

Appeal No: CC-50627-99(00TH00728)
Immigration Appeal Tribunal - Key Case
Date heard: 13/4/2000
Date notified: 17/5/2000

Before:
Mr P R Moulden(Chair)
Mr P Rogers JP

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

LYUDMYLA DZHYGUN
Respondent

Determination and Reasons

1. The appellant is the Secretary of State for the Home Department. The respondent is LYUDMYLA DZHYGUN, a citizen of the Ukraine. The appellant refused to grant the respondent leave to enter the UK and refused her asylum. She appealed to a Special Adjudicator (Ms. M. S. Beg) who allowed her appeal. The appellant appeals against this decision.
2. At the hearing before us the appellant was represented by Mr L. Adio of IAS. Mr T. Wilkie, a Home Office Presenting Officer, appeared for the respondent.
3. Immigration and appeal history
4. The respondent is now 23 years of age. She arrived in the United Kingdom on 28th June 1998 and attempted to secure entry using a passport to which she was not entitled. She claimed asylum on arrival.
5. The reasons for refusal letter is dated 22nd October 1998 and the notice containing the decision against which the respondent appeals, 2nd December 1998.
6. The Special Adjudicator heard the appeal on 7th July 1999 and her determination was promulgated on 5th August 1999. Leave to appeal appears to have been granted on 12th August 1998, but this must have been 12th August 1999.
7. The hearing before the special adjudicator and her determination
8. The Special Adjudicator heard oral evidence from the respondent. She found her to be a credible witness, although extremely naive and trusting. However, she came from a poor family in a rural area of the Ukraine.
9. In summary the basis of the respondent's claim was that, whilst working in a market in the Ukraine, she was approached by a man who offered her

employment as a nurse in Budapest. When she arrived in Budapest she was met and taken to a flat where she was raped, sexually assaulted and then forced to work as a prostitute for two months. She was guarded but eventually, with the help of one other captors, was able to return to the Ukraine. Whilst she was there the same man helped her obtain the necessary documents with which she travelled to the UK.

10. Whilst she was in the Ukraine the respondent did not go to the police because she did not believe they would help her. She did not contact her family until after she arrived in the UK. When she did so they told her not to come back to the Ukraine because people had been to their home looking for her. They had made threats and were believed to be involved with the Mafia.

11. The respondent was afraid to return to the Ukraine because the members of the Mafia from whom she had escaped would find and kill her.

12. The Special Adjudicator concluded that the respondent belonged to a particular social group, defined as "women trafficked from the Ukraine to other countries for sexual exploitation and detained under threat of violence." She found that those who held and abused the respondent were agents of persecution because the authorities in the Ukraine were unable to provide the appellant with sufficient protection. The country information supported the respondent's claims and fears.

13. The Special Adjudicator found that internal flight was not a realistic alternative because she would be tracked down whenever she was in the Ukraine. The respondent had established a well-founded fear of persecution for a Convention reason. Her appeal was allowed.

14. This appeal

15. The appeal against the determination of the Special Adjudicator is on the basis that the respondent does not belong to a particular social group. There is no appeal against the positive credibility finding, the findings of fact, or any other conclusion.

16. The grounds of appeal submit that the group defined by the Special Adjudicator was a very specific group which did not relate to all women belonging to a particular age group or who had any other identifying characteristic. It was not a group with particular characteristics recognised by society.

17. It was submitted that the social group identified by the Special Adjudicator would only be apparent to those who were trying to find such women. It would not be apparent to others that anyone was a member of the group unless it was by reason of the harassment they suffered. The Special Adjudicator had misapplied the law laid down by the House of Lords in *Shah and Islam*.

18. At the hearing before us Mr Wilkie submitted a copy of the Tribunal determination in the case of *Storozhenko* (19935). The respondent did not fall

into a category whose characteristics would be recognised by society or against whom society would discriminate. It was necessary for society both to recognise and discriminate against a member of a particular social group. The appellant was a victim of crime. Victims of crime in the Ukraine could not be members of a particular social group. In reply to our question Mr Wilkie submitted that the respondent would not belong to a particular social group if she had been persecuted by criminal elements in the Ukraine even if the authorities had not provided her with a sufficiency of protection.

19. Mr Adio submitted that the respondent belonged to a group, which was recognised by society, namely women who were sexually exploited. She was not involved willingly. She was gullible but not willing. The Special Adjudicator found her to be a credible witness. She also found that the authorities in the Ukraine only rarely persecuted men for this sort of offence. When analysed, the particular social group to which the respondent claimed to belong was not that different from the particular social group identified in Shah and Islam. The inalienable characteristic possessed by the group was that all of them were women.

20. Conclusions

21. Our conclusion as to whether the respondent belongs to a particular social group must be taken in the context of the Special Adjudicator's findings of fact, none of which have been appealed or were disputed at the hearing.

22. The Special Adjudicator found that the respondent had been persecuted by criminal elements in the Ukraine, collectively referred to as the Mafia. They had tricked her into travelling abroad where she was held against her will, raped, sexually assaulted and forced into prostitution. After escaping back to the Ukraine she left that country and came to the UK. The Mafia in the Ukraine was looking for her. She feared that if they found her she would be killed. The Special Adjudicator accepted this and that the authorities in the Ukraine could not provide her with a sufficiency of protection. She concluded that the respondent had a well-founded fear of persecution for a Convention reason.

23. The Special Adjudicator, who heard the respondent give evidence is, in the absence of manifest error, the best judge of her credibility. There is no such error in this case. The findings of fact were supported by the country information. The Special Adjudicator cited the US Department of State Report, which states "Ukraine is an important source country of girls and women trafficked to central and Western Europe and the Middle East for sexual exploitation. The International Organisation for Migration estimated that 100,000 Ukrainians had been trafficked abroad for this purpose since 1991". The same report stated "the authorities rarely prosecute men for engaging women in the explosively growing sector of sexually exploitative work". There was further evidence from the Traffic in Migrants quarterly bulletin for June 1998 and the July 1998 report from the International Organisation for Migration entitled "Information Campaign against Trafficking in Women in Ukraine".

24. The opposite view to the conclusion that the authorities in the Ukraine are unable or unwilling to provide a sufficiency of protection can be found in the Tribunal determination the case of Storozhenko (19935). Mr Wilkie drew our attention to this determination, which states "there is no doubt that human rights abuses continue in the Ukraine. Furthermore, the police, security services and judiciary clearly face a major problem resulting from corruption and the influence of criminals. Nevertheless, the State is seeking to do something about the situation. The government has taken steps to punish officials who have offended and to purge local law enforcement agencies of corrupt elements. The process is a slow one, but the machinery is there and it is quite impossible to say that the government is unable or unwilling to provide protection. This does not mean that such protection is always available: it is not, as the experiences of the appellant perhaps indicate. But there has not been such a breakdown of law and order as means that citizens are without protection".

25. We find, albeit narrowly, that the situation for the respondent in this appeal differs from that of the appellant in Storozhenko (19935). Storozhenko was an honest law abiding citizen who tried to have the law enforced. The respondent in this appeal was one of many abducted by criminal gangs for the purposes of prostitution. The reports before the Special Adjudicator indicate that the authorities rarely prosecute those who commit such offences. Doubtless the substantial sums of money involved help preserve what appears to be endemic corruption in this area.

26. In this case, unlike Storozhenko (19935), there is no suggestion of perceived political opinion.

27. To follow the reasoning of Lord Hoffman in Shah and Islam women in the Ukraine would, like women in Pakistan, belong to a particular social group if they were discriminated against and unprotected by the state. We are unable to find that all women in the Ukraine belong to a particular social group because they are discriminated against and unprotected by the state. There is no evidence of deep-rooted discrimination against all women in the Ukraine as there is in Pakistan.

28. However, the group does not have to be as wide as this. There may be a smaller group, which is a particular social group. We do not think the group needs to be as narrow as that suggested by the Special Adjudicator. We cannot see that it is essential for a woman to be sent abroad for the purposes of prostitution. The threat of violence does not need to be present all the time, although it is likely to be present at some stage. We find that there is a particular social group, which consists of women in the Ukraine who are forced into prostitution against their will.

29. The unifying factors of such a group are their gender, coercion, prostitution, societal recognition, persecution and the lack of State protection. Before Shah and Islam it was thought that the persecution feared by a group could not help define it. This is no longer the case, although a group cannot

be defined by persecution alone. The group we have defined exists independently of the persecution it fears.

30. Such a group has a common immutable characteristic. All those who come within the group are women. The fact that they have become prostitutes and have been forced into prostitution is not and does not need to be obvious or apparent. We reach this conclusion by analogy with homosexual men who have been held to belong to a particular social group in certain countries in circumstances where their immutable characteristics are not apparent.

31. The group we have defined is not cohesive but, following Shah and Islam, it does not need to be.

32. One of the tests reiterated in Shah and Islam is that an individual must have been persecuted "for reasons of" her membership of that group. It is clear that, whether the definition of the particular group is taken to be that found by the Special Adjudicator or as we have suggested, the respondent belongs to and was persecuted because of her membership of that group.

33. On the question of whether the particular social group is recognised by society the Special Adjudicator does not appear to have had information as to whether such a group would be recognised within the Ukraine. However, there is evidence that such a group is recognised outside the Ukraine. The US Department of State Report referred to 100,000 Ukrainian women trafficked abroad for the purposes of prostitution since 1991. The problem is recognised in the other reports to which we have referred. These reports show that the situation has achieved international recognition and discussion. It would be reasonable to conclude that a problem of this magnitude, which has achieved international recognition, is likely to be mirrored by societal recognition within the Ukraine.

34. Mr Wilkie submitted that the respondent was a victim of crime and that victims of crime could not be members of a particular social group. We cannot see that being a victim of a crime precludes the victim from membership of a particular social group. If this was the case women victims in Pakistan who were, for example, killed or seriously injured, would cease to be members of a particular social group because their attacker was guilty of a crime. This cannot be the case. The test is not whether what happens to the sufferer is a crime but whether the sufferer belongs to a group which is discriminated against and unprotected by the State. We find that women in the Ukraine who are forced into prostitution against their will are discriminated against and unprotected by the State. We have already referred to the question of lack of protection. The discrimination arises because members of this group are not accorded the same protection as other women or other people in the Ukraine. The differential element in the lack of protection results in the discrimination.

35. Mr Wilkie argued that it was necessary for society both to recognise and discriminate against a member of a particular social group. It was not sufficient if only a very limited section of society, such as the Mafia in the Ukraine, discriminated against the respondent. In our judgement this is to

confuse discrimination with persecution. The Mafia in the Ukraine is not likely to discriminate against the respondent; they are likely to persecute her. Indeed, the Special Adjudicator found that they were likely to kill her.

36. We find that, in a situation where society in a country recognises the existence of a particular social group, and the authorities are unable or unwilling to provide a sufficiency of protection, it is not necessary for society as a whole, or even the majority of society to persecute that individual. Discrimination by society as a whole will be a relevant element but, even where it exists, does not have to extend to hostile acts against individual members of the group. Whether or not society approves of the situation, a climate of corruption in which the authorities are unable or unwilling to provide a sufficiency of protection will suffice. There was no evidence directed to the issue but the reality may be that many societies discriminate against prostitutes.

37. In the particular circumstances of this case and in the light of the undisputed findings of the Special Adjudicator we find that the respondent belongs to a particular social group, namely women in the Ukraine who are forced into prostitution against their will.

38. For these reasons we dismiss the appeal of the Secretary of State.

Mr P R Moulden
Chairman