



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2021-000652**  
**PA/09932/2019**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 26 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**BOG + 4**  
**(anonymity order made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Aziz, Counsel instructed by Lei Dat Baig Solicitors  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 9 January 2023**

**Order Regarding Anonymity**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant or any member of her family. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant is a national of Mongolia, born in 1985. Her dependants are her husband and three children. She seeks protection in the United Kingdom. On the 9<sup>th</sup> July 2021 the First-tier Tribunal (Judge Austin) dismissed her appeal on protection grounds. The Appellant was granted permission to appeal against that decision on the 25<sup>th</sup> May 2022.

## Background and Decision of the First-tier Tribunal

2. The substance of the Appellant's claim was that July 2018, whilst working at a corporate event, she inadvertently overheard part of a conversation between security personnel who worked for a corrupt and powerful politician in Mongolia, who for the purposes of this anonymised decision shall be known as P. The gist of the conversation, as far as she could make out, was that these men were planning to murder a person unknown. They noticed that she was listening and she was told to keep quiet. The following day she was dismissed from her employment. She received a threatening telephone call. About two weeks later, in early August, some men visited her home to threaten her. She was not there; they instead assaulted and threatened her daughter. The Appellant sought legal advice. On the 10<sup>th</sup> September 2018 the Appellant herself was attacked by men who said that they knew she had sought advice, and again threatened her to keep quiet. On the 27<sup>th</sup> October 2018 the Appellant was again attacked, as a result of which she miscarried a pregnancy. She attended a hospital and received medical treatment. In June 2019 she and her family left Mongolia and eventually sought protection in the UK.
3. Judge Austin dismissed the appeal. His key findings may be summarised as follows:
  - i) The Appellant's account lacks credibility because she was vague about the details of the plot;
  - ii) The documentary evidence supplied by the Appellant did not actually support her account;
  - iii) The Appellant's delay in leaving Mongolia after the attack in October 2018 undermines the claim. It speaks to her lack of subjective fear and the lack of objective risk;
  - iv) The feared agent of persecution, P, has now been removed from power and so would not be in a position to pursue the Appellant
  - v) The Appellant failed to call her husband as a witness
  - vi) There was a failure to claim asylum in a safe third country, viz the Republic of Ireland, which the family passed through *en route* to the UK.

## Error of Law: Discussion and Findings

4. For this appeal to succeed the Appellant needs to overcome two hurdles.
5. First, she must show that the Tribunal erred in its approach to the credibility of her account. Mr McVeety very fairly conceded that it was perhaps a misapplication of the lower standard of proof to expect the Appellant to be able to give fuller details of the overheard murder plot. It was her evidence that she only heard snatches of the conversation and that was that. That she did not question the plotters to obtain more detail about who their target was etc would be perfectly understandable. Nor was it particularly helpful to weigh against the Appellant the fact that her husband did not give evidence. That is not to say, however, that the Tribunal's overall conclusions are flawed such that they must be set aside. The Tribunal was bound by law to weigh against the Appellant that

she failed to claim asylum in a safe third country (s8 of the Asylum, Immigration (Treatment of Claimants etc) Act 2004 applied). It subjected the documentary evidence supplied to lawful and proper scrutiny, noting that whilst for instance the hospital records confirmed a miscarriage, they did not confirm that this resulted from the Appellant being subjected to an attempted kidnapping. It is not arguable that the approach to those documents was legally flawed. Mr Aziz submitted that the decision is defective for a failure to make express findings on the Appellant's oral evidence. I do not accept that. The decision overall was an assessment of her account, given at interview as well as at the appeal. Further it was obviously open to the Tribunal to draw adverse inference from the delay in leaving Mongolia after the events narrated by the Appellant. That delay was significant and plainly went to both subjective fear and objective risk.

6. As to that objective risk, this is the second issue raised in this case. The grounds of appeal criticise the Tribunal for a failure to properly assess the country background material but in fact the Tribunal quite properly did look to that evidence. Its central conclusion, that P is no longer in power, is not contested in the grounds. Even if the account were to be taken at its highest, it appears that it was not P's intention to have the Appellant killed (if it was then his security detail missed several opportunities to do so) but to threaten her into silence. Given that P no longer has a position to protect, it is difficult to see why the Appellant would possibly be of any ongoing interest to him. In those circumstances the Al Jazeera article was determinative.

#### **Notice of Decision**

7. The appeal is dismissed.
8. There is an order for anonymity.

Upper Tribunal Judge Bruce  
25<sup>th</sup> January 2023