



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/06127/2017

THE IMMIGRATION ACTS

Heard at Field House

On 17 April 2018

**Decision & Reasons
Promulgated
On 10 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

[S P]

(~~ANONYMITY DIRECTION NOT MADE~~)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Rai, Counsel.

For the Respondent: Mr C Avery, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of the Syrian Arab Republic who made application for international protection. It was refused and she appealed and following a hearing, and in a decision promulgated on 12 December 2017, Judge of the First-tier Tribunal Moore dismissed her appeal on asylum, humanitarian protection and human rights grounds.
2. In refusing the Appellant's application the Respondent accepted that the Appellant is a Syrian national but also rejected, referring to **Abdullah v SSHD [2013] EWCA Civ 42** the Appellant's claim that she held no other

nationalities having found that she is a dual national of both Syria and Armenia.

3. At paragraph 29 of his decision the Judge found that the Appellant was not a credible witness but, irrespective of that, the Home Office Presenting Officer accepted that the Appellant could not be returned to Syria based on Country Guidance. The appeal therefore turned on whether the Appellant had status in an alternative country, namely Armenia, and could be returned there. This is dealt with at paragraph 30 onward of the Judge's decision. She found that the Appellant had not discharged the burden of proving that she is not an Armenian national.

4. The Appellant sought permission to appeal which was initially refused on 12 January 2018. However, a renewed application was granted by Upper Tribunal Judge Dr H H Storey on 19 February 2018. His reasons for so granting were: -

"It was the position of the respondent, accepted by the judge, that the appellant was of Syrian nationality but also had Armenian nationality. It is arguable that para 33 discloses an arguable error of law in that the judge appears to consider that because the appellant might be able to apply for Armenian citizenship on the basis that she meets the necessary criteria based on residence, she can be treated as a national of Armenia. However, as a matter of international law, if a person does not have nationality *ex lege* but is required to apply and demonstrate compliance with requirements, that person is not presently a national. The respondent does not appear to have requested the appellant to take steps to obtain Armenian nationality prior to reaching a decision refusing her claim.

The above does not necessarily exclude that the appellant might have Armenian nationality *ex lege* by another route on the basis of descent from her father, but I am not able to establish whether that is so from the papers before me. The parties are directed to produce to the Upper Tribunal (FAO Dr Storey), within 28 days from the date this decision is sent, evidence relating to the nationality law of Armenia".

5. Thus, the appeal came before me today.

6. Consequent upon the grant of permission to appeal produced to me was a "legal opinion" prepared by Rusam Makhmudyan PHD, Associate Professor at the YSU Chair of the Constitutional Law, Member of the National Assembly of RA, Deputy Chairman of NA Standing Committee on State and Legal Affairs and Human Protection. This opinion deals with four questions which were posed to the opinion writer. The questions are: -

1. On what basis do the Armenians get citizenship in the Republic of Armenia?
2. Which are the grounds of getting citizenship and citizenship recognition by the Republic of Armenia law?
3. Whether having an Armenian surname means a person can get a citizenship in the Republic of Armenia?

4. Does the foreigner living in the Republic of Armenia have to have any status of residence?
7. Mr Rai particularly relied on Ground A in making his submissions to me. He argued that the Judge had made an unsupported finding when concluding that the Appellant is entitled to Armenian nationality and that this amounted to a material error of law. The issue of the Appellant's entitlement to Armenian nationality is determinative of the Appellant's claim as the Respondent is satisfied that the Appellant is a citizen of Syria and cannot be returned there but finds that she can be returned to Armenia as she is entitled to Armenian nationality because of being in that country for a three-year period. The Respondent relies upon background material within www.mfa.am/en/citizenship. The grounds further contend that the Judge "seems to think" that the Appellant can override the criteria for Armenian nationality and has come to a finding on what is a determinative issue within this appeal which is not supported by evidence. The grounds then criticise the Judge's credibility findings which it is suggested are both irrational and arbitrary. The second ground of appeal (Ground B) asserts that the Judge has misdirected herself in law and/or makes unclear findings in relation to the different standards of proof that have been applied.
8. Mr Rai said that paragraph 30 of the Judge's decision amounted to the key issue in the appeal. For the avoidance of doubt paragraph 30 states: -

"The issue is therefore whether she has status in an alternative country, namely Armenia, and can be returned there. The Appellant bears the burden of proving the material facts of her claim for asylum and humanitarian protection. Further she stated on her visa application to this country that she is an Armenian national (and that her father is an Armenian national). In these circumstances the burden of proof in respect of her contention that she is not in fact an Armenian national and therefore cannot return to Armenia must fall on her. Further, since the issue of her Armenian nationality is relevant to her ability to return to Armenia, rather than her risk of persecution, the standard of proof is the standard of the balance of probabilities rather than the lower 'real risk' or 'reasonable degree of likelihood' test. See **Abdullah** at paragraphs 16 and 23 and **RM (Sierra Leone) v Secretary of State for the Home Department [2015] EWCA Civ 541** at paragraphs 34-36".
9. Mr Rai went on to highlight the content of the "legal opinion" on acquiring the citizenship of the Republic of Armenia and emphasised that for a person who is Armenian by origin to acquire the citizenship of the Republic of Armenia two conditions must be met simultaneously namely "the person who is Armenian by origin should permanently residing (sic) in the Republic of Armenia" and "should not have citizenship of another country". Further that regardless of whether the person is Armenian by origin or not the legislation prescribes requirements for the acquisition of citizenship which include the attaining of 18 years of age, permanently residing in the Republic of Armenia for the last three years, expressing him

or herself in Armenian and is familiar with the constitution of the Republic of Armenia.

10. Mr Avery emphasised that the Judge had adequately reasoned her conclusions having found at paragraph 31 of her decision that the Appellant had failed to discharge the burden of proof that she is not an Armenian national. He submitted that the grant of permission by Upper Tribunal Judge Storey was “misconceived”, that the origin of the “legal opinion” is unclear and in any event, it was not before the Judge who decided the appeal in the First-tier.
11. The Judge dealt with the key issue of the Appellant’s Armenian nationality at paragraph 30 onward in her decision. She found that the Appellant had not discharged the burden of proving that she is not an Armenian national. Also, that her visa application to the United Kingdom stated that she was not only an Armenian national but that her father was likewise an Armenian national. The Judge took account of the Appellant’s explanation that her visa application had been completed by someone else but found that no reason had been suggested as to why the agent would invent these two pieces of information. The Judge also found implausible the Appellant’s evidence as to why she no longer had possession of her Armenian passport (namely that it was taken from her by somebody connected to her agent “outside Northfields underground Station”). The Judge went on to find that she was not satisfied that having lived in Armenia for over three years the Appellant did not meet the necessary criteria for Armenian citizenship according to the objective information set out in the refusal.
12. All this must be set into the context of the adverse credibility findings in relation to the Appellant’s claim including the period of residence in Armenia and, as I say, the loss of the travel documents. In short, the Appellant had been recognised by the Armenian authorities as an Armenian national and it was open to the Judge to find that she therefore had dual nationality.
13. The grant of permission to appeal gives rise to some difficulty. Mr Rai heavily relied upon the “legal opinion” put before me consequent upon that grant. It is important to emphasise that this document was not before the Judge at the First-tier hearing. Therefore, the Judge cannot be criticised for the absence of any finding in relation to either it or its content.
14. There are clear findings as to why the Judge finds the Appellant holds Armenian citizenship which are adequately reasoned and they are not solely based on potential ability to make application for Armenian citizenship. The findings were open to be made that the Appellant is a citizen both of Syria and Armenia. They are not based on irrationality but on objective material that was before the Judge. Contrary to the grounds there is no irrationality at all within the Judge’s credibility findings.

Throughout Judge Moore has applied the correct burden and standard of proof.

15. For these reasons the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

Decision

I do not set aside the decision.

No anonymity direction is made.

Signed

Date 2 May 2018.

Deputy Upper Tribunal Judge Appleyard