



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/06633/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 10 May 2017**

**Decision & Reasons  
Promulgated**

**On 16 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**MISS Z M**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Behbahani, Solicitor

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appeal of Miss Z M against the decision of First-tier Tribunal Judge who dismissed her appeal against the Secretary of State's decision refusing asylum on 14 June 2016. The issue as Mr Tarlow says is a narrow one. It is common ground I think that she would be at real risk on return to Iran as is noted by the judge at paragraph 22 of her decision. It is accepted by the respondent that the appellant cannot return to Iran as she would face a well-founded fear of persecution in that country. The only issue is whether the appellant can seek protection in Canada, a country in which she has permanent residence.

2. The judge considered the evidence on this. He noted an email exchange between the respondent and the Canadian Border Services and noted from the Canadian Government's immigration website that the status of permanent resident is not lost simply because the permanent resident's care expires or the individual lives outside Canada for a period of time. There was no evidence that this had been lost and the judge agreed with the Secretary of State that the appellant had a right of permanent residence and could be returned to Canada provided the respondent could issue her with travel documents. That was the responsibility of the respondent and the judge went on to say:

"If the handicap of an expired Iranian passport cannot be overcome through discussion with the relevant Canadian and Iranian Embassies then the respondent will not be able to remove the appellant to Canada and will have to consider granting her some form of refugee status."

The judge then went on to consider living in Canada and was not satisfied that the appellant could not return to Canada on the information before the judge and as she had a right of permanent residence in that country, she cannot be a refugee.

3. Permission to appeal was sought and granted on the basis that the judge had failed to adhere to the principle of finality in reaching her decision, failed to consider case law referred to such as Taylor v Lawrence [2002] 2 AER 353 and had failed to consider key evidence which was in particular a copy of an email enquiry by the appellant's solicitors to the Canadian Embassy in London and the response that she was required to have a valid passport in order to be able to travel to Canada and give effect to the right of permanent residence. One can see this from the bundle. If you are a permanent resident of Canada currently travelling outside Canada but not in possession of a valid permanent residence card you must apply for a travel document permanent resident abroad before returning to Canada. However, before this application can be made you must have a valid passport and that is the problem that the appellant faces in this case.
4. Following an earlier adjournment after a hearing in February this year the Secretary of State was directed to use her best endeavours to conclude enquiries with the Iranian Embassy as to the provision of an Iranian passport to the appellant. That has proved fruitless unfortunately and today Mr Tarlow argues that there is no error of law in the judge's decision because the appellant is a permanent resident of Canada and as a consequence, as he says, she can be returned to Canada if the issue of documentation is still an open one. The difficulty I think with this submission is that it seems sufficiently clear from the response of the Canadian authorities that the appellant is required to have a valid passport in order to give effect to her right of permanent residence in Canada and that is precisely something she cannot do on the evidence. There is no indication that the Iranian authorities are going to be co-operative. It seems from Mr Nath who investigated that he did not expect any response

from the Iranian authorities and I think therefore there is force in both the point about the failure to consider key evidence properly and the issue of finality. The appellant cannot be expected to remain in limbo forevermore and as Mr Behbahani says the grant of status is not something that fixes the position forevermore if the position changes at some stage and it is open to the Secretary of State to take into account on the basis of active review the position but as matters stand it seems to me first that the judge did materially err in law in concluding that the claim was not made out and that, as a consequence of that error, I substitute for the judge's decision dismissing the appeal a decision allowing the appeal under the Refugee Convention.

**Notice of Decision**

The appeal is allowed.

Anonymity direction made.



Signed

Date

Upper Tribunal Judge Allen