

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

Heard at Field House
On 10 January 2007

Determination Promulgated
On 26 March 2007

Before

Senior Immigration Judge Allen
Designated Immigration Judge Coleman

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, Counsel, instructed by Sheikh & Co.
For the Respondent: Ms K Lonsdale, Home Office Presenting Officer

DETERMINATION AND REASONS

An Azerbaijan male of Armenian ethnicity who has come to the attention of the authorities in Azerbaijan faces a real risk of persecution.

1. This is the reconsideration of the appellant's appeal against the Secretary of State's decision of 9 June 2003 refusing leave to enter the United Kingdom. The appellant is a national of Azerbaijan who claims to be at risk on return to that country. His appeal was initially heard by an Adjudicator who had dismissed it in a determination promulgated on 13 January 2004. An application for permission to appeal to the Immigration Appeal Tribunal was received, it seems, on 23 July 2004. Thereafter the matter did not come before a Senior Immigration Judge until 5 April 2005. As the Senior Immigration Judge noted, the application was almost six months out of time and he averted to the further problems that appeared to have existed in obtaining the

file given delay between the application for permission and the placing of the file before a Senior Immigration Judge. The Senior Immigration Judge accepted the appellant's explanations as to why it was that the application was so late and considered that it would be unjust in the circumstances not to extend time and therefore he extended time. Thereafter he considered the reasoning of the Adjudicator to be arguably perverse and ordered reconsideration. At a hearing on 6 November 2006 it was agreed "that the Adjudicator had materially erred in law in failing to assess the risk to the appellant from the KGB. Clear findings on all aspects of the appellant's claim were needed". The hearing was therefore adjourned for a second stage reconsideration.

2. We heard evidence from the appellant. He adopted his statement of 9 April 2003 which he was content to stand as part of his evidence. With regard to a matter raised at paragraph 11(a) of the reasons for refusal letter, he was asked to confirm how it was that he came to be released on 9 January 2003. He said that they made him sign an undertaking to work with them and then they took him back to Genja. He also adopted the answers he had given at interview on 8 May 2003 and the contents of his statement of 4 January 2007.
3. He was referred to the statement of evidence form at 1.15. There he said he had come to the United Kingdom in a caravan. He clarified that he meant a lorry.
4. He was then referred to his answer to question 64 at interview. He confirmed that he was hidden and that was how he avoided immigration. As to what the agent had told him to do about claiming asylum, he said that he had taken him to a solicitor and he had given him a letter and told him to go to the Home Office and apply there.
5. It was clear, he said, that he was of Armenian ethnicity and his wife's ethnicity was also Armenian. He was asked what problems he experienced in Armenia prior to his detention in 2002 and he said that there were always problems and there were problems between Muslims and Christians. The problems he experienced, however, were not enough to cause him to leave Azerbaijan at that time. By problems he meant for example that if there were good jobs going they would always go to their own ethnic nationals and children might throw stones at your windows saying you were Armenian. He referred also to problems between Muslims and Christians.
6. He was referred to various matters contained in the first statement, as we shall refer to it, of 9 April 2003. He was asked why, with reference to paragraph 9 of that statement, the Omon (the police) asked him and his wife why they had not gone to vote in the election if Armenians were not able to vote in such an election. He said that these were just excuses to harass them. They did not have Azerbaijani passports. He was asked why on this occasion he thought he was detained and not just harassed and he said they were accused of causing disturbances in a particular area of the town. These were the areas where the ethnic minorities would gather. He said he and his wife were not involved but the Omon were looking for an excuse. By saying they were not involved he said they never went there. But they could not prove this. The place in question was one where people got together for meetings. He had always kept away from political issues. In this regard he was referred also to his answer to question 30 at interview where he had said he had never been deeply involved or interested in politics. He repeated that that had always been the case. He

was asked why therefore the authorities focussed on him on 8 November 2002 and he said that that was the election day.

7. He was referred to paragraph 15 of the first statement concerning a book found at his house by the Omon, being a book written by a man called Guliev. He said that they had smashed their way in and found the book by Guliev, which is about a freedom fighter who escaped them i.e. the Azerbaijani regime, and went to the USA. He was asked why the book would cause him such problems and he said it was illegal. It concerned the Azerbaijani President Aliev, and was against him. It described all the criminal acts and violence against minorities including Armenians which had been ordered by the President.
8. He was asked why he as a person of Armenian origin who had no political involvement would be wanted by the KGB (i.e. the Azerbaijan secret police) to work for them. He said that they would do anything to undermine Armenians to the rest of the world. They caused friction between Armenians and other groups to cause the Armenians to be blamed for trouble. There had in the past been conflict between Armenia and Azerbaijan which had led to a war.
9. He was then referred to paragraph 20 of the statement where he had said he had promised to go to the solicitors' building. He said that in the undertaking document he had said that he had to go after his release to a building which was a centre of solicitors and they would tell him what to do and he would have to do it.
10. It was suggested to him that, as had been said at paragraph 12 of the refusal letter, this might be thought to lack credibility since the Secretary of State believed that the KGB would have put him under surveillance and therefore did not believe it would have been possible for him to escape as he claimed. He said that he had to sign the paper or they would not release him and they had released him when he signed. The document which he had signed was distributed by them to all former Soviet Union states and he could be arrested within a day if he had stayed there. It was suggested to him that the refusal letter queried why they would do all that when they could keep him under surveillance and he said that no-one could question the KGB as to why they did what they did.
11. The concern of the Secretary of State expressed at paragraph 13 of the refusal letter was put to him concerning the contended implausibility of him not knowing that the KGB building was occupied by KGB agents though it was only 500m from where he lived. He said that they never wrote on this building that it was KGB building and would only do that in Baku where there was a big building which said it was a KGB building.
12. He was asked whether he could have moved elsewhere in Azerbaijan and he said one could not get away from the KGB and it would make no difference.
13. He was asked why he had not stayed on in St. Petersburg where he said he had gone to stay with his sister for a while. He said that again he feared the KGB. They would have given notice to every part of the country. Because he owned a house there perhaps they did not think he would leave his house and get out. He had made reference in his most recent statement to his house now being sold. He was asked

why the authorities would do that and he said he did not know the details and probably it was as he had promised to work for the KGB and they were a very important part of the state. As the house was owned by an Armenian they could sell to another Armenian and this was a matter of internal regulation in the state. He was asked why there would still be an interest in him four years on and he said that even after four years it would be the same. You could not get away from the KGB when you had made a previous undertaking to them.

14. When cross-examined by Ms Lonsdale the appellant was asked whether he had had problems with the authorities prior to his detention in 2002. He said no, the most direct problem was that they felt tension because they were of Armenian ethnicity. When he was detained in 2000 he was never taken before a court or charged with an offence. The KGB told him that for causing a disturbance in public he could get a sentence from three to nine years. If he had been taken to a prison for only a month he would have died under torture. He had never been given any legal representation during the two months he was in detention.
15. With reference to the book by Mr Guliev, he was asked whether he had been aware that it was illegal and he said yes it was on the television. He was asked why he had the book given that he had said he had avoided politics in Azerbaijan. He said it was an interesting book. He had not thought that they would come and search the house. The book was about the cause of Armenians and the misdeeds of the President. He was aware that he could be in trouble with the authorities just for having the book. It was the case not only for him but for anyone who possessed it. He was again asked why, if he was avoiding politics, he had the book in his possession when he was aware of the danger and he said it was interesting to read and pictures in it showed how Armenians were killed.
16. He was asked whether he gave any explanation when they told him they knew he had the book. He said that they had not questioned him about the book but used it as an excuse to force him to work for them. The book had been well hidden inside the house but they had searched the whole house.
17. He was asked whether while he was detained they had asked him if he was involved in any political movement. He said yes, they asked him if he knew anyone and mentioned certain names, but he said he did not know these people. They had intended to create fear in him so he would agree to work for them. As to what exactly they had asked him to do, he said that they had said they would pay him and that he would be given a map and he was to go to the ethnic minorities. He did not know what he was supposed to do. Perhaps the minorities or the KGB would have killed him. That was all they had told him. He was to go to the solicitors' office and they would tell him what to do. He was asked whether he had not asked more about what he would have to do and they said that at the solicitors he should do what they told him, just give his name and they would tell him what to do. They had not given him any money at that time.
18. He was asked whether he was aware of the contents of the declaration he had signed and he said it was an undertaking and it was their document to say that he was prepared to work for the KGB and do anything they told him to in the interest of the Azerbaijan authorities. He had not been give a copy of the document.

19. What had happened then was that two people took him to Genja and those two people were KGB officers. They had told him to go home and to go the solicitors' office the next day.
20. He was asked how long he was at home before he left Azerbaijan. He said that it was about four or five o'clock and dark when he got home. He had left that night on the same day. He was in such a state he probably did not even remember his own name. It was the same night when they left. He had taken with him what funds he had. This had been money in the house, some \$600 or \$700, which was not enough to get him to a destination but enough to get away. The money had been hidden in the house. He did not have any other money. He had obtained the money from his business selling clothes and shoes.
21. He had travelled to Tbilisi initially and then to Minvodi and then to St. Petersburg. He could not remember exactly how long he had stayed with his sister in St. Petersburg, but it was about a month. They had been looking for someone to help them escape. He had been very frightened even there and had been in a very bad state. He had not experienced any problems while in St. Petersburg. It was put to him that in his statement he had said he was there for two months and he said he could not remember. He was asked why if he experienced no problems had he come to the United Kingdom and he said he had been staying in the house and was too frightened to go out and was frightened the KGB would find him there. When he had left Azerbaijan his neighbour had taken him to Tbilisi. His sister had to pay \$4000 for both him and his wife to go to St Petersburg. Her husband worked in business and they had money and \$4000 was not a lot of money in St Petersburg in comparison to Genja.
22. He was asked whether he had been in contact with anyone in Azerbaijan since he came to the United Kingdom. He said that a man telephoned his sister and she telephoned him about the sale of his home. He identified this man but said he preferred not to give his name because it could be dangerous for him. He identified this man as E. The full name was given in the appellant's most recent statement.
23. On re-examination the appellant was asked why it was dangerous to give this man's name to them and said that if they found he had given information out of the country to the appellant he would be prosecuted or tried. He would be in trouble because the appellant's problem had been with the KGB and they might put this man under some pressure to say where he was. Selling the house was a state matter and he had informed the appellant while he was outside the country and he could be accused of helping them to flee Azerbaijan. It was this man who had told him about the house sale over the telephone.
24. As to why he had gone to St Petersburg if he was so frightened of the KGB, he said he had nowhere else to go. He said he had it in mind to flee. He had his sister there and he wanted to leave Russia. With regard to the question of whether he was in St Petersburg for a month or two months, he said he could not remember exactly and they were in a very bad state and he had felt as though he had a noose around his neck. It was suggested to him that surely he would remember now when he was not in a situation of such tension and he said he could not remember whether it was a

month or two months and at the time he had not even known what day it was. They had never left the house.

25. He was referred to the book by Guliev. He had realised the book was illegal to own. He knew this because it had been on television. He had not thought that they would smash the door in and ever search the house. He was 100% certain that if they had not found the book they would have planted something, narcotics or a bomb, so as to accuse him of something. The book was just their excuse. It was hidden downstairs on the book shelf behind bigger books. The money had been kept in the basement which was a place where people kept money. He was asked why they would not find and take the money if they searched the house. He said they did not find it. They did not find the jewellery either. He did not know. Perhaps they had found it and did not take it. He was asked why he said that and he said as they were not interested in finding \$600. They could not do anything with it. Or perhaps they had found the book and that was enough.
26. We asked the appellant to clarify what he was saying as to what he was told he would do for the KGB. He said that they had said that he had been given a map and would be given all the detail at the solicitors' office. He had been worried in case it was narcotics and they said it was only money and they would give him a map.
27. On further examination by Mr Collins the appellant said that the money would have been for him to pass on to the ethnic minorities. He had not known any more than that. He had to go and receive his instructions. If you touched KGB money with a red colour then it would not wash off.
28. In her submissions Ms Lonsdale argued that the appellant lacked credibility. He had given different accounts as to whether he had known the book was illegal. Even if he had known he would not have taken the risk of keeping it in his home. Also it lacked credibility that the KGB would not have found the money and jewellery when they searched his home. There was no credible reason why the KGB would have trusted him to work for them. Nor was it credible that he would have gone to St Petersburg when he said he felt in danger there. He could have gone to another area and his sister could have sent the money to him. It was not necessary to go to St Petersburg for the length of time he did and in any event the accounts he had given as to how long he stayed with his sister varied. He was likely to be an economic migrant.
29. Otherwise Ms Lonsdale referred to the decision she had put in Sarkisian [2002] UKIAT 01257, in particular at paragraph 10. With regard to the authorities put in by Mr Collins, she argued that GM [2005] UKAIT 00147 was concerned with politically active individuals and the appellant would not be so viewed, and as regards the other case, Teymor [2002] UKIAT 03404, there were particular risk factors in that case which were different from those in this case.
30. In his submissions Mr Collins referred first of all to s.8 issues but argued that the explanation given by the appellant for not claiming on arrival should be accepted.
31. Thereafter Mr Collins addressed the various matters in relation to which the appellant's credibility had been doubted in the refusal letter and in Ms Lonsdale's

submissions. He argued that the appellant's credibility should be accepted and that any discrepancies were not material.

32. As regards the objective evidence, Mr Collins first of all addressed us on the general human rights issues in Azerbaijan. The appellant's account was clearly consistent with what was said in the various reports in the bundle. There were both general human rights problems and specific problems for people such as the appellant who were of Armenian ethnicity.
33. With regard to the case law put in, Teymor was relevant. The appellant there had been out of Azerbaijan for a number of years but that would also, albeit to a lesser extent, be true of the appellant and by now there were fewer Armenians in Azerbaijan than had been the case when the Tribunal considered the objective evidence then. Also the Tribunal had benefited from the assistance of expert evidence. It was not argued that the appellant was at risk purely on account of his Armenian ethnicity, and as had been pointed out at paragraph 10 of Sarkisian, each case must turn on its own facts, and it had been said there that some might have merit. The analysis in Teymor should be preferred. Although GM did not concern a person of Armenian ethnicity, it was consistent with the objective evidence relied on today and there were also references to Mr Guliev, at paragraph 6 in that determination concerning his attempt to return to Azerbaijan.
34. The Azerbaijan state was essentially a police state. If the appellant was found to be credible then he was a person who had reneged on a promise to help the KGB and in whose possession a book critical of the President had been found. He would come to the attention of the authorities on return. The objective evidence amply demonstrated the grim climate of human rights in Azerbaijan. The appellant would face a real risk on return.
35. We reserved our determination.

Reasoning and conclusions

36. We take the appellant's account of his claim from the interview, the two statements and the oral evidence before us. We bear in mind that it is for him to show a real risk of breach of his protected rights under the Refugee Convention, the Qualification Directive as set out in the amended Immigration Rules and regulations and under the Human Rights Convention. Mr Collins accepted that there was no human rights claim going beyond the Refugee Convention claim in this case, and it is clear that that particular claim is one based on ethnicity and/or imputed political opinion.

The appellant's claim

37. The appellant is an Azerbaijan national of Armenian ethnicity, as is his wife. He is aged fifty-three and he is a Christian. He does not claim to have experienced particular problems on account of his Armenian ethnicity prior to the particular events that led him to leave Azerbaijan which he said commenced on 8 November 2002. He had felt tension on account of his Armenian ethnicity but had experienced no problems with the authorities. The appellant was self-employed and bought shoes from Georgia and sold them in Azerbaijan and his wife worked in a hospital. On 8 November 2002 they went to the market in Genja which is the town where they lived.

The police, known as the Omon, were at the gates to the market and closed the market gates and started to check people. It seems that there was an election going on and because the appellant and his wife did not have passports and had only got ID cards showing their names they did not have the right to vote. It was the day of the city/town election and the Omon were checking to see who had gone to vote and who had not. They asked the appellant and his wife why they had not gone to vote in the election and took them to the police station.

38. They were separated and he was taken to a room and kept for a day and next day a policeman took him to Baku. There he was taken to a KGB building by two guards and kept there for two months. During that time he did not see his wife or know of her whereabouts. He was kept in a small room. He was fed and there was a sink and toilet in the room. If he ever asked if he could leave the room he was hit with the butt of a gun. On 8 January 2003 he was taken to the basement of the KGB building and questioned. He was told that when the police searched his home they had found a book written by a man called Guliev. The book, he said, was mainly about Aliev, the President of Azerbaijan and it described him as a dictator. He said in his statement that this book was prohibited literature. At interview, he said when asked whether he was allowed to keep such material that they were not allowed to have this book but there was no official declaration of banning the book. In oral evidence he said that the book was illegal. He had known it was illegal. It had been said that this was the case on the television. He said that Guliev was the leader of the Freedom Party. He said that he had the book because it was an interesting book. It was about the case of Armenians and about the President. He had not thought that they would come and search his house. He had kept the book hidden behind other books in a book case.
39. The plainclothes man told him that because the book by Guliev had been found in his home he had been sentenced to between three to nine years imprisonment but he would not be imprisoned if he listened to him and followed what he asked him to do. He then went on to say that a minority group of the Muslims were called Hamams who were opposed to Aliev. It was suggested to him that he should join this group and act as a courier taking various items such as maps and money in order to trap the Hamams. He accepted this because he said he knew he had no other way out and feared he would be imprisoned for up to nine years and ill-treated and indeed quite possibly killed in prison.
40. He was taken back to Genja on 9 January 2003 and said he was to go to what he described as a solicitors' building which it seems was a building where a number of firms of solicitors practiced, where he would be given instructions as to what to do. He was left in Genja after he had signed to say he would not run away and had agreed to cooperate with them.
41. He went home and found his wife there. She had been kept for three days after her arrest and had a court hearing on the fourth day. Initially they said they would detain her for two months but then said that as it was her first offence they would detain her for two weeks. She was kept in a place like a prison chamber and treated very badly. She said that when she returned home her door had been broken in and everything was all over the place.

42. On the evening of the day when the appellant came home he went with his wife to Georgia by car, driven by a neighbour who was a Georgian. They stayed in Tbilisi for a week and then went on to St Petersburg where his sister lives. In the statement he said that he went to his sister's home for just over two months, whereas in oral evidence he could not remember and thought it was a month. He said that he collected some \$600 or \$700 from his home before leaving. That had been hidden in the basement together with some jewellery, which had also not been found by the KGB. As to why the KGB had not found the money and the jewellery, he surmised that it was not what they had gone to find and perhaps they had found it and left it, or alternatively, that perhaps having found the book they did not deem it necessary to search any further. He said that his sister and her husband, who is a businessman, had money, and in relative terms to Genja it was not a lot of money for them in St Petersburg. He then went on to describe the arrangements by which he came to the United Kingdom. They arrived on 31 March 2003 and the agent took them to London, to a solicitor who gave him a letter and because it was late he had to wait until the next day to claim asylum and because on the next day they had difficulties finding the Home Office they were not able to claim asylum until 2 April 2003, at Croydon.

The background evidence

43. The US State Department Country Report on Human Rights Practices in Azerbaijan for 2005 describes the government's human rights record as remaining poor and it continued to commit numerous abuses. There were credible reports that security forces had beaten detainees to extract confessions while in custody. Prison conditions remained harsh and life-threatening despite improvements in the prison infrastructure in recent years. Harsh prison conditions resulted in 107 deaths during the year and at least four of these were said to be the result of torture or abuse. Although the law prohibits arbitrary arrest and detention, the government generally did not observe these prohibitions in practice, and impunity remained a problem. There was also a problem of law enforcement corruption. The police often levied spurious, informal fines for traffic and other minor violations and extracted protection money from local residents. It is also said that police officers acted with impunity, and in most cases the government took little or no action. Although the law states that people who are detained arrested or accused of crime should be advised immediately of their rights and reasons for arrest and accorded due process of law, the government did not respect these provisions in practice. A number of examples are given of arbitrary behaviour by the police and the government. There is a serious problem of lengthy pre-trial detention of between three and six months. Although the law provides for an independent judiciary, in practice judges did not function independently of the executive branch. The judiciary is described as being corrupt and inefficient. Although the constitution allows for searches of residences only with a court order or in cases specifically provide by law, authorities in practice often conducted searches without warrants.
44. There is specific mention of a relative of the exiled opposition leader Rasul Guliev having been detained at the airport on charges of carrying a gun. This lady, Almaz Gulieva, a British citizen, collapsed when airport police showed her the supposed weapon. She was taken to hospital and released after she recovered three weeks later. She left the country immediately thereafter. International observers doubted the credibility of the evidence in the case. There is also mention of the arrest of a

nephew of Mr Guliev who was sentenced to three months imprisonment for threatening the police with a weapon in connection with Guliev's planned return to Azerbaijan. The authorities did not charge the nephew with a specific crime at the time of his arrest and his confession was obtained by prosecutors only after detaining him on unrelated charges for several days.

45. Although the law provides for freedom of assembly, the government restricted this right in practice. There is widespread public perception of corruption throughout all facets of society including the civil service, government ministries and the highest levels of government. There are said to be only some twenty thousand citizens of Armenian descent living in the country. They complain of discrimination in employment, schooling, housing, provision of social services and other areas. It is said that Azerbaijani citizens who are ethnically Armenian often conceal their identity by legally changing the ethnic designation in their passports.
46. This unattractive picture is repeated in other reports. For example, the Amnesty International report of 23 May 2006 on Azerbaijan gives examples of security forces using excessive force to break up both authorised and unauthorised demonstrations in Baku. A Freedom House report, Freedom in the World 2006: Azerbaijan, states that the 1993, 1998 and 2003 Presidential and the 1995 and 2005 parliamentary elections were considered neither free nor fair by international observers, and the 2005 parliamentary elections were likewise afflicted by extensive irregularities. There are again references to the corruption and inefficiency of the judiciary and the fact that arbitrary arrest and detention are common and prison conditions are reportedly severe. There is further reference to some members of ethnic minority groups, including the small Armenian population, complaining of discrimination of areas, including education, employment and housing.
47. There appear to be ongoing problems between Armenians and Azerbaijanis which is not without relevance to the perception of Azerbaijanis of Armenian ethnicity. Thus there is a report at page 14 of the appellant's first objective evidence bundle of fresh exchanges of fire between Armenians and Azerbaijani forces and there has been an upsurge of cross border skirmishes during March 2006 which is the date of the report.
48. In the most recent bundle is the United Kingdom Foreign and Commonwealth Office Human Rights Annual Report 2006 of Azerbaijan, dated 12 October 2006. It is said that, despite some progress, the Azerbaijan human rights record remains poor, the judiciary does not function independently of the executive and is widely perceived to be inefficient and corrupt. In the Operational Guidance Note on Azerbaijan of 4 December 2006 there is reference to the government continuing to commit numerous abuses including restrictions on the right of citizens to peacefully change their government, torture and beating of persons in custody, leading to four deaths, arbitrary arrest and detention, particularly of political opponents, police impunity and pervasive corruption in the judiciary. With regard to the situation of Armenians and those of mixed Armenian and Azerbaijani ethnicity, and those involved in a mixed marriage, at paragraph 3.6, it is said that as this category of claimants' fears is of ill-treatment or persecution by the state authorities they cannot apply to the authorities for protection, and nor is internal relocation feasible. The conclusion in the Operational Guidance Note on the basis of what is said there and the case law to

which we shall come in a moment, is that in general the discrimination experienced by ethnic Armenians does not amount to persecution and will not breach Article 3 of the ECHR.

49. We turn to the case law. None of the cases to which we were referred is or has been country guidance, but they provide helpful guidance as to the country conditions at the relevant times. The claimant in Sarkisian was an ethnic Armenian of Azerbaijan nationality. The Adjudicator had found that he was at risk per se on that basis. The Tribunal did not agree. It assessed the objective evidence and concluded that an ethnic Armenian could not establish even to the low standard of proof applicable, a well-founded fear of persecution on return to Azerbaijan on the grounds of ethnicity per se. The point is made at paragraph 10 that of course each case must turn on its own factors and some may have merit.
50. In Teymor, which was heard some three months later, the Tribunal had the benefit of expert evidence from Mr Robert Chenciner. He described a culture of discrimination and hostility towards ethnic Armenians based on a climate of bitterness resulting from the very significant expulsion of Azeri refugees from Armenia and Armenians from Azerbaijan. He considered that the appellant in that case, who was of mixed ethnicity as his father was an Azeri and his mother an Armenian, would be recognised as half Armenian and would not be provided with Azerbaijani papers. The claimant had left Azerbaijan in 1990 when he would have been aged around sixteen. The objective evidence before the Tribunal suggested that there were some thirty to forty thousand Armenians remaining in Azerbaijan and there was evidence that 98% of these were women and therefore there were very few males of the age of the appellant. The Tribunal concluded that the appellant, though he was not at risk of persecution from the fact solely of being of Armenian origin, was at risk on the basis that he was a male aged now twenty-six who had been out of Azerbaijan for some twelve years which would place him at risk on return.
51. Finally, there is the decision in GM. This was not concerned with an ethnic Armenian but with risk to senior members of the Azerbaijan Democratic Party. The Tribunal concluded that senior members of the party had been arrested and imprisoned in an effort to stifle opposition to the government in circumstances that amounted to persecutory treatment, and there was background evidence that family members of such people were also at risk. At paragraph 19 the Tribunal noted that the situation in Azerbaijan had deteriorated as far as the Democratic Party was concerned.
52. We consider that the appellant's claim is consistent with the objective evidence. It is relevant to note that he does not complain of anything amounting to more than discrimination prior to the particular events which he claims took place which caused him to leave Azerbaijan. The general tenor of the evidence and the findings of the Tribunal in the above cases is that ethnic Armenians are not at risk per se, and Mr Collins did not seek to argue to the contrary but rather argued, as had been found on the facts in Teymor, that the appellant's case is one which puts him at risk.
53. The first issue in relation to which Ms Lonsdale argued that the appellant lacked credibility was the question of whether he knew that the book about Mr Guliev was illegal or not. As we have set out above, at the hearing before us he said he did know about this and this had been effectively publicised on television whereas it is

argued that his answer to question 35 is inconsistent with that in that he said there was no official declaration banning the book. Mr Collins argued that there was no inconsistency here. Though there was a difference in what he said, essentially there is in our view no material difference. Certainly it is the case that the appellant said at interview that they were not allowed to have the book. In practice therefore we consider that the difference between that and any formal ban making it illegal would make little material difference to the risk that having the book found in one's possession could give rise to problems. Accordingly we do not consider that this is a matter adverse to the appellant.

54. Nor do we consider it damaging to his credibility that he would have kept the book in his home. The book does after all deal with the problems experienced by Armenians and the appellant could reasonably be expected to find that, as indeed he said it was, of interest although clearly on his evidence he took care to conceal it, albeit as it seems not very successfully, but so that at least it was not on immediate view, behind other books in a bookcase. We do not consider this is inconsistent with his claimed lack of involvement in politics in any way. We consider it perfectly understandable that a person such as the appellant with his ethnicity would have an interest in this book and would keep it at home. After all, as he said, on the day in question, he and his wife had simply gone shopping and did not expect that the authorities while they were out would smash the door of their house down and search the house and find the book.
55. There is next the issue of whether it is credible that the authorities having found the book would not be also have found the money and jewellery or indeed might have found the money and jewellery before they found the book. Here one can only surmise. The appellant understandably said that one could not legislate in effect for the KGB. It may be that the jewellery and money were more effectively hidden, as they are items which might be of greater interest to a burglar, quite apart from officials, as opposed to the book, which would only be of interest to the officials. We cannot speculate about this. The appellant's surmise as we have set out above that it may be that taking money and jewellery as they found it was beyond their remit or simply that they found the book and did not deem it necessary to look any further. Again this is a matter bearing in mind the low standard of proof which we do not see as being adverse to the appellant.
56. The next point made by Ms Lonsdale was why the KGB would trust the appellant when he had never been involved in such matters before. Again it is a matter of speculation which is not satisfactory, but we consider that there are a number of reasons why the KGB might think that a person over whom they had such a hold, as they would have had over the appellant, would be prepared to work for them. He might have been able to find some useful information, alternatively he might have been identified and disposed of by the Hamams. They might have seen real advantage to using a person who on his own account had never been political and therefore would not be likely to be regarded with suspicion. As we say, we do not know, but again we do not consider it is lacking in credibility that the KGB would regard the appellant as an appropriate person to make use of in this particular way. We accept that he would not have known the building to which he was taken in Genja was a KGB building. It is credible that the KGB would not have advertised the

fact, and there was no reason otherwise why the appellant would have been aware of it.

57. The next issue raised by Ms Lonsdale was the question of why the appellant went to St Petersburg to his sister when he could have gone elsewhere, where he might have felt safer and have the money forwarded to him by his sister. Clearly he had said that the information about him would be likely to be circulated among all the former Soviet Union states and therefore, it must be assumed, to Russia. As Mr Collins argued, he might reasonably be regarded as having taken that as the easiest way out given that his sister was there and would be able to fund him. The period of time that might have been taken to forward money to him is unclear, and at least in St Petersburg he would have the home of a relative to go to and the opportunity to raise the money directly, albeit except he must have apprehended an element of risk in going to a family member. It is however entirely unclear whether the authorities would have known that he had a sister in St Petersburg. Again this is not a matter which we consider to be adverse to the appellant.
58. It follows from the above analysis that we find the appellant's account to be credible. As we have also noted above, the account fits in well with the objective evidence. The appellant has, as Mr Collins argued, not sought to embellish his claim. If returned he would in our view be at risk on account of what he said happened to him. He does not have a passport and there is a real risk that he would be immediately identified as being of Armenian ethnicity. It has not been contested that that is his ethnicity. As such he is one, it seems, of a very small number of males of Armenian ethnic origin in Azerbaijan. It is not unreasonable to suppose that the KGB would hardly be pleased with a man who had failed to follow their instructions and had instead fled the country. They can hold over him the charge they threatened him with of being prosecuted in relation to possession of the Guliev book or alternatively for creating public disorder, as it seems it was also suggested to him might form the basis of a prosecution, on the election day when he was arrested. He is therefore in our view an ethnic Armenian Azerbaijani national who, as was said in Teymor, has specific features about his case which put him at risk. The more recent objective evidence subsequent to Sarkisian and Teymor which we have been able to consider does not materially change the picture before the Tribunal in those cases, and in particular is consistent with the evidence of Mr Chenciner in Teymor. Accordingly, we conclude that the appellant has made out his claim. This appeal is allowed.

Decision

59. The original Tribunal made a material error of law. The following decision is substituted.

The appeal is allowed on asylum grounds.

The appeal is allowed on human rights grounds (Article 3).

Signed
Senior Immigration Judge Allen

Date

USSD Country Report on Human Rights Practices: Azerbaijan: 8 March 2006

Amnesty International Report 2006 : Azerbaijan: 23 May 2006

Freedom House, Freedom in the World: Azerbaijan: 6 September 2006

UK Foreign and Commonwealth Office, 'Human Rights Annual Report 2006 : Azerbaijan', 12 October 2006

UK Home Office Immigration and Nationality Directorate: 'Operational Guidance Note: Azerbaijan', 4 December 2006.