citizens. At paragraph [18] of his report Dr Kahki claims there is ample evidence of the shortages being experienced in Iran available in the public domain, which in his view, is relevant to the circumstances of the appellant's case, in that the availability of vital medication for her health conditions cannot be guaranteed in the current circumstances. Dr Kahki states at paragraph [19] that in his view, the lack of support from ALK will serve to limit the accessibility of medical treatment within the country should she continue to live on her own. He also claims, at [21], that the societal stigma associated with the appellant's mental health conditions along with her son's apostasy being known amongst the community is likely to stifle her ability to remain integrated amongst her friends/neighbours and the local community, leading to hopelessness and despair, particularly in the absence of her beloved son.

20. Although it forms no part of the appellant's claim that she is at risk in Iran, Dr Kahki states at paragraph [29] of his report that in his opinion, the refugee status of the appellant's son as well as his religious conversion could place her at risk of monitoring/harassment from the Iranian security services. He states that if it is established that the appellant is in contact with her son and has not co-operated with the enquiries made by the investigating authorities, she may face arrest and prosecution for her own conduct.

21. Dr Kahki also claims that everyday requirements for an acceptable standard of living would be difficult to meet for women living alone in Iran, as they would face rejection by society when attempting to conduct their everyday lives without the support of a male family member, whereby they face rejection from Islamic society due to their social status. He states that in order to successfully complete important elements of everyday life, women need to be accompanied by a close male relative or a husband so as to minimise the effect of society's judgement. At paragraph [32] Dr Kahki concludes:

"...it would, in my opinion, be very difficult for [the appellant] to continue to live in Iran without the support of her son, particularly in view of her personal circumstances in terms of her health conditions and the level of societal discrimination within Iran. Her apparent emotional dependency on her son, combined with her physical/mental health issues and the need for support in order to overcome the societal stigma attached to her living situation, would in my view leave her with little option but to seek reunification with [ALK] who can provide the necessary support that she requires."

THE PARTIES' SUBMISSIONS

22. Ms Arif continued to rely upon the respondent's decision. The respondent considered the evidence relied upon by the

appellant to confirm she is currently suffering from major depressive disorder since her son left for the UK. The respondent also considered the evidence presented confirming the appellant has a background of heart problems and tachyarrhythmia along with spinal canal stenosis and discopathy. However, the respondent was not satisfied that the evidence confirms that due to age or illness, the appellant requires long term personal care. The respondent noted the appellant has been, and is currently receiving the required level of healthcare in Iran and there is no evidence that the appellant will no longer be able to obtain the care she requires in the future. The respondent noted the appellant is separated from her son, but was not satisfied there are exceptional circumstances which could or would render refusal a breach of Article 8 because it could or would result in unjustifiably harsh consequences for the appellant or her family.

23. Ms Arif submits that although the appellant wishes to live with her son, she cannot satisfy the requirements for entry clearance as an adult dependent relative as set out in Appendix FM of the Immigration Rules. Even if Article 8 is engaged, the appellant is unable to establish that there are exceptional circumstances which render refusal of entry clearance a breach of Article 8 because such refusal would result in unjustifiably harsh consequences for the appellant and her sons.
24. Mr Woodhouse adopted the appellant's skeleton argument and submits that Article 8 is engaged. The appellant has a deep rooted emotional attachment to ALK and until he was forced to leave Iran, they lived together as a family unit. Although 'family reunion' is not possible under the immigration rules, in *ZN (Afghanistan) v Entry Clearance Officer* [2010] UKSC 21, Lord Clarke acknowledged, at [25], that one of the purposes of the Refugee Convention is to protect and preserve the family unit of a refugee.
25. Mr Woodhouse submits that there is a wealth of evidence before the Tribunal regarding the health of the appellant, much of which is attributable to her separation from her son. She is isolated in Iran and has a lack of support. She has no-one that she can turn to, and she has for all intents and purposes been ostracised. The separation has also had an impact on the mental health of ALK and his ability to integrate in the United Kingdom. The evidence is that the appellant has substantial savings and her own income such that she would not be a burden on the public purse. She has what equates to a sum in excess of £23,300 and that would be sufficient to cover her essential living costs for a period of about two years. In any event, she will be supported by her sons.
26. Mr Woodhouse submits the appellant has a lack of support in Iran and the appellant is left socially isolated following ALK's conversion to Christianity. There is a general expectation that the appellant would be cared for by her sons in later life. He submits there is also a social stigma attached to poor mental health in Iran, and that looking at the evidence in the round, the appellant has established that the circumstances are so compelling that the appellant has established that the decision to refuse the appellant entry clearance is disproportionate.

DECISION

27. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to. I have had regard, in particular to the evidence set out in the appellant's bundle and the witness statements of the appellant and her sons. I have also considered the medical evidence before me and the expert's report. I have had the opportunity of hearing the oral evidence of the appellant's sons and seeing their evidence tested in cross-examination.
28. The burden of proof is upon the appellant to show, on the balance of probabilities, that she has a 'family life' with her sons and that her exclusion from the UK as a result of the respondent's decision, would interfere with that right. It is then for the respondent to justify any interference caused. The respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances.
29. There is an issue between the parties as to whether the appellant has established that she enjoys a 'family life' with her sons, and in particular, ALK for the purposes of Article 8. There is no legal or factual presumption as to the existence or absence of family life, for the purposes of Article 8. The principles are well-established, and set out in the leading case of *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31, [2003] INLR 170. Ultimately, the question whether an individual enjoys family life is one of fact and depends on a careful consideration of all the relevant facts of the particular case. The question is highly fact sensitive. In *Kugathas*, at [14], Sedley LJ cited with approval, the Commission's observation in *S v United Kingdom* (1984) 40 DR 196:
- "Generally the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case."
30. The irreducible minimum of what family life implies remains that which Sedley LJ described as being whether support is real or effective or committed. The love and affection between an adult child and parent do not of itself justify a finding of a family life. There has to be something more. The existence of family life after an individual has achieved his or her majority is a question of fact without any presumption, either positive or negative, for the purposes of Article 8. It is a question of fact whether the appellant has demonstrated that she has a family life with her sons, and in particular ALK which had existed at the time of his departure from Iran and has endured beyond it, such as to fall within the scope of Article 8.
31. Although finely balanced, I am just persuaded that the appellant has a family life with ALK in particular for the purposes of Article 8. I find that ALK lived with the appellant in Iran and although the appellant has been able to live alone in Iran since ALK left, I am satisfied from the medical evidence before me that there remains a close familial

relationship between the appellant and ALK. The 'Medical certificates' relied upon by the appellant all refer to the appellant's separation from her son to account for some deterioration in her mental health. I am prepared to accept that the emotional support that the appellant receives from ALK when they regularly communicate provides the appellant with real, committed and effective emotional support, and that ALK who lived with his mother and has found it difficult to integrate in the United Kingdom derives emotional support from his mother too.

32. I find that the decision to refuse the appellant leave to enter has consequences of such gravity as to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The question therefore is whether the interference to the appellant's family life is proportionate to the legitimate public end sought to be achieved.
33. As set out by the Court of Appeal in *TZ (Pakistan)* [2018] EWCA Civ 1109, compliance with the immigration rules would usually mean that there is nothing on the respondent's side of the scales to show that the refusal of the claim could be justified. At paragraphs [32] to [34], the Senior President of Tribunals confirmed that where a person meets the rules, the human rights appeal must succeed because 'considerable weight' must be given to the respondent's policy as set out in the rules. The corollary of that is that if the rules are not met, although not determinative, that is a factor which strengthens the weight to be attached to the public interest in maintaining immigration control.
34. Although Mr Woodhouse concedes the appellant cannot meet the requirements of the 'Family Reunion' rules at Part 11 of the Immigration Rules, he does not expressly concede the appellant is unable to meet the requirements for leave to enter as an adult dependent relative under Appendix FM.
35. Throughout my consideration of the issues that arise in this appeal I have borne in mind the report of Dr Kahki. A summary of his qualifications appears at the end of his report. Dr Kahki has been a member of the Iranian Bar Association (an Attorney-at-law) since 1998 and since 2003, he has been providing expert opinions on the Iranian Law and Procedure. He states he has provided oral evidence at courts and tribunals on the structure of the Iranian legal system and Iranian society. He states he regularly partakes in research on various issues pertaining to the law in Iran, as a member of the Board of Directors for the Centre for Iranian Studies at Durham University. This encompasses the treatment of religious and ethnic minorities, women and workers' rights, the treatment of Afghan nationals in Iran, the availability of social security benefits and medical treatment, etc. The matters upon which Dr Kahki has been instructed to provide 'expert evidence' and upon which he provides an opinion are in my judgement outside his expertise. He may be well qualified and have a significant amount of experience regarding the Iranian legal system, including Iranian Law and procedure. However, it is difficult to discern from his qualifications and experience, how he is qualified to give an

expert opinion on the general situation pertaining to women living alone in Iran, or the availability of health care in Iran. Dr Kahki simply draws upon background material without having any qualifications and experience on those subject matters. Dr Kahki is not a general 'country expert' as regards how society operates in Iran and Islamic values and culture, and, he has no medical qualifications or experience of the health services available in Iran. He refers to the availability of medication and care for the appellant's health, without addressing the particular medication or care that she requires, and alternatives that may be available. In some respects the report lacks objectivity and Dr Kakhi strays into 'advocacy'. None of the 'medical certificates' provided by the those involved in the healthcare of the appellant suggest that the appellant is unable to access medication or medical care that she requires because of ongoing issues with shortages and costs that are attributed to the impact of international sanctions. I am not satisfied that Dr Kahki has provided an objective report that sets out opinions based upon his own experience and qualifications. That impacts upon the weight I attach to his evidence. That is not to say that I attach no weight to his report. I have due regard to what he has set out in his report when considering the wide canvas of evidence before me and taking a holistic view of the evidence.

36. The evidence before me regarding the question whether the appellant, as a result of age, illness or disability requires long-term personal care to perform everyday tasks is limited. The medical certificates relied upon confirm the appellant suffers from various illnesses. The medical certificate provided by Dr Liaghat confirms the appellant *"needs the care and help of her family members and caretakers in doing her personal activities due to her inability to perform daily heavy and medium activities.."*. Dr Liaghat does not elaborate and there is no assessment as to the tasks that the appellant can and cannot undertake. In her witness statement, the appellant claims her back problems have not improved since her previous witness statement, and she still has problems with strenuous physical activity. She claims she cannot carry heavy things which makes it difficult for her to do things like her shopping. She claims she can only buy a few items at a time, so that she does not have to carry anything too heavy home.

37. In his evidence before me, ALK said that his mother does not have anyone to care for her and she gets dressed, does the cleaning, cooking, washing and carries out her daily activities by herself, albeit with some difficulty. He claimed that an old neighbour, who now lives some 30 to 35 km away assists her every two weeks or so, to help her buy food. Although I accept that ALK was doing his best to assist the Tribunal, I find that he had a tendency to exaggerate his evidence in a misguided attempt to portray that the appellant requires much more support than the other evidence before me establishes. Where the evidence of ALK is at odds with the other evidence before me, I attach greater weight to the other evidence. For example, I find the appellant's evidence that she does her shopping, buying a few items at a time, to be more reliable than the claims made by ALK. In his witness statement ALK claims that because of her bad mental and physical health, his mother

cannot take care of her daily tasks. He claims that sometimes when he speaks to her, she tells him she has not eaten for days because she has nothing in the house. In his oral evidence he claim that the appellant has to rely upon an old neighbour who lives some distance away to assist her buy food. Taking a holistic view of the evidence before me, I do not accept the appellant requires long term personal care to perform everyday tasks. In her witness statement, the appellant claims that sometimes she goes several days without eating. She goes on to say that *"sometimes it is because my back is sore, and I do not feel like I can go outside and other times it is because of my mental health, and I do not have the motivation to go out"*. I am prepared to accept that some days are better for the appellant than others, and like many of her age, she often lacks motivation to do things, but overall, she has demonstrated her ability to perform every days tasks.

38. In any event there is scant evidence before me that the appellant is unable, even with the practical and financial help of her sons to obtain the required level of care in Iran because- (a) it is not available and there is no person in that country who can reasonably provide it; or (b) it is not affordable. I find the appellant has her own income and is not reliant upon her sons to provide her with any financial support. There is no evidence before me that any care required by the appellant is not affordable. In her witness statement the appellant claims, and I accept, she takes medication for her mental health. She claims that she had suicidal thoughts and when she discussed that with her psychiatrist, the psychiatrist tried to have her admitted to a psychiatric hospital, but they would not accept her. She claims that at the time she needed somebody to take her to the hospital and she must have someone available to collect her. She claims that because she does not have any family who could help her, she could not go to the hospital.
39. In her witness statement the appellant refers to her daughter [S] getting married and moving away with her husband. There is no suggestion that her relationship with her daughter has broken down and that she has been abandoned by her daughter. In his witness statement ALK claims his sister [S] left to be with her husband more than 10 years ago. I reject the oral evidence of ALK that his sister is not allowed to contact her mother. It is in my judgement an embellishment of the evidence in an attempt to persuade me that the appellant has no-one else to assist her in Iran. The medical certificate provided by Dr Motlagh makes no reference to any suicidal ideation, but confirms the appellant could not be hospitalised due to her not having any next of kin to accompany her. There is in my judgment no reason why the appellant could not be accompanied by her daughter. The appellant's son AFK has visited the appellant and there is no suggestion that the appellant made any attempt to seek treatment when he was available and present in Iran.
40. In his witness statement ALK states that recently the appellant went around three days without any electricity. He states that in the end, they managed to find someone to go around and sort out the electricity, but it was not easy. He claims Iran is not like the UK where there are services to help people in need; in Iran they expect that family

members will take care of each other. ALK does not explain how the issue was resolved, but plainly it was resolved. I am not satisfied therefore that the appellant is unable, even with the practical and financial help of her sons, to obtain the required level of care in Iran because it is not available or not affordable.

41. I have considered Appendix FM GEN.3.2 and whether there are exceptional circumstances which would render refusal of leave to enter a breach of Article 8 because such refusal would result in unjustifiably harsh consequences for the appellant, and her family. I acknowledge the close relationship the appellant enjoys with her two sons in the UK and it is quite understandable that the appellant would wish to live with them in the UK. That however does not equate to a right to do so. I acknowledge that ALK has been recognised as a Refugee and so the refusal of leave to enter will impact upon the appellant's ability to see ALK in Iran. AFK has been able to travel to Iran to visit his mother and to stay with her despite his evidence that he came to the UK in 2001 to claim asylum. The appellant has a daughter in Iran. I have little evidence before me about her, other than she is married, but I do not accept the appellant has no contact with her daughter at all. I accept the refusal of entry clearance has an impact upon the appellant's ability to see her sons who are in the UK regularly, but there is no reason why ALK could not meet with the appellant somewhere other than in Iran. Looking at the evidence before me in the round, I am not satisfied that the refusal of leave to enter results in unjustifiably harsh consequences for the appellant, and the wider family. The family has demonstrated its ability to provide support and maintain their close relationships. I am satisfied that this is a close and loving family and that they all pull together to support and assist each other whenever necessary. The appellant is financially independent but in any event, the appellant's children could, if necessary, reduce the burden on her, by paying for any additional care and support that is required by the appellant to ensure the appellant receives any additional assistance she needs at this stage of her life.

WHETHER REFUSAL OF LEAVE TO REMAIN IS NEVERTHELESS DISPROPORTIONATE

42. I have considered whether the decision to refuse the appellant leave to enter is nevertheless disproportionate. The ultimate issue is whether a fair balance has been struck between the individual and public interest; *GM (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1630. Section 117A(2)(a) of the 2002 Act requires me to have regard to the considerations listed in section 117B in considering the public interest question. The public interest question is, in turn, defined in section 117A(3) as being the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2). There is, however, an element of flexibility within this provision. In *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58, at [49], Lord Wilson observed that the provisions of section 117B cannot put decision-makers in a strait-jacket which constrains them to determine claims under Article 8 inconsistently with the article itself.

43. The maintenance of immigration control is in the public interest. The appellant on her own in Iran. She is a widow with a daughter who remains in Iran and two sons that now live in the UK.
44. I have had due regard to factors that weigh in favour of the appellant including her age, mental and physical health, and the strength of her relationship with her two sons. I have had regard to the immigration status of ALK and the impact that has upon his ability to visit Iran. I have also had regard to all the medical evidence and the background material referred to by Dr Kahki in his report, in particular, regarding the status of women in Iranian society. I accept the refusal of entry clearance will mean that the appellant would remain separated from her two sons in the UK. I also acknowledge that the separation of the appellant from ALK is having a negative effect on the wellbeing of ALK. ALK will undoubtedly feel better if the appellant is able to join him in the UK.
45. On the other side of the scales I have had regard to the findings made regarding the support available to the appellant in Iran, her long-standing connections to Iran and the fact that the appellant is unable to meet the requirements of the immigration rules. In the end, standing back, although I have accepted the refusal of leave to enter will interfere with the appellant's family and private life, even giving due weight to the factors that weigh in favour of the appellant, in my judgement, the interference for the purposes of the maintenance of effective immigration control is proportionate and, it follows, lawful.
46. It follows that I dismiss the appeal.

NOTICE OF DECISION

47. I dismiss the appeal on the basis that the refusal of leave to enter does not breach section 6 Human Rights Act 1998 (based on Article 8 ECHR).

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 January 2024