



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

Appeal Number: PA/12403/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12th December 2018**

**Decision & Reasons
Promulgated
On 20th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**KS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton (Counsel)

For the Respondent: Ms N Willocks-Briscoe (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse her protection claim was dismissed by a First-tier Tribunal Judge in a decision promulgated on 11th June 2018. That decision was set aside, as containing a material error of law, in a decision made in the Upper Tribunal and promulgated on 16th October 2018. The appeal remained in the Upper Tribunal for the purpose

of remaking the decision as the parties were agreed that there would be no need for full fact-finding, the First-tier Tribunal Judge having found the appellant to be a credible witness and having accepted her account.

2. The appeal was listed for hearing on 12th December 2018 and the Upper Tribunal had before it the appeal bundle prepared in May 2018 and a further short bundle containing a certified translation of the appellant's Kyrgyz identity card and a supporting letter and related documents. Mr Eaton relied upon the skeleton argument prepared for the First-tier Tribunal hearing and on the written grounds supporting the application for permission to appeal.
3. Ms Willocks-Briscoe, for the Secretary of State, drew attention to an IT failure at the Home Office which impeded her preparation. Mr Eaton wished to proceed, particularly as the Secretary of State appeared not to have reconsidered the adverse decision, there being a suggestion at the error of law hearing in the Upper Tribunal that such a step would be taken. The issues in the appeal were narrow and largely concerned the question of internal relocation on return to Kyrgyzstan and the sufficiency of protection available. Before the Upper Tribunal was a report prepared by a country expert, Mr Robert Chencinor.
4. The hearing was adjourned to the afternoon, to enable Ms Willocks-Briscoe to prepare. At 2 p.m., she made an application to adduce evidence in the form of a Country of Origin Information Report, concerning the position of couples in Kyrgyzstan from different ethnic backgrounds. Mr Eaton had no objection.

Remaking the Decision

5. Mr Eaton said that the First-tier Tribunal found the appellant to be a credible witness in relation to her account of events in Kyrgyzstan. She is of Uighur ethnic origin and suffered violence at the hands of her father, who became a strict Muslim some twenty years beforehand. The account the appellant gave of threats from her father was accepted. She would be returned to Kyrgyzstan as a lone female with a son of mixed Uighur and Uzbek ethnicity. Her current partner, in the United Kingdom, is a Romanian national.
6. The appellant has been involved in some political activity in the United Kingdom. The salient features of her case were that she was a victim of violence in the past and there was a reasonable degree of likelihood that she would face violence on return. The critical questions concerned the sufficiency of protection available to her and the possibility of relocation internally in Kyrgyzstan, away from her home area.
7. Important country evidence contained in the appellant's bundle was the report published in July 2016 by the Minority Rights Group, regarding the position of women in Kyrgyzstan belonging to minorities and showing the

attitude of the authorities to domestic violence cases. They were seen as a domestic problem or an issue for the families concerned. The Immigration and Refugee Board of Canada published a report in 2015, highlighting discrimination against Uighurs in Kyrgyzstan and the treatment of returnees. Uighurs were a small minority in the country, amounting to about 1% of the population and present almost entirely in the southern part of the country, in two urban areas. They were viewed with suspicion by the authorities and faced discrimination. A report from the Equal Rights Trust published at the end of 2016 showed that the prevalence of domestic violence in Kyrgyzstan is high. There is an absence of effective state protection in such cases. Domestic violence is treated less seriously than other violence and there are few effective sanctions against perpetrators.

8. The appellant also relied on the country expert, Mr Chencinor, whose report appeared in the bundle at pages 39 to 103. His report was prepared in May 2018. Mr Chencinor stressed the small size of the Uighur community and the reliance of members of it upon each other for accessing services, work, housing and medical treatment. Mr Chencinor considered the high levels of domestic violence in the country, the absence of crimes reported as honour killings as such and the likelihood that the appellant's father would follow up the threats made against her in the light of the family shame said to be felt as the appellant had given birth to a child out of wedlock. Mr Chencinor considered it plausible that the threats would be followed up. There was limited support from other family members and it was not likely that her father would be stopped from carrying out his threats. The report also considered why it was that the appellant would be clearly identified as a Uighur. Her passport gave her ethnicity as such and her registered address was in a predominantly Uighur suburb of Bishkek. The appellant speaks Russian and Uighur and although she understands Kyrgyz, she does not speak the language. This would put her at a disadvantage in finding work or education for her son because of an increasingly nationalist language policy. There is a concentration of Uighurs in East 5 suburb of Bishkek.
9. Mr Chencinor went on to consider the extent of domestic violence in Kyrgyzstan and in this part of his report, he drew on sources including Human Rights Watch and the US State Department. The appellant would face difficulties as a lone woman on return, with a child, in gaining access to housing. Mr Chencinor also drew on expertise held by a senior member of the BBC Central Asian Service, particularly about attitudes in a strict Muslim family to the breaking off of an arranged marriage in the Uighur minority.
10. In summary, the accepted account was that the appellant had received threats from her father, that she was from Bishkek, that it was reasonably likely, in the expert's view, that he would find her on return there and that she could not relocate elsewhere in Kyrgyzstan. Gaining access to housing and work depended on family and community in the Uighur minority. She

would not have these sources of support elsewhere in Kyrgyzstan. The country evidence showed clearly that the authorities were unlikely to intervene should the appellant face further threats.

11. Ms Willocks-Briscoe said that the evidence of all the witnesses fell to be taken into account. The supplementary bundle included a letter from a friend of the appellant which suggested that the appellant's father had washed his hands of her. That bore on the plausibility of the threats being carried out or repeated. The appellant's friend suggested that the father no longer treats the appellant as his daughter. Although there may have been threats in the past, the more recent evidence is that her father wants nothing to do with her. The appellant's own witness statement suggested that there might be support available to her from her friend's mother. There was nothing to show that this support would not be available on return, to help the appellant establish her own network. Ms Willocks-Briscoe accepted that the appeal largely turned on the country evidence before the Tribunal.
12. The appellant spent eight years with her grandmother in the same city, Bishkek and there was nothing to show that she was confined there. There was also scant evidence showing that her father had the ability or inclination to track her down, even though she ran away from the family. So far as difficulties finding accommodation and work were concerned, the country expert described the appellant's religion as Sunni Muslim, the same as most Kyrgyz nationals. The expert suggested that it might be more difficult for the appellant to re-establish herself as a lone parent but it would not be impossible. Her friend's mother might be able to help. The country evidence fell short of showing that all Uighur individuals were prevented from accessing health and accommodation by reason of their ethnicity. At paragraph 1.4, the expert speculated that the appellant might commit suicide but this was not within his field of expertise.
13. The expert noted that as a matter of law in Kyrgyzstan, there was no discrimination and that the real problems were more at street level. That might suggest that there would be no discrimination in the provision of services. There were new laws in 2017 and 2018 to combat discrimination and the expert was not in a position to consider how these might have an impact on the attitude of the authorities towards Uighur people. Ms Willocks-Briscoe accepted that the country evidence showed difficulties but there were efforts being made by organisations on the ground, as shown at section 2.7 of the report. There appeared to be four state shelters for those suffering from domestic violence and some accommodation was available there, with legal services and counselling. There was a new Act in Kyrgyzstan providing for shelters for women and nothing to show that the appellant could not access these. With support, the appellant could gain access to accommodation, work and health services. She could relocate near the city of Osh, mentioned by the expert at paragraph 2.4.

14. The appellant currently has an old identity document and birth certificates with her Uighur ethnicity indicated but the country evidence showed that new style identity cards were now issued, which do not record ethnicity unless a person opted to have this included in the data stored on an embedded microchip. The expert did not consider the availability of a new identity card.
15. So far as the threat of forced marriage was concerned, as described in the appellant's witness statement, there were nothing to show that steps were taken to put the proposal into effect and no evidence of current plans to force the appellant to marry against her will. Overall, the assessment of risk turned on the influence and reach of the appellant's father. The country evidence did not show that members of the Uighur community knew everyone else within the category and the appellant's witness suggested that her father was no longer interested in her. The appellant spent eight years in Bishkek and there were no problems overall. She spoke Russian, the second language in Kyrgyzstan. In the light of a report on the Uighur people at page 97 of the appellant's bundle, which referred to the historic practice of Uighur families including one husband and multiple wives, a subsequent marriage or divorce would attract no social stigma and the appellant returning as a single woman would not be a problem.
16. There was no substantial reliance on any political activities undertaken by the appellant in the United Kingdom. The riots that occurred in Kyrgyzstan in 2010, involving Uighurs, would not have an impact on her return now and there was no evidence showing that the Kyrgyzstan authorities monitored nationals outside their jurisdiction.
17. The appellant's Facebook page in the bundle did not show any open profile. The country evidence showed that Uighur organisations were permitted to exist in Kyrgyzstan, tolerated by the authorities.
18. A COI response note published in August 2018, responding to an information request on Kyrgyzstan, contained general information on the country and paragraph 1.6 dealt with mixed marriages. The evidence shows that the authorities are seeking to repair the damage caused by the clashes in 2010 between ethnic Uzbeks and Kyrgyz people. Some steps were clearly being taken to encourage mixed marriages.
19. Although the appellant might face difficulty in obtaining employment, the report from the expert lacked detail on documents or language requirements and members of the Uighur community might rely on friends and family. Similarly, there was little detail on accessing education for the appellant's child. Overall, there was a lack of evidence regarding single parent households. Notwithstanding the difficulties the appellant might face, the evidence did not show that she would be unable to relocate and obtain support outside her home area.

20. In a brief response, Mr Eaton said that the appellant's child was born out of wedlock. In the years she was with her grandmother, the appellant was a teenager and in very different circumstances. The letter from the appellant's friend was clearly an attempt to show that mediation was tried and the response from the appellant's father was in the context of his daughter remaining in the United Kingdom, not directly concerned with what would happen if she returned to Kyrgyzstan. Mr Chencinor was making a strong point that although the law might not discriminate in formal terms, the reality was that institutions and those responsible for providing security, education, work and accommodation all did discriminate against the Uighur minority. Support from the non-governmental sector was also unlikely to be available. The report referred to by Ms Willocks-Briscoe the appellant's bundle concerned bride kidnap and so contained nothing specific to this case. The evidence recorded from the NGO working on domestic violence, referred to in the Human Rights Watch Report, concerned an organisation carrying out lobbying activities and reporting the unwillingness of the authorities to intervene. This was not evidence that this or any other NGO would be able to offer protection. The appellant's lack of an ability to speak Kyrgyz was, in the expert's view, likely to put her at a disadvantage in relation to securing work on return and education for her child.

Findings and Conclusions

21. In this appeal, the appellant bears the burden of proof and the standard of proof is that of a reasonable degree of likelihood that she will face persecutory ill-treatment on return to Kyrgyzstan. The appellant's case was advanced on the basis that she is at risk as a Uighur citizen who would be returned with her child, who has mixed Uighur and Uzbek ethnicity.
22. As noted earlier, the First-tier Tribunal Judge accepted the appellant's account, having found her to be a credible witness. There has been no attempt to undermine that part of the judge's decision and at the earlier hearing in this Tribunal the issues were helpfully narrowed to enable the assessment of risk to proceed on the basis of the findings of fact made by the judge. The appellant, of Uighur ethnic origin, had a difficult relationship with her father and was subjected to physical abuse by him. She fled from the family home to stay with her maternal grandmother at the age of 19. When her grandmother passed away in 2011 and her property was sold, the appellant relied on friends for support. The mother of one friend, the author of the letter from Ms E, helped the appellant to apply for a student visa so that she could leave Kyrgyzstan. The appellant arrived in this country in September 2011. She fell pregnant in December 2013 and gave birth to a son on 1st September 2014. The relationship with the child's father broke down in April that year. She made contact with her mother in Kyrgyzstan but was told that her father would kill her and the baby if he ever saw them again. The supporting letter from Ms E dated 20th May 2018 refers to a conversation she had with the appellant's

father in which he said that he would not care if she and her son were to die and did not view the appellant as his daughter any more.

23. The country evidence in the appellant's bundle strongly supports the appellant's case that the Uighur community is treated with a level of suspicion, especially if members of it come from an urban region. The appellant's home area is a suburb of the city of Bishkek. The Immigration and Refugee Board of Canada report on Kyrgyzstan, published in February 2015 (no more recent report was before me) notes an independent researcher who found that Uighurs born in Kyrgyzstan lived predominantly in Uighur neighbourhoods, as did the appellant and her family, because of the "impossibility to be assimilated or integrated into Kyrgyz culture". A Minority Rights Group report refers to claims of abusive statements by government officials, describing Uighurs as terrorists and fundamentalists, contributing to negative societal attitudes. The UN Human Rights Committee published a review in 2014 in which experts expressed concern about the apparent lack of protection against discrimination based on ethnicity and language. The Appellant speaks Uighur and some Russian but not Kyrgyz.
24. In the 2015 Immigration and Refugee Board of Canada report, widespread discrimination was described as "applied" by the Kyrgyzstan government against Uighurs. The country evidence also shows high levels of domestic violence and, according to several experts, insufficient engagement by the authorities and insufficient protection and enforcement measures, such that there is only one crisis centre for victims of violence funded by the state. Human Rights Watch found in 2015 that where women do report domestic violence, the response from law enforcement agencies is often found wanting.
25. The country expert, Mr Robert Chencinor, prepared a report which also supports the appellant's case. Mr Chencinor is a respected expert on events and circumstances in former Soviet Republics, including those in Central Asia. In his report, he notes that the appellant lived with her grandmother in the centre of Bishkek and that her parents lived on the outskirts of the city, where most Uighurs live. Her son, being of mixed Uighur and Uzbek ethnicity, would face discrimination on this basis, in part in consequence of the riots in 2010, between Uzbek and Kyrgyz communities.
26. The appellant's father became a strict Muslim and was violent towards her and her sister. The expert's opinion is that if she were to return with her illegitimate son, her father would perceive this as likely to bring shame on his family. If the appellant were to seek to return to her home area, it is, I find, reasonably likely that her father would seek to cause further harm to her. In this context, the letter from the appellant's friend, in which it is suggested that her father has disowned her, is clearly one that records his reaction while his daughter is abroad. The accepted evidence of his past treatment of her suggests that the presence of his daughter in Kyrgyzstan,

with her son, would provoke a markedly different reaction. So far as support from the appellant's friend's mother is concerned, it is again not possible to draw a reasonable inference that this person would be a reliable source of support on return, given her limited role in 2011 in assisting the appellant to leave Kyrgyzstan and to lend her funds at that time.

27. The appellant would return with an old-style identity card which identifies her ethnicity. In the light of the country evidence and Mr Chencinor's report, this would make it less likely that she would be able to obtain protection from threats made by her father, in the light of the widespread discrimination against Uighur citizens. The appellant's inability to speak Kyrgyz, although she speaks Russian, would also put her at some disadvantage. Mr Chencinor draws attention in his report (at 2.10) to widespread corruption in Kyrgyzstan and to the dismissal of most cases against corrupt officials. Anti-corruption laws are not implemented effectively. Mr Chencinor's findings are entirely consistent with the country evidence elsewhere in the bundle, including in the Minority Rights Group's report at page 152, which refers to the lax enforcement of laws against gender based violence and domestic violence. Taking into account the credibility of the appellant's claim regarding ill-treatment at the hands of her father, the small size of the Uighur minority and their confinement to Osh and Bishkek and the country evidence showing a disinclination on the part of the authorities to intervene in domestic violence, compounded by the appellant's ethnicity and separation from her family, I find that she has shown that she is at real risk of ill-treatment in her home area. Her status as a lone female of Uighur ethnicity, with an illegitimate child, is such that she would be unable to seek sufficient protection from the authorities in Bishkek, or in Osh, should she decide to move there.
28. The response to an information request from the Country Policy and Information team is helpful in showing attempts by the authorities to introduce relative stability, following the April and June 2010 change of power and violent conflict between Kyrgyz and Uzbek citizens, but it is of little assistance in relation to the position of Uighur citizens. Overall, the country evidence shows that the protection available is not likely to be sufficient to deter the appellant's father or anyone else intent on causing her harm, this being an important part of the assessment of sufficiency of protection in the light of Horvath [2001] 1 AC 489.
29. The country evidence showing the likely limitation of any response by the authorities also bears on the question whether the appellant may reasonably relocate elsewhere in Kyrgyzstan, away from her home area, with her son. What is required here is a holistic assessment and the key question is whether internal relocation is unreasonable or unduly harsh, in accordance with the principles set out in Januzi [2006] UKHL 5.
30. Much of the country evidence summarised above bears on this question. The Immigration and Refugee Board of Canada report refers to evidence

from the World Uighur Congress (“WUC”) as showing “certainly a difference between treatment of Uighur and of other groups in Kyrgyzstan, principally because of China’s influence over the Kyrgyzstan government specifically in relation to Uighurs”. According to Eurasia Net, in a report published in November 2014, the authorities have “upped their surveillance and repression of Uighurs”. Mr Chencinor noted that although the legal code in Kyrgyzstan prohibits discrimination, it is present in practice at a street level. As Mr Eaton submitted, the appellant’s ethnicity, the mixed ethnicity of her son, the absence of a close male relative to assist in a Sunni Muslim society are relevant matters in the assessment of the likelihood that the appellant will be able to obtain education for her son, employment or accommodation. The country evidence regarding shelters for women fleeing domestic violence shows, as noted above, that there is only one such centre receiving state aid. As a member of a tiny minority viewed with great suspicion in Kyrgyzstan, the country evidence does not show a realistic prospect of securing suitable shelter or the means to secure the basic needs the appellant and her son would have on return. Relocation elsewhere would be unreasonable or unduly harsh.

31. In summary, therefore, the grounds of appeal have been made out. The appellant is at real risk of persecution, for a Refugee Convention reason (she is a member of a particular social group as a lone female and single parent from the Uighur minority) in her home area and it would be unreasonable or unduly harsh for her to relocate elsewhere in Kyrgyzstan, away from the two urban centres where most Uighurs live, including the members of her family who remain in Kyrgyzstan. For these reasons, the appeal is allowed. The appellant did not advance a human rights case under Article 8 of the Human Rights Convention.

Notice of Decision

32. The decision of the First-tier Tribunal is remade as follows:

Appeal allowed on asylum grounds.

Signed

Date: 18th February 2019

Deputy Upper Tribunal Judge RC Campbell

ANONYMITY

I make a direction prohibiting the disclosure of any information likely to lead to the identification of the appellant or her son.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 18th February 2019

Deputy Upper Tribunal Judge R C Campbell

TO THE RESPONDENT
FEE AWARD

The appeal has been allowed, on the basis of evidence which was placed before the First-tier Tribunal seven days before the hearing, in breach of case management directions made earlier in the proceedings. In these circumstances, I make no fee award.

Signed

Date: 18th February 2019

Deputy Upper Tribunal Judge RC Campbell