

Between:

THE HIGH COURT

JUDICIAL REVIEW

M.B. [GEORGIA]

Applicant

-and-

THE REFUGEE APPEALS TRIBUNAL

Respondent

-and-

THE MINISTER FOR JUSTICE AND EQUALITY

Notice Party

JUDGMENT OF MR JUSTICE MICHAEL HANNA, delivered on 1st day of March, 2013.

1. The applicant seeks judicial review of the decision of the respondent Tribunal dated 4th April 2012 to make a negative recommendation in relation to her asylum application. By consent of the parties these proceedings are being dealt with by way of a telescoped hearing which took place on 25th January 2013. The respondents furnished the Court with a draft statement of opposition. Mr David Leonard B.L. appeared for the applicant, instructed by S Bartels & Co Solicitors, and Mr Anthony Moore B.L. appeared for the respondents, instructed by the Chief State Solicitor. The proceedings were issued over two weeks outside the time limit set out by s.5(2)(a) of the Illegal Immigrants (Trafficking) Act 2000 but having received an affidavit setting out reasons from the applicant's legal representatives the respondents did not object to the Court granting an extension of time.

BACKGROUND

2. The applicant in this case is a national of Georgia and is of mixed ethnicity. Her father was Georgian and her mother Ossetian. She fears persecution in Georgia on account of race, nationality, political opinion, and/or imputed political opinion.

3. The applicant said that in 2004 she joined a group of people in her village whose object was to harmonise relations between Georgians and Ossetians. In 2005 she married a Georgian man. In August 2005 one of the group meetings was attacked by Ossetian militants and the applicant and her husband were injured. On 23 November 2005 the applicant's husband was murdered and the applicant claims to have received threats to her life. In January 2006 the applicant was raped at her mother's home by a group of men who broke into the house. Shortly after this incident her mother died. The applicant then fled to Tblisi where she remained. Then, in August 2006 she alleges she was again attacked and subjected to violence. She claims to have been attacked by three or four men who beat her and burned her with cigarettes and a piece of heated metal. The attack was interrupted by the sound of a patrolling police car. The assailants departed and she says, in her s. 11 interview, they threatened to return and she would be killed like her husband. She also alleged that insulting letters were pushed under her door subsequent to this incident and she was greatly distressed. The applicant went to the police. She subsequently fled to Ireland and arrived in the State on 12th October, 2006.

4. The applicant completed her ASYI form on 24th October 2006. The Office of the Refugee Applications Commissioner issued a s.13 Report on 14th August, 2007 and made a negative recommendation in relation to the applicant's claim.

5. The decision of the Refugee Appeals Tribunal (RAT) challenged in these proceedings is dated 4th April 2012. The Tribunal member did not make adverse credibility findings except in relation to the alleged attack in Tblisi. The Tribunal member accepted that the applicant has "*clearly suffered some traumatising events in her own country*". However, the Tribunal member stated that "*I do not believe that someone who was brutally attacked and beaten by 3 or 4 men would not require some form of medical attention, this to my mind is stretching the bounds of credibility too far.*" The Tribunal member found that while the country of origin information submitted in support of the applicant's appeal indicated an array of problems in the applicant's country, none of these impacted on the applicant personally and she was not likely to suffer persecution on a Convention basis in Georgia. The Tribunal member did not accept that the past experiences of the applicant are such that a grant of refugee status is warranted and found that "*it would not be unduly harsh for the Applicant to relocate, as she already had done, to Tblisi*".

THE APPLICANT'S SUBMISSIONS

6. In the applicant's submission the Tribunal decision focuses on whether or not the Tribunal is prepared to accept that the attack in Tblisi took place. The Tribunal rejected any future risk of persecution by finding that internal relocation to Tblisi was the solution. The applicant is seeking leave on a number of grounds which can be summarised as follows:

- (i) The RAT erred in law by imposing an unlawful corroboration requirement in assessing the applicant's evidence, in particular to its evaluation of whether the Tblisi attack took place. The applicant did not seek medical treatment after the attack and it is therefore impossible to produce evidence of such treatment
- (ii) The Tribunal acted in breach of fair procedures and acted inconsistently by finding that the applicant gave "*divergent evidence as to how the burn scars were sustained*"
- (iii) The Tribunal erred by disbelieving the applicant's account of the Tblisi attack on the basis that she did not seek medical treatment after the attack. The Tribunal also failed to take into account the applicant's claim that the attack had

been interrupted

(v) The Tribunal failed to have regard to Regulation 5(2) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006).

(vi) The Tribunal applied an incorrect standard of proof that is stricter than the 'reasonable likelihood' test normally applied

THE RESPONDENTS' SUBMISSIONS

7. The respondents argue that the decision of the Tribunal was lawfully and validly made and responds to each of the applicant's claims as follows:

(i) The respondents submit that the Tribunal member simply made a legitimate and undeniable observation that no medical evidence of the attack in Tblisi has been produced and this does not amount to imposing an unlawful corroboration requirement.

(ii) The medical and psychological evidence in this case did not contain any specific finding about the applicant's ability to recollect past events in Georgia and the applicant has previously given detailed accounts of events. It is submitted that there is therefore nothing wrong with the Tribunal member finding that the applicant gave divergent evidence as to the attack in Tblisi.

(iii) The Tribunal member highlighted that the applicant was "*no stranger*" to the medical services available in Georgia and she had sought treatment whenever she had suffered trauma previously. The respondents assert that the Tribunal member was entitled to conclude that the applicant's failure to seek medical attention undermined the credibility of the alleged attack.

(v) The Tribunal accepted the "*traumatising events*" suffered by the applicant in Ossetia. However, it is submitted that the Tribunal did not accept that she had suffered persecution in Georgia proper. The Tribunal did have adequate regard to the applicant's past experiences and concluded that there were no compelling reasons for granting the applicant refugee status arising from her past experiences in Georgia. The Tribunal member noted that the applicant had a psychiatrist in Tblisi, that her cousin had supported her there and that she had friends from University there. Therefore, it is submitted that the Tribunal was correct to conclude that internal relocation would be available to the applicant and she would not be alone in Tblisi.

(vi) The respondents submit that there is no basis for the claim that the Tribunal imposed a stricter standard of proof. Even if it had imposed a 'balance of probabilities' test the case of *DH v Refugee Applications Commissioner* (Unreported, High Court, 27th May, 2004) suggests that this would not be incorrect. Nonetheless, the respondents submit that there is no evidence to suggest anything other than a 'reasonable likelihood' test was applied.

DECISION

8. In connection with grounds (ii) and (iii) it is of significance that the Tribunal accepts the applicant's narrative of what had happened to her prior to her arrival in Tblisi. To that extent, therefore the applicant's version of events is cushioned with a positive credibility finding. One must take full account of the fact that the Tribunal had the benefit of hearing the applicant in person as well as having recourse to all material papers in the case (including the s.11 interview). But, having made a favourable credibility assessment of the applicant to this point, it should be apparent from the decision on what basis the Tribunal moved to a polar opposite position concerning events in Tblisi. I have to say that I find great difficulty in following the reasoning grounding the shift from acceptance to disbelief. Credibility lies at the heart of the Tribunal finding and thus should be explained rationally (in the *O'Keefe v An Bord Pleanála* sense¹) and with reasonable clarity.

9. In relation to Ground (ii), the SPIRASI report of Dr. Abdul Bulbulia received on June 18th 2008 indicated that the applicant suffered scars and burn marks which could be consistent with cigarette burns. Counsel for the applicant submitted that the report indicates that the applicant stated that "*she was ill treated with cigarettes and was burnt*". It was submitted that this could be interpreted as meaning the applicant was both burnt with cigarettes as well as with something else, including a piece of heated metal, and there is therefore no divergence in her evidence. In addition to this, the Tribunal member stated "*I am not confident that the Applicant would be in a position to properly recall events that occurred, or that for example she would not imagine events or recall them differently given the psychiatric presentation*". In light of the evidence of cigarette burns contained in the SPIRASI report and the acknowledgment of the Tribunal member of the applicant's traumatic past and problematic psychiatric presentation, the Court accepts the applicant's submission that the Tribunal member acted inconsistently and in breach of fair procedures by finding that there had been a divergence in the applicant's evidence.

10. In relation to Ground (iii), the applicant submitted that the Tribunal member erred by disbelieving the applicant's claims about the Tblisi attack because she did not subsequently seek medical treatment. It was further submitted that the Tribunal member did not take into account the claim that the attack was interrupted and the attackers therefore did not get the opportunity to complete the attack in full. Counsel for the applicant asserted that it was impermissible for the Tribunal member to speculate or to say that the applicant definitely would have needed medical attention. Counsel for the respondents submitted that the applicant had a history of seeking medical treatment in the past and the Tribunal member was correct to conclude that it was implausible she would not do so again after being attacked and beaten by three or four men. The Court finds that the Tribunal member erred by disbelieving the attack in Tblisi took place simply because the applicant did not subsequently seek medical treatment. While the applicant may well have been "*no stranger*" to the health and psychiatric services when she previously suffered trauma, it does not automatically follow that she definitely would have sought medical treatment for the attack as described. The Tribunal member accepted that the applicant filed a police report relating to the attack and that the SPIRASI report indicated that she may have been burned with cigarettes. The Court finds that the Tribunal failed to take adequate account of the claim that the attack was interrupted and the applicant did not require medical treatment as a result. The Tribunal erred by disbelieving the applicant's account of the attack simply on the basis that she did not seek medical treatment. The menacing remarks by the attackers and letters pushed under her door followed by her leaving the city in a matter of weeks does not appear to have weighed at all with the Tribunal.

11. In relation to ground (i) the Court accepts the respondents' submission that in stating that the medical reports produced by the applicant did not relate to the Tblisi attack the Tribunal member did not impose an unlawful corroboration requirement. The Tribunal member simply stated that the medical reports provided did not refer to the Tblisi attack. It is also clear that in reaching her decision, the Tribunal member did have regard to the applicant's past experiences of persecution. The Tribunal member accepts that the applicant "*clearly suffered some traumatising events in her own country*" and that she experienced past trouble "*as a result of the animosity between the two groups*" before reaching the conclusion, albeit a conclusion based on adverse credibility findings which are discussed herein, that the applicant was not likely to face persecution on a Convention ground in Georgia as she could relocate to Tblisi. For that reason the Court does not accept the applicant's submission that the Tribunal member failed to have regard to reg. 5(2) of the EC (Eligibility for Protection) Regulations 2006 as set out in ground (v). Finally, the Court does not accept that the Tribunal member imposed a stricter standard of proof on the applicant. The applicant offers no convincing evidence to support this claim. The Court therefore rejects ground (vi) as set out in the applicant's statement of grounds.

CONCLUSION

12. In light of the foregoing the Court is satisfied that an order of *certiorari* quashing the decision of the Refugee Appeals Tribunal dated 41h April 2012 should be granted on grounds (e)(ii) and (iii) of the applicant's Statement of Grounds. The matter will be remitted to the Tribunal for re-hearing before a different member.

¹·[1993] 1 IR 39