

ASYLUM AND IMMIGRATION TRIBUNAL

GM (Senior members of the Democratic Party and their families at risk) Azerbaijan
[2005] UKAIT 00147

THE IMMIGRATION ACTS

Heard at: Kings Court, North Shields
On 19 October 2005

Determination Promulgated

20th October 2005

Before:

Mr Andrew Jordan, Senior Immigration Judge
Mr L.D. Sacks, Immigration Judge

Between:

APPELLANT

and

The Secretary of State for the Home Department

RESPONDENT

For the Appellant: Mr G. Denholm, counsel (FRU - Holborn)
For the Respondent: Mr B. Craven, Home Office Presenting Officer

DETERMINATION AND REASONS

Senior members of the Azerbaijan Democratic Party have been arrested and imprisoned in a effort to stifle opposition to the government in circumstances that amount to persecutory treatment. There is background evidence that family members of such persons are also at risk.

1. The appellant is a citizen of Azerbaijan who was born on 24 July 1982. He is 23 years old. He arrived in the United Kingdom on 1 February 2004 and claimed asylum the following day. The Secretary of State made a decision on 23 March 2004 to refuse his asylum claim and a second decision on the same day refusing to vary his leave to remain in the United Kingdom. The immigration decision gave rise to a right of appeal under

section 82 (1) of the Nationality, Immigration and Asylum Act 2002 which the appellant duly exercised on 13 April 2004.

2. At the hearing before the Immigration Judge, Mrs N. Bircher, promulgated on 8 July 2004, the Judge allowed the appeal on asylum as well as human rights grounds. The Secretary of State appealed the Judge's decision on the basis of a procedural irregularity. The Tribunal (Miss K. Eshun, Senior Immigration Judge) directed that the appeal should be reconsidered by a panel. Her reasons for doing so were as follows:

"There was a procedural impropriety on the part of the Immigration Judge. The respondent made an application to tender documentary evidence in relation to the appellant's application for a visa. According to the grounds of appeal the information was in the form of a letter and a copy of the appellant's visa interview from the British Embassy in Baku, Azerbaijan. According to paragraph 9 of the determination the Immigration Judge refused the application because the HOPO was not in receipt of the document and it was unclear when it would actually arrive if at all that day. When the documentary evidence arrived later that morning, according to the grounds, the application to submit the documents was renewed. The Immigration Judge declined the application; it would appear for the reason as before.

Whilst we accept that the Immigration Judge had good reason to refuse the initial application, we find that she did not give any good reason for refusing the application when it was renewed. Maintaining the decision seemingly for the same reason, when the HOPO had the document was an error of law. We also find that as the appellant had denied in cross-examination that he had applied for his own visa and had not attended the British Embassy on any occasion, the additional information may have made a material difference in the Immigration Judge's assessment of the credibility of the appellant."

3. When the matter came before us, the material issues raised in the appeal did not involve the appellant's credibility. It is clear that the Secretary of State was concerned that the Immigration Judge had not permitted the Presenting Officer to raise issues centred upon the fact that the appellant had visited the Embassy and had been interviewed. In the course of the interview, he had stated that there were no problems to stop him returning. In addition, in order to gain access to the Embassy, the appellant had been required to pass in front of a number of Azerbaijani policemen. More important still, when asked about the visit to the Embassy, the appellant had denied it taking place. We now know that there was more than one such visit.
4. Notwithstanding issues relating to the appellant's own conduct, it is common ground that the appellant's family are leading members of the Azerbaijan Democratic Party. Information extracted from news reports establishes that Sardar Jalaloglu Mammadov, secretary-general of the Azerbaijan Democratic Party was one of seven men sentenced on 22 October 2004 in the Court of Grave Crimes in Baku on charges of organising or participating in mass disturbances which followed the

- violence that erupted during protests following the October 2003 presidential elections. Independent observers found that the government's election victory was a result of elections that had been fraudulently conducted. There was substantial and compelling evidence that Sardar's conviction was a means of suppressing dissent and designed to prevent the activities of the Democratic Party. Sardar is the appellant's uncle. His son, Jalal, has been recognised as a refugee in the United Kingdom. The basis of the grant of leave to remain was his relationship with Sardar.
5. Gurban Jalaloglu Mammadov is the brother of Sardar and the appellant's father. It is accepted that he was arrested and detained for five-years as a result of his political activities with the Azerbaijan Democratic Party, although he was released in February 2003. He was, however, re-arrested in October 2005. Once again, this evidence is uncontroversial. It appears, for example, in a Radio Free Europe bulletin for 17 October 2005.
 6. The activities of the Azerbaijan Democratic Party has come to the attention of the international press in recent days with the decision of its chairman, Rasul Quliyev, to return to Baku from his exile in the United States. He left London on a chartered flight on 17 October 2005 amidst some publicity. The news report indicated that the Azerbaijani police had blocked the main road to Baku's main international airport in anticipation of Mr Quliyev's return. The Interior Minister warned journalists and diplomats to stay away from the airport. The arrest of the appellant's father appears to have been related to the ADP chairman's return. We understand from Mr Denholm, who appeared on behalf of the appellant, that Rasul Quliyev was refused clearance at the airport and was diverted to Ukraine where he was arrested and held in custody. It appears that there is an arrest warrant issued by the Azerbaijan government that is being considered by the Ukrainian government. There is little doubt that these manoeuvres are politically orchestrated in an effort to still opposition.
 7. We are satisfied that the background material establishes that senior members of the Democratic Party are at risk of arrest and detention. The background material establishes that those held in detention are at risk of ill-treatment.
 8. There was before the Immigration Judge material from the Human Rights Watch Report that the Azerbaijani police use violence to extract confessions and pressurised detainees to sign false statements denouncing opposition leaders. That same report indicated that members of opposition parties *and their families* were more likely to experience arbitrary arrest and detention than other citizens. Accordingly, the Immigration Judge found that the appellant was himself at risk as a result of he is family connections. That finding is consistent with the grant of leave to remain in favour of Sardar's son, Jalal.
 9. Jalal was recognised as a refugee in the wake of a determination of his appeal promulgated in May 2004. The Adjudicator, Mr Michael D. Oakley, recorded in paragraph 31 of his determination that the Secretary of State accepted in the refusal letter relating to Jalal that members of opposition parties and their families are more likely to experience arbitrary arrest and detention than other citizens. He had before him evidence that the Secretary of State had clearly accepted that situation in practical terms by

granting refugee status to a number of Jalal's extended family. He concluded that there was every likelihood, notwithstanding the fact that the appellant may not have suffered treatment that would amount to persecution whilst he was in his country, that he would do so if he were to be returned. The Secretary of State did not appeal that determination. The situation in Azerbaijan since then has, if anything, deteriorated as far as the Democratic Party is concerned.

10. At the commencement of the hearing, both parties sought additional time in which to take instructions. At the conclusion of his consideration of the papers, Mr Craven, who appeared on behalf of the Secretary of State, no longer sought to pursue the reconsideration of this appeal. By so stating, he accepted that the appeal should be allowed.

DECISION

- (1) The Adjudicator made a material error of law.
- (2) The following decision is accordingly substituted:
 - a. the appeal is allowed on asylum grounds;
 - b. the appeal is allowed on human rights grounds.