

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2009 No. 93 J.R.]**

**BETWEEN**

**M.A. AND E.M. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND M.A.)**

**APPLICANTS**

**AND**

**THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND ATTORNEY GENERAL  
AND IRELAND**

**RESPONDENTS**

**AND**

**HUMAN RIGHTS COMMISSION**

**NOTICE PARTY**

**JUDGMENT of Mr. Justice McDermott delivered on 5th day of September, 2014**

1. On 27th July, 2012, the High Court (Cooke J.) granted the applicants leave to apply for judicial review by way of *certiorari* to quash the decision of the first named respondent ("the Tribunal") refusing to recommend a grant of refugee status to the applicants. Leave was granted on the sole ground that:-

"The tribunal member erred in law by failing to examine and reach a conclusion from a forward looking perspective on the applicants' claim to be at continuing risk of persecution if returned to Nagorno-Karabakh due to her family background and ethnicity, having regard to country of origin information as to ongoing inter-communal conflict in the country of origin."

**Background**

2. The applicants are mother and son and arrived in the state on 28th August, 2007, having fled first Nagorno-Karabakh in Azerbaijan and later Turkey in fear for their personal safety.

3. The applicant is of mixed ethnicity. Her father is an ethnic Armenian and her mother an Azeri. The family lived in the Nagorno-Karabakh region in Azerbaijan which internationally lies within the borders of the Republic of Azerbaijan. However, it claims to be a state in its own right styled the Nagorno-Karabakh Republic, the territory of which includes the old Nagorno-Karabakh Oblast when Azerbaijan was part of the Union of Soviet Socialist Republics. Nagorno-Karabakh has land borders with Iran, Azerbaijan and Armenia. The Armenian community is the largest ethnic group in the region and a pro-Armenian movement has grown and operated there for many years.

4. The applicant claims, that as Armenian influence in Nagorno-Karabakh grew, her parents mixed marriage was seen as contentious and attracted violence against the family.

5. The first named applicant's father assisted his brother-in-law, an Azeri, to flee when his family were killed on ethnic grounds and he retaliated. Her brother was murdered in June, 2002. Following these events, the first named applicant's parents and her other brother fled to Ireland on 10th June, 2002. They were each granted refugee status on appeal to the Refugee Appeals Tribunal.

6. The first named applicant married on 14th May, 2002. Her husband was an Armenian and she moved from her family to her husband's village where she lived with her in-laws. She claimed that Armenian forces came to their home seeking the whereabouts of her parents. Her father-in-law was beaten and hospitalised and serious threats were made against them if her parents whereabouts were not disclosed. Her father-in-law believed that she and her husband should flee immediately and they fled to Turkey on 28th December, 2002. The second named applicant her son, E.M., was born on 3rd February, 2004, in Turkey. . The applicants lived as illegal aliens in Turkey for a number of years until August, 2007. The first named applicant claimed that it became too dangerous to remain because her Turkish neighbours were insistent that her son should be circumcised as per the cultural norm there, and that they should convert to Islam. The applicant claims that the situation became so fraught that remaining in Turkey constituted a threat to their personal safety. Notwithstanding their difficult financial position, a smuggler was arranged to transport the first named applicant and E.M. to Ireland where they arrived on 28th August, 2007, and applied for asylum. Her husband did not travel with them as they could not afford the extra cost involved. This application was refused by ORAC and the matter was appealed to the Tribunal, which affirmed the decision of the Commissioner in a decision dated 29th October, 2008, notified to the first named applicant on 23rd December. The first named applicant's husband remains in Turkey.

**The Tribunal Decision**

7. The Tribunal rejected the applicants appeal on the basis of credibility. The tribunal member placed importance on the fact that the applicant could not identify the ethnicity, nationality and motivation of her alleged persecutors. There was also a clear contradiction between the individual accounts furnished by the first named applicant and her father.

8. Furthermore, the Tribunal was not satisfied that the applicant did not become aware of her brother's death first hand, but only became aware of it when she came to Ireland and was reunited with her father.

9. A number of the Tribunal findings are clearly predicated on the fact that the applicant is an Azeri national who is a daughter of a

mixed marriage between an Armenian and Azeri. Her uncle had been involved in revenge attacks on Armenians as a result of his own brother's murder by them. Her father, an Armenian, assisted her uncle in his escape and was also involved in arms sales and distribution in Armenia. He became the subject of distrust, initially based on the fact that he was had a mixed marriage, compounded by his assistance to his Azeri brother-in-law and his involvements in arms procurement. Her brother was killed. For that reason he fled with his wife and son who were granted asylum in Ireland. Those who sought him then attended at the first named applicant's home which was, in fact, her father-in-law's family home. This family was Armenian. They were harassed, beaten and intimidated by those seeking the whereabouts of her parents and she and her husband fled on the advice of her father-in-law. Though much of this story was not believed, the basic fact that she was the daughter of a mixed marriage and that she was half Azeri and half Armenian in a predominantly Armenian province of Azerbaijan, was accepted as was the fact that ethnic conflict existed in that area.

10. The applicant contends that in deciding the case, the Tribunal failed to consider a future risk of persecution if returned to Nagorno-Karabakh. It is claimed, relying upon country of origin information that there is a new risk of fighting amongst the ethnic groups in the province and as a result it was incumbent upon the tribunal member to assess her claim in the light of future potential persecution bearing in mind her mixed ethnicity. The applicant relies upon the judgment of Cooke J. in *M.A.M.A. v. Refugee Appeals Tribunal* [2011] IEHC 147. It is claimed that since her parents were granted refugee status on the basis of the same complaints of persecution in Nagorno-Karabakh, the decision ought to be set aside.

11. The respondent contends that the tribunal member accorded the requisite consideration to the applicants' case. As the credibility of the applicants' was dubious, the tribunal member was relieved of the duty of applying the forward looking test. Reliance was placed on *Imafu v. Refugee Appeals Tribunal* [2005] IEHC 416 and the judgment of Clark J. in *Tamko v. the Minister for Justice, Equality and Law Reform* (Unreported, High Court, 27th July, 2012).

12. The court is satisfied that the tribunal member failed to analyse the potential threat the applicants may face if returned to Nagorno-Karabakh. In its decision, the tribunal member makes reference to country of origin information which considers the plight of displaced persons in the region and the efforts of the Azerbaijani Government to resettle them. The only relevant sentence in the decision is to the effect that the applicants and their family did not display the characteristics of displaced persons. There is no analysis of the current situation in Nagorno-Karabakh, whether or not upheaval could occur again, what the day to day situation for a young woman and child is in the region and most importantly, there is no assessment of risk to those of mixed ethnicity in the greater community. The first named applicant claimed that violent antagonism exists between the Armenian majority and the Azeri minority and that this continues. She also claims that mixed marriages are frowned upon and give rise to the suspicions at the root of her father's and extended families' difficulties in the course of the conflict. The court is satisfied that a proper analysis of these matters was necessary for the assessment of the future risk to the applicants in the case.

13. In *M.A.M.A.*, Cooke J. quashed the decision of the Tribunal because it had not taken into consideration the danger of future and potential persecution. Cooke J. stated:-

"18. ... Accordingly, if the finding on credibility goes so far as to reject a claim that the asylum seeker has a particular nationality or ethnicity or that he or she comes from a particular region or place in which the source of the claimed persecution is said to exist, there may be no obligation upon the decision-maker to engage in "reasonable speculation" as to the risk of repatriation in the case. On the other hand, if the decision-maker concludes that the asylum seeker is opportunistically seeking to place himself in the context of verifiable events in a particular place but decides that while such events did occur, the asylum seeker was not involved in them, the risk of future persecution may still require to be examined if there are elements (the language spoken or obvious familiarity with the locality for example) which establish a connection with that place. Thus, opportunistic lying about participation in events involving previous persecution will not necessarily foreclose or obviate the need to consider the risk of future persecution provided there are some elements which furnish a basis for making that assessment."

14. As in *M.A.M.A.*, in this case, the issue turns upon the extent of the rejection of the applicants' story as incredible in the Tribunal decision. Though various aspects of their claim have been assessed as lacking credibility, their ethnic background is not questioned nor is the nature of the inter-ethnic conflict that existed in Nagorno-Karabakh. This is, therefore, a case, in which the obligation to consider the possible risk of future persecution arises.

15. The court has also considered the respondents submissions that Nagorno-Karabakh is but a province of Azerbaijan and that there is no evidence that state protection was not available to the applicants in their country of origin. Furthermore, the respondent contends that relocation was a reasonable option in some other part of Azerbaijan. Neither of these issues was considered by the Tribunal and have no regard to the fact that the applicants, though partly Azeri, lived within a predominantly Armenian community and that the first named applicant married into an Armenian family. It would be entirely inappropriate for the court to embark on speculative considerations which were not part of the Tribunal's decision.

16. The court is satisfied that the applicant has established that the decision of the Tribunal was fundamentally flawed and will grant the application for *certiorari*.

17. The matter will be remitted in full for rehearing before a different tribunal member.