

# Good news for UK refugees who marry: Post flight spouses of refugees now allowed visas

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Since August 2005, people who were granted asylum in the UK were granted five years stay instead of the usual indefinite leave to remain which had been the case for the past years. Those who were granted indefinite leave to remain in the UK as refugees would find it easy to apply for family re-union particularly for both their spouses and children. This is explained by the existence of paragraph 281 of the immigration rules which among other requirements seeks to allow spouses of those married to a person present and settled in the UK. In the majority of cases where refugees were then granted indefinite leave to remain they became settled and thereby making it easier for them to bring their spouses in terms of the rules. It has been really a problem for refugees who get married after being granted asylum in the UK to bring their spouses to the UK to live together as a family.

The immigration rules dealing with family reunion make it clear that a refugee can bring one's spouse under family re-union on condition that the applicant is married to a person who was granted refugee status and they used to live together as a family before flight. The key element being that the marriage did not take place after the person granted asylum left the country of his former habitual residence in order to seek asylum. In the circumstances this provision has created a difficult situation for those refugees seeking to bring their wives or husbands who were married after one was granted refugee status. It becomes a group of people not covered by the Immigration rules as they currently stand. They do not fall to be considered in both paragraphs 281 or 352 A. Paragraph 281 deals with the normal route for the admission of foreign spouses. Paragraph 352A arises from the United Kingdom government's acceptance of a principle of family reunion for refugees. Those entering the UK under family re-union are not bound with the usual financial requirements and other restrictive measures.

In a recent determination, in the case of FH (post Flight spouses ) Iran [2010] UKUT 275 (IAC), the Upper Tribunal had occasion to consider an appeal for entry clearance by an Iranian lady married to a refugee who had been granted refugee status in the UK. The parties got married after the husband had been granted five years refugee status in the UK. The parties travelled to get married in Turkey as the husband could not return to Iran as a refugee in the UK. After the marriage the parties returned to their usual countries of residence, one to Iran and the other to the UK. In seeking a visa to enter the UK, the wife faced serious difficulties. The husband was not settled in the UK and as such could not invite his wife to rejoin him. The parties had not stayed together as husband and wife before the husband fled Iran and as such they could not seek family reunion in terms of the Immigration rules. The issue was how the newly formed family could be reunited. In that case the court observes that a post flight spouse of a refugee is indeed being treated in a particularly adverse way. The court also took into account the recent Supreme Court decision in the case of ZN Afghanistan which confirmed that even if one becomes a British citizen a refugee remains a refugee in terms of the assessment of family reunion. The principle in that case was applied in this particular case in the assessment of the refugee rights.

The court observed that refugees are in a particularly disadvantageous position. If after leaving their country of nationality, they contract a marriage to a person who is not a British (or EEA) national, the Immigration rules do not provide for the couple to live together in the United

Kingdom. The court remarked that it was odd that a refugee should be disadvantaged in that way, because, unlike other persons with limited leave in the UK under the rules, the refugee is a person who cannot return home to enjoy married life there.

In the case of FH Iran cited above, the court ruled that the appellant meets all the requirements of paragraph 281 save that relating to the sponsor's status in the UK. The court decided that it was disproportionate for her to be refused entry clearance to come to the UK to live with her husband. On the basis of article 8, the court decided that the appellant and the sponsor should leave together and as such entry clearance in favour of the wife was ordered by the court. In this case the court actually recommended the Secretary of State to amend the rules to accommodate post flight spouses so that they are not to be left out. The court made it clear that it would not be proportionate to exclude spouses of people who have been recognised as refugees. A number of refugees who might have travelled to different countries to get married to people from their own nationality might now be accommodated by this development as their spouses may now be able to have their entry clearance applications reviewed and considered under article 8 to travel to the UK to rejoin their refugee sponsor spouses.

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