



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

Appeal Number: PA/04049/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 17 May 2021**

**Decision & Reasons Promulgated  
On 2 June 2021**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**RS**

(Anonymity direction made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Khan instructed by Parker Rhodes Hickmotts Solicitors  
For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. On 1 July 2020, a judge of the Upper Tribunal found a judge of the First-tier Tribunal had erred in law in a manner material to the decision to dismiss the appeal. Following the respondent's representative accepting that the First-tier Tribunal judge had erred in the approach to the medical assessment, when assessing the credibility of the claim, and erred in relation to assessing risk on return, the decision was set aside.

2. The appeal comes back before the Upper Tribunal, following the making of a Judicial Transfer Order, to enable a decision to be made to either allow or dismiss the appeal.
3. At the conclusion of the hearing, I announced in court that I allow the appellant's asylum appeal for which I now give my reasons in writing.

## **Discussion**

4. The appellant is a citizen of Russia born on the 1 January 1992 whose protection claim was refused by the Secretary of State in a Reasons for Refusal letter dated 26 February 2018.
5. The appellant has provided in support of his claim a considerable volume of evidence, including expert reports.
6. The appellant has also, since arriving in the United Kingdom, had part of his right arm amputated for which medical evidence has been provided.
7. Reports from the country expert, Robert Chenciner, are dated, 17 September 2018, 6 December 2019, and 8 January 2021, which confirm, inter alia, the documentary evidence the appellant has provided to support his claim of an adverse interest in him by the authorities and to face a real risk on return are reliable, with no evidence to show they are fake.
8. The country expert's findings in relation to a real risk faced by the appellant set out in the initial report of September 2018 are maintained in the later report of 8 January 2021.
9. The appellant has also provided medical evidence from Freedom from Torture dated 17 December 2020, in which the summary of the report reads:

### Summary

- 110 Mr S reports that in the Chechen Republic he experienced imprisonment and ill treatment on two occasions and that he has been informed that Chechen authorities planned to kill him and continue to search for him (Paragraph 18).
- 111 I have made diagnoses of PTSD and moderately severe depressive disorder, and have also described disturbances of Mr S's autobiographical memory which may not be fully accounted for by these diagnoses.
- 112 I have found no clinical indications of fabricated symptoms or of false allegations of torture.
- 113 On the basis of the history that Mr S has given and my observations at interview, it is my opinion that it is highly likely that Mr S's PTSD is due to his imprisonment and mistreatment in the Chechen Republic and that the time course and content of his symptoms make earlier childhood experiences highly unlikely to be sufficient explanation. It is my opinion that more generally his psychological problems arise from his traumatic experiences of detention and threat, along with other factors, including his amputation, other ongoing stresses in the UK and uncertainty over his future.
- 114 In my opinion, if Mr S's asylum application is refused and he believes himself at risk of being returned to the Chechen Republic, there would be a significant risk of his suicide, as well as of further deterioration in his mental health.
- 115 In my opinion, differences between Mr S's accounts of his detentions can be understood as effects of normal limitations of memory and recall, with likely additional problems associated with depression and PTSD, recall under stress,

the traumatic nature of the events and his difficulties with autobiographical memory.

116 I have recommended that Mr S is offered treatment for his PTSD and depression and, if his asylum claim is refused, that he has an immediate reassessment of his suicide risk. I have written to his GP about his treatment needs and have made a referral to the Freedom from Torture clinical service. I recommend that he continues to be treated as a vulnerable adult in view of his mental health.

- 10.** The later report does not change this diagnoses but provides guidance on the best way to enable the appellant, who was treated as a vulnerable witness, to cope with the court environment.
- 11.** A further medical report dated 28 September 2018, written by Mr Graham Johnson an A & E Consultant finds the scarring on the appellant to be 'typical of' injuries inflicted by glass as described by the appellant. The use of such a phrase within the Istanbul Protocol means that the scars have an appearance that is usually found with this type of trauma, but there are other possible causes.
- 12.** It was accepted by Mr Diwnycz that the situation in Russia, particularly with regard to those from Chechnya who have been in the United Kingdom, has moved on considerably since the reasons for refusal letter was written, and that if the appellant claimed asylum today is highly unlikely that the refusal letter would have been written in similar terms. It was accepted by Mr Diwnycz that he had nothing that would undermine the credibility of the appellant's claim or warrant a finding being made that the claim was not credible in light of the weight of evidence that had been obtained to prove that it was and current country conditions.
- 13.** Country evidence cases include RM (Young Chechen Male - Risk - IFA) Russia CG (2006) UKAIT 00050 in which the Tribunal said that a young Chechen male will not as such be at real risk of persecution or a breach of Article 3 either on return to Russia, or on the rail link to Chechnya, or in Chechnya, and, as an alternative, has a viable internal relocation option in Ingushetia. However, a Chechen, who is recorded as wanted by the Russian authorities in connection with or for supporting the rebels in Chechnya, will be at real risk on return at Moscow or St Petersburg Airports, and anywhere else in the Russian Federation.
- 14.** In OY (Chechen Muslim women) Russia CG (2009) UKAIT 00005 the Tribunal indicated the position had changed somewhat since RM. The Tribunal found, despite the existing country guidance cases, there are circumstances in which a female Muslim Chechen may be at risk and may not be able to relocate within Russia. In this case the appellant was of predominantly Chechen but part Russian ethnicity and a Muslim. Her husband was of Russian ethnicity. She had been detained in 2002 and again in 2006 and she was ill treated during each detention. The Respondent relied on AV (IFA - Mixed Ethnicity Relationship - Russian/Chechen) Russia CG (2002) UKIAT 05260 and argued that the option of internal relocation was available. The Tribunal had before it evidence from an expert Mr Chenciner who said that the appellant's family name would, in Russia, indicate that she

was of the Muslim faith and from the Caucasus. If she tried to change her name and was able to do so this would be recorded with her earlier name and the rest of her history. Ethnic Russians would look at her and conclude that her facial features were not those of an ethnic Russian. They were likely to conclude that she came from either Chechnya or somewhere in the Northern Caucasus. Many Russians would describe her with the pejorative word "Chorny" which means "black". Russians apply this to Caucasians. Many Russians would view a woman wearing a headscarf as linked to Wahibi terrorists. Moderate, devout Muslim women who wear hijab or headscarves are often targeted as Wahibi extremist terrorists by the Russian authorities. It was clear that another Russian would recognise her as having a Caucasian accent. Mr Chenciner indicated that she would be seen as a potential threat because she would be perceived as a Muslim woman trying to settle in non-Islamic Russia and because she would be returned from the United Kingdom which the Russian authorities perceive as a hotbed of Islamic terrorism. As she would be travelling on a one way ticket the likelihood was that she would stopped at the airport. If a perception arose of any connection with Chechen insurgents, then she was likely to be detained for a lengthy period and suffer further serious ill-treatment. If she was fortunate enough to be able to pass through the airport on arrival it was not likely that without an internal passport she would be able to travel to Chechnya without being stopped, identified and detained with the same outcome as if she had been stopped at the airport. Even if she was able to reach Chechnya she would be at risk from the Russian supported authorities. Such an individual would not be able to live in Chechnya with a husband or partner of Russian ethnicity because he would be at constant risk from the authorities who, whilst they are supported by the Russian central government, are also Chechen in outlook and attitude. He would also face a real risk of death at the hands of the Chechen population. If she lacked an internal passport it would be unduly harsh to expect her to attempt to relocate. She would not be able to live anywhere in Russia for any length of time without running a real risk of being stopped, identified as Chechen, having the lack of a registration document discovered and being forced to return to Chechnya.

- 15.** Reliance was placed upon OY by Ms Khan in her submissions.
- 16.** The most recent case examining this issue is *I v Sweden* (Application no 6129-04/09 ECtHR September 2013). The court noted the situation in Chechnya, the ongoing disappearances, arbitrary violence, ill treatment in detention facilities, particularly with regard to certain categories of people such as former rebels, their relatives, political adversaries, journalists and others who had complained to international organisations: but found that the unsafe general situation was not sufficiently serious to conclude that the return of Chechen applicants to Russia amounted to a violation of Article 3 though all the facts of an individual's case had to be considered.

- 17.** I find in light of the acceptance of the appellant’s credibility, combined with the current country conditions, expert evidence supporting the credibility of not only the evidence provided but also of the claim to face a real risk of ill treatment on return to Russia, and the medical evidence, that the appellant has discharged the burden of proof upon him to the required lower standard applicable to show that he faces a real risk of harm on return to Russia for the reasons claimed.

**Decision**

- 18. I allow the appeal.**

Anonymity.

- 19.** The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 18 May 2021