



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06821/2018

THE IMMIGRATION ACTS

Heard at Field House
On 21 January 2019

Decision & Reasons Promulgated
On 20 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANI [S]

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms J Isherwood, HOPO

For the Respondent: Ms V Easty, Counsel

DECISION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Chana who in a decision promulgated on 1 October 2018, allowed the respondent's appeal on humanitarian grounds.
2. For ease of reference the respondent will from now on be referred to as the applicant.
3. The applicant is a citizen of Armenia born on [~] 1991. She has a daughter born on [~] 2017 who is her dependant.

4. The applicant arrived in the UK clandestinely on 5 March 2017. She claimed asylum and humanitarian protection on 6 March 2017.
5. She claimed that she entered into a relationship with a national of Azerbaijan, [E], who told her that he was an Armenian and later claimed that he was a national of Azerbaijan.
6. The applicant said she met [E] in the summer of 2016 at a holiday resort near the Sevana River in Armenia. They were together for five to six months. Her problems started when she realised she was pregnant after one month of the start of the relationship and the father of her baby was a national of Azerbaijan. Her parents came to know in January 2017 when she was about two months pregnant. Alternatively, she ended her relationship with [E] in January 2017 before she knew she was pregnant. Alternatively, her relationship ended in December and her problems started in February 2017. Her parents were against the applicant having a baby with an Azerbaijan national and told her to have an abortion. Her father and brother became aggressive towards her and her father raised his hand towards her. Her brother also wanted to do the same but did not. She started working in January 2017 and people found out about her pregnancy. She went to the police at the end of February 2017. They laughed at her and told her that they could not help her. She left Armenia on 1 March 2017 illegally with the help of an agent. She cannot return to Armenia because she will not be accepted by her family or the Armenian community. Returning to Armenia as a single woman would put her and her child at risk.
7. In respect of the credibility of the applicant's claim, the judge found as follows:
 - “33. I find that the core of the appellant's claim to be credible although there are some inconsistencies in the evidence. I accept that she started a relationship with an Azerbaijan national and had a child with him. I accept that her parents did not approve of the relationship or her pregnancy and wanted her to have an abortion which she refused to do. I accept her evidence that she was beaten, and her father and brother wanted to forcibly take her to a clinic to have an abortion and she ran away. Therefore, having accepted this evidence, I now must determine whether returning the appellant with a child by an Azerbaijan man to Armenia would expose her to risk of persecution and violence at the hands of her father, brother and the community at large.”
8. The judge considered the background evidence. At paragraph 30, the judge said the background evidence clearly states there is a growing conflict between the Armenians and the Azerbaijanis. The judge outlined in detail the history of the conflict. At paragraph 32, the judge considered the Freedom House report 2018 which states that there is discrimination based on race in Armenia. Domestic violence is common and not adequately prosecuted. Evidence of honour crimes is increasing in Armenia. There are only 29 Azeris living in Armenia as the rest have

been forcibly displaced. At paragraph 34, the judge set out more background evidence of violence against women, and evidence that Armenia has no law criminalising domestic violence. At paragraph 35, the judge set out the respondent's referral to background information found at Refworld/Law in his reasons for refusing the applicant's application.

9. The judge then concluded as follows:

"36. This report does indicate that there is violence against women in Armenia although attempts are now being made to combat it and to assist the women. There is a child born in this country who will have to return with the appellant. In that regard I must consider the best interests of the second appellant who is a child.

37. The appellant will return to Armenia without the support of her parents. Not only that they consider that the appellant has dishonoured them by having a child out of wedlock with an Azerbaijan man. The appellant will be a single woman returning to a country which is known for domestic violence and honour killings. This will put the child at some risk and any risk to the child is not acceptable for a child born in this country even though she is not a British citizen.

38. Applying the standard of proof required in asylum cases, I find that the appellant has demonstrated that she and her child would be at risk on their return to Armenia. In the absence of a country guidance case setting out the extent of the risk to the appellant in her circumstances and her child, I find that the appellant has demonstrated that she and her child are entitled to humanitarian protection in the United Kingdom."

10. At paragraph 39 the judge cited paragraph 339C of the Immigration Rules which sets out the requirements to be satisfied by an applicant in order to be entitled to Humanitarian Protection. An applicant must show a real risk of suffering serious harm. At paragraph 40 the judge accepted the applicant's claim that she risks domestic violence and the possibility of an honour killing by her family if returned to Armenia. She concluded that the applicant and her child will be at risk of serious harm in Armenia. She therefore found that the applicant and her child are entitled to humanitarian protection in this country.

11. Permission to appeal the judge's decision was granted by First-tier Tribunal Judge Page who was satisfied that an arguable error has been identified in the judge's decision at paragraph 33 that could cause the Upper Tribunal to interfere. Judge Page said that the Secretary of State's two grounds of appeal were arguable in saying that the judge has not provided adequate reasons for accepting the applicant's core account and that the judge has failed to engage with the specific reasons the respondent gave for refusing the applicant's asylum claim. He said the Secretary of State was entitled to know why the applicant's core account was found credible; and moreover why the respondent's reasons for refusing were displaced by the applicant's evidence.

12. Ms Isherwood relied on the grant of permission and the grounds submitted by the Secretary of State.

13. The Secretary of State relied on **MK (duty to give reasons) [2013] Pakistan UKUT 00641 (IAC)** head note 2 of which states

“If a Tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.”

14. I find that this head note does not apply to this decision for the simple reason that the applicant’s evidence was accepted by the judge.

15. The Secretary of State relied on the Upper Tribunal’s decision in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)** paragraph 14 of which states

“... it is however, necessary for First-tier Tribunal Judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost.”

16. The grounds relied on paragraph 28 of the Reasons for Refusal Letter which it was submitted stated why the Secretary of State found the applicant’s evidence to be internally inconsistent. It was argued that the judge did not take into account or resolve the highlighted inconsistencies in the applicant’s account when finding the applicant credible.

17. Ms Easty relied on the skeleton argument she had put before the judge in which she had argued that there were no inconsistencies in the evidence given by the applicant and averring that the Secretary of State considered the case on the basis of inherent probability.

18. Ms Easty submitted that the basis for the applicant’s claim is that she was duped by [E] as to what his nationality was and it was when the applicant realised that he was not an Armenian that she ended the relationship by which time she was pregnant with the child. Ms Easty said that there was only one inconsistency at paragraph 28, which was the timing of the applicant’s pregnancy. She said this was due to her misunderstanding set out at paragraph 24 of the applicant’s statement.

19. I set out paragraph 28; it states

“For example you were asked how your parents reacted to the news and you said ‘because my father was in the war with Azerbaijan and he could not see that his grandchild could be Azerbaijani race and they wanted me to abort the child after a

month. My parents were saying that not only us but our community would be against' (AIR 72). You were asked when your parents started to question you and how far along your pregnancy you were and you said 'it was January 2017 and my parents started questioning me about the situation' (AIR 68) and 'about two months' (AIR 69). You were also asked how far into the relationship you were before you found out about his nationality and you said 'after five to six months later' (AIR 65). It is also noted that you said 'I stopped our relationship in January before I knew I was pregnant. In December our relationship stopped' (AIR 110). He also said 'the day he told me that he was Armenian and I left him accommodation and I could not take the situation and I did not see him after that' (AIR 111). This is internally inconsistent as you previously said that you got pregnant one month into your relationship which was in summer 2016 and it is not credible that you were two months pregnant in January 2017 when your parents found out and this damages your credibility."

20. I find that the internal inconsistency in relation to the timing of her pregnancy was explained by Ms Easty who said that this was due to a misunderstanding set out at paragraph 24 of the applicant's statement.
21. Ms Isherwood drew my attention to paragraphs 23 to 25 of the Secretary of State's Reasons for Refusal Letter which formed the basis of the rejection of the applicant's claim. I note that these paragraphs did not form part of the Secretary of State's grounds. In any event I find that at paragraph 23 the Secretary of State was merely setting out what the applicant said was the basis of her claim.
22. At paragraph 24 the Secretary of State further cited the applicant's claim about the nationality of [E]. Then went on to cite the applicant's evidence as to where and when she met [E] to which she answered summer 2016 in Armenia near Sevana River. She met him at the holiday resort as he was on holiday. They were together for about five to six months. The respondent said that it was reasonable to expect that the applicant would give a detailed account of where and when she met [E]. She was unable to provide specific dates when asked and her narrative of where they met was vague. This damaged her credibility. When I asked Ms Isherwood what further details the applicant could have provided she was unable to answer the question.
23. Miss Isherwood argued that the issues raised by the Secretary of State at paragraph 25 were not resolved. I find that in paragraph 25 the Secretary of State was questioning the applicant's judgment and not her credibility when the Secretary of State said it was expected that the applicant would be more hesitant to accept his claim to be from Azerbaijan based on the fact that he had been circumcised given that he had initially given her two different accounts of his nationality before telling her that he was from Azerbaijan. The Secretary of State claimed the applicant was unable to give a reasonable explanation as to why she accepted his account on this occasion. I find that she had given an explanation which was that she had discovered that he had been circumcised and that led her to accept [E]'s claim that he was from Azerbaijan.

24. I can only hazard a guess that the inconsistencies the judge was referring to at paragraph 33 were those she recorded at paragraph 16 of her decision as follows:

“The appellant’s problem started when she realised she was pregnant after one month of the start of the relationship and the father of her baby was a national of Azerbaijan. She asked her friends for some advice and her parents came to know in January 2017 when she was about two months pregnant. Alternatively, she ended her relationship with [E] in January 2017 before she knew she was pregnant. Alternatively, her relationship ended in December and her problem started in February 2017”.

25. I find that these inconsistencies do not undermine the core of the applicant’s claim, which is that she was duped by [E] as to what his nationality was, and it was when the applicant realised that he was not an Armenian that she ended the relationship, by which time was she was pregnant with the child. I find that the judge considered the applicant’s claimed risk in the context of her oral evidence and the objective evidence and accepted that she would be at risk of harm on return to Armenia.
26. Consequently, I find that the judge’s failure to consider internal relocation or sufficiency of protection does not materially undermine her decision.
27. The judge’s decision allowing the applicant’s appeal shall stand.

No anonymity direction is made.

Signed

Date: 19 February 2019

Deputy Upper Tribunal Judge Eshun