



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal no: PA/03182/2017

**THE IMMIGRATION ACTS**

Heard at Royal Courts of Justice, Belfast  
On 24.07.2018

Decision and Reasons Promulgated  
On 05. 09.2018

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

**Gayane [A]**  
**(anonymity direction not made)**

appellant

and

**Secretary of State for the Home Department**

respondent

**Representation:**

For the appellant: *Stuart McTaggart* (counsel instructed by Andrew Russell & Co)

For the respondent: Mr A McVeety

**DETERMINATION AND REASONS**

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Sean Fox), sitting in Belfast on 13 June 2017, to dismiss an asylum appeal by a citizen of Georgia, born 1958.

2. The appellant had been born in Armenia, but in about 1975 she met and married a Georgian, and they had a son together. In 1988 her husband was killed in a car crash, and it was only after this, she says, that she came to realize that she preferred women. In about 2015 she

**NOTE:** (1) *no anonymity direction made at first instance will continue, unless extended by me.*  
(2) *persons under 18 are referred to by initials, and must not be further identified.*

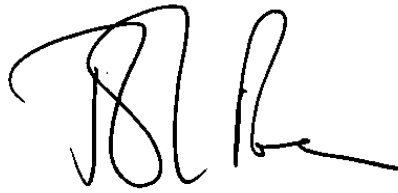
formed a passionate relationship with one called Marine, who regularly came to her house. One day she and Marine were kissing goodbye at her door, and a neighbour saw it and spread the word. This led to the appellant being taken into the forest, beaten and raped: three of the perpetrators were neighbours, and it seems one was also a policeman.

3. The appellant reported this to the police; but they refused to help. So she went to stay with Marine in her village till she left Georgia on 13 September 2016. Then she left for Turkey, with the help of an agent, by air for another country, which she says in her statement she assumes must have been the Republic of Ireland, before coming on, still with the agent, to claim asylum in Belfast on 15 September: on 16 March 2017 that was refused.
4. Mr McTaggart appeared for the appellant before the judge, and made clear (see the judge's 19) that there were no article 8 grounds to be argued, in view of the short time the appellant had spent in this country. Nevertheless the judge began his section headed 'Credibility and Findings' not only with references to, and findings on s. 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, which properly belonged there, but also on s. 117 of the Nationality, Immigration and Asylum Act 2002, which did not.
5. That was the first ground on which permission was given; but, though what the judge said about s. 117 was not relevant to the question in hand, there is nothing to show that it affected his credibility findings. The s. 8 point, the other ground for permission, clearly did, and that is what this appeal is about.
6. The judge dealt with the s. 8 point at paragraph 17. He noted that the appellant had come here 'through unknown countries': in fact she had said at her screening interview that she had flown to Turkey with an agent, and from there to what she accepted must have been the Republic of Ireland, as it was a 2 – 3 hour taxi ride to Belfast, where she made her claim. Both these countries were of course signatories to the Refugee Convention, and the judge went on to make a number of points about the appellant's journey here which were perfectly valid in themselves.
7. Unfortunately the judge ended 17:

"She gives no evidence as to why she chose to come to the United Kingdom in preference to any other safe country. The possibility therefore exist[s] that the United Kingdom was at the top of a shopping list of countries that she may have felt best suited her needs. At the conclusion of today's hearing she gave no evidence to demonstrate that this contention could not be relied on. I am satisfied that her behaviour is such that Section eight should be applied against credibility and that her credibility should be considered damaged."
8. Mentioning the possibility that the appellant had a 'shopping list' was more than a little tendentious, when there had been no evidence on this point, nor had she been challenged on it. If that had been all, then it might have been possible to regard it as not material to the judge's decision, which was in my view perfectly sound on other points. However, having stated the possibility, the judge went on in the last two sentences of the passage cited to draw a direct conclusion from 'this contention', that the appellant's credibility should be considered damaged. In my view this was not entirely fair, for the reasons just given.

9. It follows that there will have to be a fresh hearing of this appeal.

**Appeal allowed: first-tier decision set aside**  
**Fresh hearing at Belfast, not before Judge Fox**

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke at the end.

(a judge of the Upper Tribunal)

Dated 28 July 2018