



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/08757/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Birmingham
On 10 July 2017 and
Bennett House, Stoke-on-Trent
On 29 November 2017**

**Decision & Reasons
Promulgated
On 27 April 2018**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**Z P
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation and Interpreter:

Interpreter On 29 November 2017 Ms Shafa Seyidili interpreted the Russian and English languages

For the Appellant: The appellant appeared in person assisted by Mr D Forbes as a McKenzie friend

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer on 10 July 2017

Mr A McVeety, Senior Home Office Presenting Officer on 29 November 2017

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because this is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk.

2. Mr Forbes identified himself as an employee of Lifeline Options, a Community Interest Company based in Vyse Street, Birmingham. Mr Forbes is registered with the OISC and is entitled to provide immigration advice but he has no rights of audience and was punctilious in acting solely as a McKenzie friend. His contribution was professional and thoughtful and I acknowledge it with my thanks.
3. This is an appeal by a citizen of Kazakhstan against a decision of the First-tier Tribunal dismissing her appeal against the decision of the Secretary of State on 22 May 2015 refusing her leave to remain in the United Kingdom as a refugee and on human rights grounds relying on Article 3 and Article 8 of the European Convention on Human Rights.
4. No interpreter had been invited to attend on 10 July 2017 which is one of the reasons the case had to be adjourned. On 29 November 2017 I was assisted by Ms Shafa Seyidili who interpreted the Russian and English languages.
5. For reasons that will be explained later it is a feature of this case that the appeal has to succeed. Mr Mills made clear on 10 July 2017 that the appellant has shown a human right to remain because she is the mother of a British citizen child who cannot be expected to leave the protection of the European Union. It follows that her appeal must be allowed on human rights grounds. Whether or not Mr McVeety was bound by that concession is immaterial. He made it clear that he wholly agreed with Mr Mills and confirmed that the appeal had to be allowed.
6. The benefits available to the appellant as a person who has succeeded in an appeal on human rights grounds are not hugely different from those available to her as a person who succeeds. It follows that even if I dismiss the appeal on asylum grounds the appellant will be in much the same position as if I allow it. In either case she would be given a limited period of leave to remain in the United Kingdom after which time her case will be looked at again.
7. Nevertheless, she insists that she is a refugee and she is entitled to a lawful decision on that claim and a lawful decision on appeal.
8. It is helpful to begin by considering the decision of the First-tier Tribunal.
9. This notes that the appellant was given a multi-visit visa in August 2014 and arrived in the United Kingdom with her three children on 19 November 2014. She claimed asylum on 23 December 2014 and, as indicated above, the application was refused on 22 May 2015.
10. Under the heading "Findings and Conclusions" the First-tier Tribunal explained that the appellant is "half Chechen and half Russian" and says that she is the victim of bride kidnapping and a forced marriage.
11. She had spent most of her life in Kazakhstan and some time in Russia and Chechnya.

12. The judge noted evidence that bride kidnapping is commonplace amongst Chechen people who tend to operate under their customary laws and have little regard to the customs of the state in which they live.
13. The Secretary of State did not accept the appellant's claim to be Chechen but the judge found in her favour, noting that she is identified in her passport as a person of Chechen origin and she found the Appellant to be a credible witness.
14. At paragraph 16 of her decision the judge accepted that gender-based violence is:

“... endemic in Chechnya and in other parts of the North Caucasus. This can include honour killings, domestic violence, bride kidnapping and forced marriage. I therefore accept it is practised culturally. However, I note the objective evidence relates to Chechnya and other parts of the North Caucasus not Kazakhstan but I accept the practices are likely to relate to Chechen people who live elsewhere”.
15. The judge also accepted that there was a cultural expectation that a woman would live under the protection of a man, firstly her father and then her husband, and that in the event of the marriage failing and her divorcing she would be expected to revert to the control of her father. The judge also found that women who “find themselves back in their father's home” are “likely to face various forms of gender-based violence including physical and psychological abuse, humiliation, being confined to the home and so on”.
16. The judge accepted the appellant's account of being kidnapped and forced into marriage. The judge also accepted that the appellant had been the subject of domestic violence.
17. However, the judge found that this was not the complete picture. She said at paragraph 21:

“However not in keeping with the culture, the appellant explains in her statement that she was returned to her family home in 2011 two years after the birth of her third child following a dispute with her father-in-law. However in accordance with the Chechen culture, her three children remained with their father. Unusually however the children were later returned to the appellant sometime in 2012 on her estranged husband's mother's dying request. The appellant has failed to explain why her husband would be willing to do this even on the request of his mother, given it is the father who usually retains residence”.
18. The judge accepted the appellant's evidence that the appellant at least believed that she would have to leave her home area if there was any possibility of her finding another man who would have any interest in her when she had three children to consider. The judge noted that the appellant obtained visas for herself and her children and travelled to Chechnya where she spent a month before travelling to the United Kingdom. The appellant said that her relatives thought she was returning to Kazakhstan. This led the judge to conclude that the appellant was “able

to freely travel alone with her children which would seem contrary to the culture”.

19. The judge noted other parts of the claim that were contrary to the cultural expectations. For example, her estranged husband on more than occasion allowed the children to return to the appellant. The judge found this suggested the appellant’s husband was “more relaxed and does not adhere to Chechen customs as the appellant suggests”.
20. The judge also noted that the appellant did not speak a Chechen language and that her father, contrary to cultural expectations, made no effort to encourage her to learn a Chechen language.
21. The judge also found the appellant was “well educated and mature when she was kidnapped” and regarded this as an unusual feature. The judge found the appellant “was allowed to travel and work in various different places without male control”. The Judge further noted that the appellant “left her husband in 2011 and did not return, neither did she stay in her father’s house as custom dictates she does”.
22. It was not her case that her husband had forced her or threatened her in order to encourage her return and the judge found that the appellant had described a family whose members “do not strictly adhere to Chechen culture”.
23. The judge concluded that the appellant was “unlikely” to have any problems from her husband’s family in the event of her return.
24. While the judge reminded herself that she had accepted evidence about cultural based ill-treatment in the past, she found there was no evidence that the appellant’s husband would do anything to enforce a reconciliation and noted that between 2011 and 2014 there was no suggestion by the appellant that her husband or her family had done anything to force her or threaten her with harm if she did not reconcile with her husband.
25. The judge concluded there would be no problem on return.
26. The judge found in paragraph 32 that the appellant did not leave Kazakhstan in fear for her safety. She left to ensure that her estranged husband could not remove the children once again and so that she would have to option of marrying again.
27. The judge also found that if there was any well-founded fear about the children being taken back by her husband she could relocate away from her home area. Additionally she found there was sufficient protection in Kazakhstan. She recognised that such procedures were not often used but found they existed in law and the claimant would have the confidence and education to access remedies.
28. There are five grounds of appeal. Grounds B and C are related. Ground B complains the First-tier Tribunal Judge disregarded the substance of the expert report, and ground C complains that the judge disregarded the

objective evidence. These complaints are not made out. I do not see why the judge was not entitled to conclude that the appellant would be able to take advantage of the protection of the state of Kazakhstan. As the grounds acknowledge something like 17% of family disputes are referred to the authorities but that is not the point. The appellant is not entitled to protection against the family law of her country of nationality. The judge's point is that the evidence of the last few years indicates that whatever may have gone on in the early stages of the relationship in which the appellant was kidnapped, the appellant's husband and his family and her family have not committed themselves to the usual pattern of outrage that might be expected to follow the breakdown of a marriage involving somebody from Kazakhstan.

29. The expert report is not a satisfactory document. It is the work of one Almut Rochowanski who has worked as a Programmes and Advocacy Co-ordinator with the US-based Chechnya Advocacy Network since 2004 and since 2011 has been a Project Co-ordinator with the UK-based charity Peacebuilding UK on the rights particularly about girls in North Caucasus. I have no reason to doubt the experience of the writer but she does not list her academic qualifications and does not include the normal expert direction indicating she appreciates that her duty is to the court and not to the person paying her. I have no reason to doubt the opinions expressed are honestly held or that she describes accurately what can or might well happen, in Chechen society because she writes from considerable experience. However the absence of the expert direction necessarily diminishes the weight that can be given to the evidence. A report can be biased without being dishonest and without a direction I cannot know that the writer understood what is expected from an expert witness.
30. Further, the report is not a particularly persuasive guide to what will happen or what might happen in this particular case. It does not deal with the points that have interested the First-tier Tribunal Judge, particularly the lack of hostility shown to the appellant when there was an opportunity to show it. I do not find the expert report, such as it is, something that assists the appellant because it does not deal with her particular circumstances or answer adequately the judge's concern that this case is different from the norm.
31. The remaining ground concerns the contention that the findings are perverse. That is not an easy thing to establish in a case such as this where the judge has clearly read the papers and show respect for the evidence of the appellant.
32. The criticisms are in the form of something akin to a Scott Schedule and purport to compare the judge's findings with the appellant's statement and Ms Rochowanski's statement.
33. The findings about the unhappiness in the marriage are not important because the marriage has broken up and the appellant has been allowed to establish herself independently. I recognise the expert report explains that the appellant has been tolerated because the appellant's husband has

consented to the arrangement, at least nominally, and so is in control. I appreciate that the expert report explains the sense of outrage that people in the Chechen community will feel about the appellant's behaviour and the expert speculates that the appellant would be at risk if she tried to establish herself completely independently in circumstances where the pretence of subjection to male authority could be preserved or, as she surely would if she had to be returned, with a man from outside the Chechen community.

34. However, although examples are given of very serious violence following in these circumstances I do not see how they can show there is a real risk in all cases involving similar circumstances. The judge was entitled to find that this appellant's family had shown more tolerance than might have been expected. It is always extremely difficult to make proper findings about "honour killing" because the motivation and morays behind it are so completely alien to the mindset of a judge who can be expected to embrace western democratic liberal values. Nevertheless, when all allowances are made the appellant still has to prove her case and proving that some women are treated in an appalling way does not establish that there is a real risk of this appellant being so treated. Given the thin nature of the expert report and the history of tolerance, I am satisfied that the judge was entitled to come to the conclusion that she did. Her findings were not perverse and although Mr Forbes' assistance has directed me very carefully to the important part of the expert's report from his perspective, I am not persuaded there was any error in the First-tier Tribunal's conclusions.
35. In her oral submissions the appellant drew attention to her witness statement at page 18 in the bundle where she identified her cousin B. She said that he had killed someone and she was frightened of him. However, the actual conduct complained of has always been in the context of disputes over the children and they appear to have been resolved because the appellant's husband's family wanted her to look after the children. They arranged for them to come back. Whatever the general position might be, the First-tier Tribunal was entitled to take the view that this is not a typical case and the hostility that can be expected would not follow.
36. I am inclined to agree with the appellant that it is not safe to assume that she could not be found. I accept that record keeping is very precise and I do not accept that there can be any confidence in the records being kept private. Neither do I see any basis for rejecting the appellant's evidence that Chechen people take an interest in each other and wherever she settled news of her whereabouts will eventually trickle back to her husband's family. What I cannot accept is that the First-tier Tribunal was obliged to accept that the very serious consequences that sometimes happen would be reasonably likely to happen here. It is no more than a bare possibility.
37. Neither do I see any error in the conclusion that effective protection is available. State authorities might be very reluctant to act in part because they are not often asked to act but the expert recognises they are

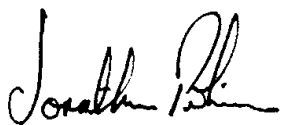
probably the best place to go for protection and I am not persuaded that it is unsafe to conclude that there would be no protection available for this appellant.

38. However, my main point is that there is no need for protection or rather the First-tier Tribunal was allowed to reach that conclusion.
39. Where the First-tier Tribunal clearly erred was in requiring the appellant to leave the United Kingdom with her British citizen children or requiring her to go and leave them behind. That is just not permissible and the Secretary of State does not suggest that it is. It follows therefore that the appeal should have been allowed on human rights grounds.
40. In short, I am not persuaded there is any legal error in the decision to dismiss the appeal on asylum grounds but I allow the appeal on human rights grounds for the reasons given above.

Notice of Decision

The First-tier Tribunal erred in law. I substitute a decision allowing on human rights grounds only the Appellant's appeal against the Secretary of State's decision.

Signed



Jonathan Perkins, Upper Tribunal Judge

Dated: 25 April 2018