



**(IMMIGRATION AND ASYLUM CHAMBER)  
AA/10923/2013**

**UPPER TRIBUNAL  
APPEAL NUMBER:**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Determination  
Promulgated**

**On: 13 October 2014**

**On: 30 October 2014**

**Prepared: 28 October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**

**MS LKHAGVAKHAND KHALZAN  
NO ANONYMITY DIRECTION MADE**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Ms S Iqbal, counsel (instructed by Quality Solicitors (Orion))**

**For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

- 1.** The appellant is a national of Mongolia, born on 14<sup>th</sup> November 1970. She appeals with permission to the Upper Tribunal.
- 2.** Her appeal to the First-tier Tribunal against the decision of the respondent to remove her from the UK, having refused her asylum claim, was dismissed by First-tier Tribunal Judge Brenells in a determination promulgated on 1<sup>st</sup> May 2014.
- 3.** At the hearing before Judge Brenells, counsel withdrew her Article 8 claim [19].

- 4.** The appellant claimed that she had been a victim in Mongolia of domestic violence perpetrated by her husband, whom she claimed was and is a police officer.
- 5.** She claimed that she left Mongolia in 1998 to get away from her husband who was beating her. She fears returning to Mongolia presently as her husband remains the same and she does not want him anywhere near her. She has plans to marry in the UK. She claimed that were she to return, he would be able to find her and could kill her. She knows this because when he came to the UK, he was able to find her easily.
- 6.** She said that she married her husband, a shamanist, in 1996, when she was 26 years old. He began to abuse her, and has raped and beaten her.
- 7.** In order to escape from him she applied for a visa to study in the UK. She flew to the UK. She entered the UK on 26<sup>th</sup> December 1998 on a student visa and claimed asylum on 29<sup>th</sup> March 1999. Before being interviewed, she withdrew that claim, alleging that she had been subject to duress from her husband who came to the UK in 2000 on a student visa. He managed to find her. She lived with him here for less than a year. She did not report him to the police.
- 8.** The form on which she withdrew her asylum claim was signed on 5<sup>th</sup> September 2001 shortly before her voluntary return flight was due to depart. However, she did not go back but continued to remain in the UK.
- 9.** In 2009, someone told her that her husband was still a policeman. She believes he still is a policeman. Two or three years ago, her friend in Ulaan Baatar told her that her husband had been asking about her.
- 10.** During the last 12 years she did not seek to regularise her stay in the UK or claim asylum. All her papers had been left with her husband. She had regular contact with her legal representatives about claiming asylum but she did not want to use a "free one" as they would be working for the other side as well.
- 11.** She has not divorced her husband in Mongolia. She is exploring whether she can divorce him in the UK. She was issued with an IS 151A document as an overstayer. This resulted in a second claim for asylum made on 15<sup>th</sup> September 2013.
- 12.** In the reasons for refusal, the respondent did not accept that she was married when she left Mongolia. Given that she had been consistent concerning the level of violence, the respondent accepted that she had been in a violent relationship at some juncture. However, that was not to say that the violence was at the hands of her husband. The respondent stated that she had failed to show that Namsraijav, her alleged husband -

allegedly a policeman - was the perpetrator of this violence: paragraph 16.

- 13.** At paragraph 17, the respondent contended that her 'lack of tangible insight into his job' places in doubt whether he was really in the police.
- 14.** It was thus accepted that she is a Mongolian woman who had been in an abusive relationship. However, in applying the principles of paragraph 339L of the Immigration Rules, the respondent did not 'believe' that this was her husband and that he is a policeman in Mongolia. It was also not accepted that having fled to the UK, she later attempted a reconciliation with him in the UK.
- 15.** Her failure to submit a fresh claim for asylum in the intervening years following his claimed return to Mongolia, having had discussions with her legal representatives in this regard, was "believed to support the belief" that she did not have a genuine fear of persecution in Mongolia now - (paragraph 36). The respondent also contended that even if her account is truthful, the opportunity to seek protection to the standard raised in **Horvath** and to internally relocate, "are reasonable in your case" (paragraph 35).
- 16.** The appellant instructed Mr Robert Chenciner to provide an expert report, which was considered as part of the evidence produced before the First-tier Tribunal.
- 17.** Judge Brenells set out the summary of the expert's report in full at paragraph 12 of the determination. Mr Chenciner "confirmed" that the 'context' of the appellant's statements ".....is plausible with regard to, inter alia, conditions in Mongolia, shamanism in Mongolia, domestic violence, corrupt police, trumped up charges, unfair trials; relocation not secret".
- 18.** He stated that if she were to be returned she would be at risk of rape and physical and psychological abuse from her estranged husband. He appeared to be a Tangri cult shaman from a relatively small minority ethnicity. His worst drunken attack on the appellant involved cutting her and chanting which appears to be a confabulation of an ancient shamanic ritual - paragraph 4 of the report [12].
- 19.** Mr Chenciner also asserted that her husband is a long serving policeman with plausibly many contacts. If returned, she would reasonably visit her friends which might come to his notice, as one was approached in 2009. Because of re-registration requirements, he would be alerted through police contacts. A woman on her own would be noticed outside Ulaan Baatar.

20. Accordingly secret relocation is not feasible 'for long'. He stated that a policeman who is violent to his wife would likely be able to act with even greater impunity. The few shelters are temporary and poorly funded. If she refused to go back to him, he has threatened to put her in prison on a trumped up charge. The police and judiciary are corrupt. Her husband is a long serving policeman and it is therefore plausible that she takes his threat seriously and is afraid.
21. The Judge also had regard [13] to a psychiatric report prepared by Dr Robin E Lawrence. The appellant dictated a record of events. Dr Lawrence accepted that the appellant had been the victim of domestic violence.

### **Judge Brenell's findings**

22. The Judge's findings with regard to "credibility and fact" are set out in four paragraphs [14 to 17].
23. He noted that the appellant provided no evidence establishing that her husband has had any contact with her in recent years. At the hearing she stated that she has had no contact since 2010 with her friends in Mongolia who helped her in the past as she did not want any information about her getting through to her husband and because she wanted to forget about her former life.
24. He found that it is unlikely that her friends would relay information to her husband. The Judge did not understand why she did not speak to her friends when faced with a threat of return. [14]
25. He stated that the appellant claimed to have been married but had not produced documentary evidence of this. However, he did not regard this as a serious omission because the respondent accepts that she has been the victim of domestic violence prior to her coming to the UK. There was no suggestion that this took place anywhere other than in Mongolia [15].
26. He went on to state that whilst the appellant claimed that her husband was a policeman, she has produced no evidence of this other than her own testimony. Further, the only evidence of her husband having come here and that he persuaded her to withdraw her first asylum claim, was her own word.
27. She has not explained why, having withdrawn her claim and agreeing to leave the UK, she withdrew her consent but did not continue her claim and remained here without renewing that claim until 2013. She had been advised by solicitors when she made her first claim. She cannot therefore claim ignorance of the procedure and had not suggested that she was

unable to obtain legal advice in the ten or more years between the dates of withdrawal and the dates when she made the second application [16].

28. At paragraph 17, the Judge stated that he has considered and rejected the appellant's claim that there would be no state protection available to her. In so doing, he has borne in mind that she would be unlikely to advertise her return to the person who previously was violent towards her "...and the likelihood which I assess as low of her coming to that person's attention on her return and the small chance of his wishing to resume the relationship and her ability to relocate internally so as to avoid him if that became necessary."
29. He has also '.....borne in mind the background evidence indicating that **Horvath** level of protection may well be available to her, albeit that the local courts and police are unlikely to offer the same level of protection from domestic violence as would be available in the United Kingdom" [17].
30. In the result, Judge Brenells concluded after considering those factors that the appellant was unlikely to suffer domestic violence on her return and that, if this becomes likely, she could receive state protection or relocate [17].

### **The appeal before the Upper Tribunal**

31. On 21<sup>st</sup> July 2014, Upper Tribunal Judge Allen granted the appellant permission to appeal. He stated that the Judge arguably erred in not making any findings on the expert report, since he provided evidence on specific issues of relevance such as risk on return, state protection and relocation.
32. Ms Iqbal, who did not represent the appellant at the hearing before the First-tier Tribunal, relied on the grounds. She accordingly submitted that the Judge had failed to take into account the expert report of Mr Chenciner in the assessment of the appellant's credibility or the risk on return.
33. Although at paragraph 17, the Judge stated that he had borne in mind the background evidence, there was no attempt to engage with either of the expert reports produced. Mr Chenciner's report set out in detail that if she refused to go back to her husband, he has threatened to put her in prison on a trumped up charge. Mr Chenciner stated that the police and judiciary are corrupt because he is a long serving policeman and it is plausible that she takes this threat seriously and is afraid.
34. The expert also had regard to her claim that a Mongolian acquaintance in London told the appellant in 2009 that her husband was still working with

the police. She also phoned her friend occasionally. Her friend told her that she was approached in 2009 by people asking where she was. Mr Chenciner also stated at page 15 of his report that if she tried to relocate in a place outside Ulaan Baatar she would 'stick out'. Her estranged husband would quickly find her. She would wish to visit her friend and this would get back to her husband.

- 35.** Ms Iqbal submitted that this evidence was given by the appellant in a statement before the First-tier Tribunal. The appellant also stated that she was unable to obtain a copy of her marriage certificate as in Mongolia they do not just give out personal information to any other person.
- 36.** Further, Ms Iqbal referred to the answers that the appellant gave during her asylum interview (questions 51-52), where she was being questioned about her fear of returning to Mongolia. She stated that she has spoken on three occasions to her friend in the past years and that two or three years ago, her friend in Ulaan Baatar said he had been asking about her.
- 37.** Ms Iqbal submitted that the Judge at paragraph 17 of the determination assessed the likelihood of the appellant's coming to the attention of a person who had been violent towards her on her return 'as low'. That indicates that the Judge was indeed accepting that there was a possibility of this happening.
- 38.** However, he then assessed that possibility only in terms of the background evidence. He did not have regard at all to the evidence given by the expert at paragraphs 2.1.6 and 2.1.7 of the report which dealt with the fact that he is a shaman who had used alcohol and who had repeatedly beaten her when drunk.
- 39.** Accordingly, she submitted, the failure by the Judge to have regard at all to the expert report meant he had failed to assess her claim on the totality of the evidence, including the reports.
- 40.** On behalf of the respondent, Mr Duffy submitted that it was 'not in the expert's domain to rely on her account for the purpose of his finding that she would be subject to further abuse from him'. That was a matter for the Judge.
- 41.** Neither the respondent nor the Judge in fact accepted that 'he was or is a policeman'. At paragraph 16 it was accepted that she had been in a violent relationship at some juncture. However, the Judge stated at paragraph 16 that there was no evidence that her husband was a policeman, apart from her own testimony.

42. Accordingly, although it may have been accepted by the expert for the purpose of his opinion, that he was a policeman, this was not accepted by the Judge. Accordingly, the expert report sought to be relied on was not “germane” to the issue. The expert's ultimate opinion as to relocation and risk on return is 'predicated' on the fact that her assailant was and remains in a position of power.
43. Accordingly, if her husband is “an ordinary person” there would be appropriate state protection available.
44. Mr Duffy accepted that there was no explicit finding that her husband was not a member of the police. However, paragraph 17 must be read with regard to the earlier paragraphs, namely paragraphs 14 to 16.
45. She was thus found on the available evidence to be a former victim of domestic violence from an unknown person.

### **Assessment**

46. The basis upon which permission to appeal was granted was that the Judge erred in not making any findings on the expert report which provided evidence on specific issues of relevance such as risk on return, state protection and relocation.
47. However, the basis for the risk factors identified by the expert was that the appellant's husband is a police officer. Thus, he refers at paragraph 1.2 to the appellant's account, including the contention that her husband is a policeman. He goes on to state that it is plausible that because of the corrupt patronage system in Mongolia, it would be likely that he got a job in the police because he was sponsored by friends.
48. Furthermore, at page 2 of his report, he refers to an attack in 1998 when she tried to lodge a complaint against him at a different UB police station to where he had worked since 1991, but nothing was done. He states that the appellant thought “plausibly” that she was unable to successfully report her husband to the police in Mongolia because her husband worked for the police for a long time and is well connected there.
49. At page 3 of his report he refers to the appellant's acquaintance in London who informed her in 2009 that her husband was still working for the police. Further, her friend told her that she was approached in 2011 by people asking where she was.
50. At paragraph 2.1.1 of his report, page 3, he refers to widespread domestic violence and sexual harassment in Mongolia which indicates a climate where her original experience of domestic violence from 1996 to

2001 is plausible. If she were now returned and found by her estranged husband, 'the situation has not significantly changed'.

- 51.** Finally, at paragraph 2.1.8, when he dealt with the viability of internal relocation, he stated that if she tried to relocate outside Ulaan Baatar, she would stick out and her “police estranged husband” would quickly find her.
- 52.** However, the Judge assessed the availability of state protection in the light of his earlier assessment of credibility at paragraphs 14, 15 and 16. Although he found that her claim to have married had not been supported by documentary evidence, this was not regarded as a serious omission because it was accepted by the respondent that she had been a victim of domestic violence prior to coming to the UK. There had been no suggestion that this took place anywhere other than in Mongolia.
- 53.** The Judge also stated that the appellant's claim that her husband was a policeman had not been supported by any evidence apart from her own assertion. Further, her claim that her husband came to the UK and persuaded her to withdraw her asylum claim was again, her own word.
- 54.** She had however not explained why having withdrawn her claim after agreeing to leave the UK, she withdrew her consent but did not continue her claim, remaining here and not renewing it until 2013. He found that she had been advised by solicitors when she made her first claim and could not therefore claim ignorance of the procedures.
- 55.** Although no explicit finding was made regarding her claim that her husband was a policeman, it is evident that the Judge did not accept that she had produced evidence apart from her own testimony that he was a policeman.
- 56.** As submitted by Mr Duffy, findings of fact in this respect were in the province of the Judge and not the expert. The Judge had regard to the summary of Mr Chenciner at paragraph 4 of the report. The Judge has reproduced the summary in full, including Mr Chenciner's acceptance that “he is also a long serving policeman in Ulaan Bataar with plausibly many contacts.”
- 57.** The Judge was thus well aware that the conclusions relating to risk on return, relocation and state protection were upon the basis of her husband’s status as a long serving policeman who would have many contacts and who would thus be alerted through those police contacts because of re-registration requirements. In such circumstances secret relocation was not feasible for long – para 4 of Mr Chenciner's report.



- 58.** However, the Judge found that the chance of her coming to the attention of the 'person who was previously violent towards her' was low, as was the small chance of his wishing to resume the relationship. She would also have the ability to relocate internally so as to avoid him if that became necessary.
- 59.** It is evident from paragraph 17 of the determination that the Judge carefully referred to him as 'the person' who was previously been violent towards her. He did not accept that she had produced evidence that he was a policeman apart from her own assertion [15].
- 60.** The appellant did not provide any evidence of his being a policeman apart from her own assertion. Nor did she explain why such evidence was unavailable. Nor did the appellant provided evidence that he has had any contact with her in recent years [14].
- 61.** The findings as to 'credibility and fact' are set out from paragraphs 14 onwards. These findings regarding the credibility of her claim constitute findings of fact which were open to the Judge on the evidence before him.

### **Decision**

- 62.** The decision of the First-tier Tribunal Judge did not involve the making of any material error on a point of law. The decision shall accordingly stand.

Signed

Date 28/10/2014

C R Mailer  
Deputy Upper Tribunal Judge