

Appeal No. HX/54184/2001
OA ((IFA – Unduly Harsh – Chechens - Relocation) Russia CG [2002] UKIAT
03796

IMMIGRATION APPEAL TRIBUNAL

Date heard: 5 July 2002
Date notified: 15th August 2002

Before:-

DR H H STOREY (Chair)
MR A SMITH JP

Between

MR OLEG ASAEV

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, a national of Russia, has appealed with leave of the Tribunal against a determination of Adjudicator, Mrs S Brookfield, dismissing the appeal against the decision by the respondent giving directions for removal following refusal to grant asylum. Mr P Jorro of Counsel instructed by A S Law Solicitors represented the appellant. Mr M Davidson appeared for the respondent.
2. The Tribunal has decided to allow this appeal.
3. The adjudicator accepted that the appellant had a well-founded fear of persecution in Chechnya arising from the fact that he was a pilot of civilian aircraft by profession who had refused to fly planes for Chechen rebels and that the authorities would be

unable to protect him against reprisals the rebels would take against him in consequence. However she considered the appellant had a viable internal flight alternative in either Rostov (where he had earlier sent his mother) or Ingushetia. In this regard she noted there was no evidence that Chechen rebels were looking for him or that they were able to infiltrate Russia to seek out Chechens who had refused to join them or that the Russian authorities would share information about an individual's registration with Chechen rebels. Nor was there any evidence that he would be forcibly repatriated just because he was an ethnic Russian from Chechnya. She pointed out that despite being an ethnic Russian in Rostov who had failed to register, the appellant's mother had suffered no problems as a result. She discounted his claimed fear of being persecuted because ordinary Russian would be alarmed by the fact that he was a pilot from Chechnya. As regards the situation in Ingushetia, she relied on the fact that there were so many Chechens there (170,000 had fled there after September 1999) that the appellant would be amongst fellow-Chechens and at no risk of detection by any Chechen rebels. However, turning to the issue of whether in either of these places the appellant would be at risk of repeated arrests in roundups and would be singled out and beaten, she said:

“The background reports indicate that security forces do single out persons from the Caucasus for document checks, detention and extortion of bribes, though practice is not totally restricted to Chechens. I do find that the appellant would be at risk of being subjected to extortion in Russia.”

4. She then went on to discount difficulties the applicant might face in relation to judicial process, detention in dire prison conditions, employment prospects, language discrimination and racial discrimination. In relation to accommodation difficulties, she accepted the appellant might face real difficulties in Ingushetia, but he would not face the same difficulties in Rostov.

5. Before proceeding to evaluate the particular facts of this appeal we would make four introductory observations, all of which arise chiefly from the objective country materials. The first concerns the current UNHCR position which is reported in the CIPU Russian (Chechnya) Bulletin 01/2002 as follows:

“...the UNHCR is of the view that, given the ongoing unstable and highly volatile situation in Chechnya and the link between propiska registration and access to basic rights in the rest of the Russian Federation, there is currently no viable internal relocation possibility that would guarantee effective protection to **all** of those displaced by the Chechen conflict. It states that internal relocation should therefore be considered only as part of a full and fair determination in each asylum claim”.

6. Our second observation is that the adjudicator was plainly wrong to conclude that racial discrimination is not a part of everyday life in Russia. That finding was heavily against the weight of the evidence including the CIPU Bulletin 01/2002 which refers to Chechens being likely to experience difficult living conditions and racial discrimination in much of Russia. The US State Department Report of February 2001 notes that:

“Roma and persons from the Caucasus and Central Asia face widespread societal discrimination, which often is reflected in official attitudes and actions. Police reportedly beat, harassed and solicited bribes from persons with dark skin, or who appeared to be from the Caucasus, Central Asia, or Africa. Discrimination against persons from the Caucasus and Central Asia also increased concurrently with new measures at both the federal and local levels to combat crime. Law enforcement authorities targeted persons with dark complexions for harassment, arrest, and deportation from urban centres, particularly after the August 1999 bombing in Moscow. “

7. A third observation, closely allied to the second, is that the adjudicator’s findings on the risk of extortion were clearly based on background materials, in particular the US State Department report of February 2001 which states that:

“There are credible reports that security forces continue to single out persons from the Caucasus for document checks, detention and extortion of bribes.”

8. Our final initial observation is that it is not in dispute that certain areas of Russia are not places where an ethnic Russian from Chechnya can live without facing serious difficulties arising from being unable to register there. These difficulties are well documented in the background country reports. No doubt in the light of these, the respondent accepted that in this case the only two realistic options open to the appellant were Ingushetia and Rostov.

9. As regards Ingushetia, we do not think that the materials before the adjudicator justified her in concluding that the appellant could live there without undue hardship. She noted very correctly that because of the mass influx of Chechens into that area, the most likely available accommodation would be in makeshift camps. However, the adjudicator seemed to think that although conditions in such camps would be harsh, they would not be unduly so because the appellant had expressed himself ready to put up with harsh conditions. We consider that finding erroneous. In the first place it is reasonable to infer that, if the appellant were returned to live in Ingushetia, he would be at the end of any existing Chechen queue for accommodation. That is significant because in the CIPU Bulletin 01/2002 on Russian Federation (Chechnya) dealing with Chechens outside Chechnya it is stated that of the estimated 150,000 displaced persons remaining in Ingushetia one third were accommodated in tented camps and spontaneous settlements and that those in camps had faced harsh weather and a shortage of food and medicines that has caused considerable concern among human rights organisations.

10. An earlier CIPU report stated that: “some 8,000 people are believed to be living in railway carriages in the region, many of them without sufficient heating and appropriate sanitation facilities, which puts them at risk of contagious diseases....”.

11. In the second place, we do not think the appellant’s own statement that he could tolerate harsh conditions should properly have been taken by the adjudicator as meaning that conditions would not be unduly harsh in this case. Certainly in assessing

hardship it is relevant to consider the physical and mental health of the individual in relation to such factors as age, health and the like. However, there is obviously a minimum standard of subsistence below which no one can be expected to exist. In Ingushetia we also think the appellant would also face additional difficulties of being perceived as of mixed ethnic origin and mixed religious background. In this regard we cannot agree with the adjudicator who appeared to forget this factor in finding that the appellant would in that area be amongst “fellow Chechens”.

12. Thus the only real internal relocation option open to this appellant was Rostov. Even assuming the adjudicator was right to entirely discount any continuing risk of the appellant being pursued in Rostov by Chechen rebels, we do not think she was justified in concluding that the appellant would not face very considerable difficulties in living there. On her own findings – findings we consider sustainable – the appellant would be subject to a real risk of extortion. Furthermore, as regards difficulties with registration in Rostov, it may be that this city is not mentioned in the background materials as one where registration difficulties are acute, but we do not think the adjudicator was justified in assuming that just because the appellant’s mother had not had difficulties with the registration system, he would not. As Mr Jorro pointed out, the appellant’s mother is a pure ethnic Russian as well as an older person. Given that the propiska system is evidently operated quite rigorously throughout Russia, we do not think it justifiable to conclude that the appellant’s difficulties in this regard would be any less than those facing others who were visibly Chechen in origin. As regards accommodation, there was no evidence he could live with his mother as she was living with a friend, so that would cause some extra, even if not insuperable, difficulty. In addition he would, as already noted, face a certain level of societal discrimination affecting the areas of employment in particular: the latest April 2002 Country Assessment on Russia noted that people from the Caucasus and Central Asia continue to face “widespread societal discrimination, which is often reflected in official attitudes and actions”. In short he in common with others displaced from Chechnya would face considerable difficulties in relocating in Rostov.

13. We doubt that these common difficulties on their own would make it unduly harsh for him to relocate there. However, in assessing the issue of undue hardship it is obviously essential to consider the appellant’s individual circumstances as well as those he would share in common with other Chechens. To some extent these do not point in the direction of undue hardship: the appellant is a relatively young man in good health who in Rostov would have some family contact. But in addition to the common and quite considerable difficulties already identified, there would be two specific difficulties facing this appellant. One we have already highlighted, namely his mixed ethnic origin. In our view this would at once deny him full acceptance by fellow-Chechen also displaced and on the other hand make him just as liable as them to widespread societal and official discrimination. The other is something which the adjudicator entirely discounted. It relates to the fact that he is a civilian pilot. She discounted this on the basis that there was no reason why anyone in Russia (outside Chechnya) should come to learn of it. However we think this a somewhat facile conclusion. Russians have suffered terrorist attacks launched against them by Chechen rebels. Security concerns have been widespread. Plainly in the course of different types of contact with the authorities, authorities whom we already know are

apt to try and exploit Chechens and other ethnic minorities, the appellant would be required to state his background. Particularly in the wake of the strong Russian reaction to the events of September 11th, it would be naïve in our view to entirely discount the real likelihood that this would create an added ground for suspicion, in-depth scrutiny and harassment of this appellant, since, in the eyes of Russian officials, he could well be perceived as a Chechen rebel harbouring malice aforethought. No doubt, after he made protestations, they would recognise he was in fact opposed to the Chechen rebels, but the likely experience of having frequently to rebut suspicions plainly adds a real dimension to the level of difficulties he would face in Rostov (and indeed elsewhere in Russia).

14. For the above reasons we agree with Mr Jorro that, viewing the difficulties this appellant would face in having to relocate within Russia cumulatively, there was sufficient evidence before the adjudicator to demonstrate that it would be unduly harsh for him to have to relocate.

15. The appeal is accordingly allowed.

**DR H H STOREY
VICE-PRESIDENT**