



IAC-FH-CK-V1

**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Numbers: HU/20642/2019  
HU/20643/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 12 October 2022**

**Decision & Reasons Promulgated  
On the 12 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**JG  
MA  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Ms Yong, Counsel

For the Respondent: Mr Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. In a decision dated 7 December 2021 I found an error of law in the decision of First-tier Tribunal ('FTT') promulgated on 17 October 2020, in which the appellants' appeals were dismissed on human rights grounds. This short decision follows a resumed hearing, at which after the completion of evidence, Mr Kotas accepted that the key issue in dispute should be determined in the appellants' favour and their appeals allowed on human rights grounds (Article 8).

## **Parties**

2. The first appellant is nearly 64 years old. He is the grandfather of the second appellant, who is 15 years old. They are both citizens of Iran, where they live together. The second appellant has not had a parental relationship with his own parents for a lengthy period.
3. The appellants have applied for entry clearance to join the sponsor. She is a British citizen present and settled in the UK. She is the first appellant's spouse and the second appellant's grandmother. It has been accepted that she is a vulnerable witness in the light of the medical evidence available.
4. The sponsor lives in the UK with her adult daughter. The sponsor was granted refugee status in 2007, for reasons relating to her troubled relationship with the first appellant. This is a matter that has been considered by both parties. At the Tribunal's invitation the sponsor has confirmed that she fully supports the first appellant's entry to the UK to resume their relationship. The supporting evidence, including witness statements from their adult children living in the UK, indicates that they have resolved their difficulties and the sponsor has visited the first appellant in Iran regularly.
5. I have decided to maintain the anonymity order in this decision because it refers to the circumstances of the second appellant who remains a child.

## **Issues in dispute**

6. In a decision dated 12 November 2019, the respondent accepted that the first appellant met all the requirements of the immigration rules save for the English language requirement. However, the FTT concluded that the evidence did not establish that the first appellant has a mental health condition preventing him from passing the English language requirement. The FTT accepted that the second appellant had been de facto adopted by the first appellant for the purposes of paragraph 309A but was unable to meet the remainder of the requirements in paragraph 310 in order to be granted entry clearance under the Rules. The FTT also found that the appellants could enjoy family life in Iran with the sponsor who was well used to travelling there to spend time with them. I found that the FTT erred in law in its approach to the medical evidence regarding the first appellant and that the linked appeals would be re-heard by me in the Upper Tribunal ('UT').
7. The matter came before the UT on 14 March 2022, when it was adjourned with directions. The respondent had raised a concern that there were potential serious safeguarding issues for the sponsor. The respondent pointed out that it is unusual for documents relating to a refugee to be shared with the person feared. In this regard the first

appellant had been provided with a copy of a FTT decision dated 26 June 2007 ('the 2007 FTT decision') containing details of the sponsor's claims against the first appellant. The parties agreed that it was important to seek reassurance from the sponsor that she remained willing to sponsor the first appellant in the light of their history and the related disclosure.

8. Regrettably the updated evidence has been served on behalf of the appellant in a piecemeal and disorganised fashion. However, by the time the substantive hearing before me began, I was satisfied that I had all relevant evidence albeit this was to be found across three different bundles. This included a witness statement from the sponsor dated 25 May 2022, in which she confirmed that: the FTT decision dated 16 July 2007 allowing her asylum appeal on the grounds that she feared her husband, the first appellant, has been read back to her in Farsi; she understood that the contents of this decision; she was aware that it had been disclosed to the first appellant; she wished to continue supporting his entry clearance application.
9. An additional third bundle was served on behalf of the appellants, the day before the hearing. Mr Kotas quite properly indicated that although that evidence was served very late and in breach of directions, it contained relevant evidence in the form of an updated addendum report dated 11 October 2022 from Dr Beigi, a clinical psychologist. This added further information to her earlier report dated 11 August 2022. In summary Dr Beigi concluded that the first appellant's PTSD and severe depression were such that he was unable to meet the English language test. Mr Kotas confirmed that he was not in any way prejudiced by the new material and was able and ready to conduct the appeal. In these circumstances I ruled that the evidence would be admitted.
10. At the beginning of the hearing both parties accepted that the disputed issues had been clarified and narrowed as follows.
  - (1) It is undisputed that the first appellant is unable to meet E-ECP.4.1 because he cannot provide the specified evidence concerning the English language requirement. The question remains: is the first appellant exempt from the English language requirement under E-ECP.4.2? Mr Kotas accepted, consistent with the respondent's most up to date position statement dated 27 September 2022, that if this issue was resolved in favour of the first appellant, then it followed that the appeals of both appellants should be allowed on Article 8 grounds.
  - (2) If not, are there exceptional circumstances pursuant to GEN3.1 of Appendix FM, in order to support allowing the appeal outside the Immigration Rules under Article 8? This includes a consideration of the best interests of the second appellant.

## **Oral evidence**

11. The sponsor confirmed her witness statements and was cross-examined by Mr Kotas.
12. Mr AG, the adult son of the sponsor and the first appellant also confirmed his witness statements and was cross-examined. He explained that the first appellant's family members had encouraged him to take the English language test and put support in place to assist him to do so by arranging tutoring. The first appellant was willing to try but notwithstanding his best efforts simply did not have the concentration or memory to pass the test. He tried and failed three times. Mr AG explained that the family suspected that the first appellant had a mental condition that was preventing him from being able to learn English and the medical evidence that has been obtained confirmed these suspicions. Mr AG also explained that the first appellant had been unwell for some time and since he fought during the period of the Iran / Iraq war. Mr AG acknowledged that the appellant worked as a driver on a full-time basis but explained that he had done this since a very young age and this employment did not demand the necessary skills required to learn even the basics of a new language.
13. At the conclusion of the oral evidence Mr Kotas made it clear that he accepted that Mr AG provided credible and reliable evidence to explain the background to and in support of the claim that the first appellant has mental conditions, namely PTSD and depression, which prevent him from meeting the English language requirement. He was therefore able to concede that the first appellant met and continues to meet all the requirements of the Immigration Rules and the appeals of both appellants should be allowed on human rights grounds.

## **Re-making the appeal**

14. I accept the respondent's concession and entirely agree with Mr Kotas' analysis of the oral evidence, when viewed against all the documentary evidence, in particular the evidence relevant to the first appellant's mental condition from Dr Beigi.

## **Decision**

15. The appellants' appeals are allowed on human rights grounds (Article 8).

## **Direction regarding anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Ms M Plimmer*  
Upper Tribunal Judge Plimmer

Date 12 October 2022