



**Upper Tribunal
(Immigration and Asylum Chamber)**

SL (Unmarried mother with mixed race child) Azerbaijan CG [2012] UKUT 00046 (IAC)

THE IMMIGRATION ACTS

**Heard at Field House
On 27 January 2012 and 16 April 2012**

Determination Promulgated

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Before

**UPPER TRIBUNAL JUDGE FREEMAN
UPPER TRIBUNAL JUDGE MCGEACHY**

Between

**S L (1ST APPELLANT)
D L (2ND APPELLANT)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- 1. Azerbaijan is a country with high levels of corruption and there is clear evidence that political dissent is not tolerated.*
- 2. There is nothing to indicate that the State would in any way penalise unmarried mothers (approximately 10% of mothers) or those who have mixed race children. There are in place some support mechanisms for single parents.*
- 3. In order to access benefits, accommodation or work, a residence permit (a propiska) is required. There is nothing to indicate that Azerbaijanis who have lost their propiska would be unable to obtain a replacement. Children have access to education. There is some*

evidence that Government officials may require blat – a system of favours, from those who need to obtain housing or other benefits but there is nothing to suggest that that system is universal and would mean that those who refused to offer blat would be shut out from accommodation, schooling or other benefits.

- 4. Although the Azerbaijani Government has ratified most Conventions relating to human rights and the compliance with the norms therein is improving, the reality is that the improvement is from a low starting point. Many NGOs dealing with human rights exist in Baku and there is also an Ombudsman to whom complaints can be made.*
- 5. Although in the early 1990's there was discrimination against those of Russian ethnicity the situation for them was normalised by 1996. Ethnic Russians make up approximately 8% of the population. Prejudice may still exist but 80% of Ethnic Russians are in work - only slightly fewer than those in work in the population as a whole (83.7%).*
- 6. There is some discrimination against Christians but there is freedom for Christians to practice their religion.*
- 7. Azerbaijani society, particularly in rural areas, is traditional and attitudes to women are conservative - nevertheless approximately 10% of mothers are unmarried. Family support networks (krisha) are a strong feature of family life and benefit family members, for instance when obtaining work.*
- 8. Although the concept of family honour among more traditional families in Azerbaijan (namus) exists there is nothing to indicate that there is a real risk of honour killings or other ill-treatment of those who are considered by members of their families to have brought dishonour on the family. Nor is there any indication that there would not be a sufficiency of protection for those women.*
- 9. Azerbaijan is a traditional society and those who do not fit in, such as those of mixed race may well face discrimination and prejudice. Armenians and Lezghins are particularly likely to face discrimination.*
- 10. There is nothing to indicate that a single parent without parental support or her child would face treatment which would either amount to persecution or cross the threshold of Article 3 ill treatment.*

Representation:

For the Appellants: Mr J Collins, of Counsel instructed by Messrs Montagues
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Ms SL is the mother of the second appellant. In this determination we refer to the first appellant as “the appellant”. They are citizens of Azerbaijan. They appeal against decisions of the Secretary of State made on 6 August 2009 to remove and to refuse asylum. Their appeals were heard by Immigration Judge Malins on 25 November 2009 and dismissed. Applications for reconsideration were then made. An order for reconsideration was made by Senior Immigration Judge Jordan on 11 January 2010 and on 24 March 2010 His Honour Judge Pearl, sitting as a Judge of the

Upper Tribunal, found that there was a material error of law in the determination of Immigration Judge Malins ("the judge"). In his decision he indicated that this appeal should come before the Upper Tribunal as a possible country guidance case.

2. The appellant arrived in Britain on 22 October 2004 and travelled to Antigua on 27 December 2004. She returned on 9 January 2005. Her leave to enter expired on 21 April 2005. The appellant overstayed. In 2007 she gave birth to D, the second appellant. Her application for asylum was made on 13 July 2009.
3. The basis of the appellant's claim was that she feared returning to Azerbaijan because her family had told her that she would be killed and that her son would face discrimination because he was of mixed race - her son's father was "black". She was of Russian ethnicity and a Christian.
4. The judge appeared to find that the appellant was credible in so far as what she said her family had said to her but did not accept that the appellant would face persecution on return. She did not accept the conclusions in a report by Mr Robert Chenciner which was before her.
5. Senior Immigration Judge Jordan ordered reconsideration on the basis that the judge had not provided adequate reasons for rejecting Mr Chenciner's evidence. That indeed was the reason that His Honour Judge Pearl found a material error of law in the determination. In his decision, which is at annex 2 hereto, he referred to Mr Chenciner's report which had stated:-

"... The main risk appears to me to be from the appellant's traditional family in the form of a punishment to the appellant and her son for besmirching family honour according to *adat* customary law. In her case she risks severe beating or being put to death."

In his decision His Honour Judge Pearl indicated that it might be appropriate for this appeal to be used as a country guidance case as this appeal was "the first of its kind" and that it would be appropriate to hear evidence from Mr Robert Chenciner. The appeal was then listed as a country guidance case before us. Before the hearing Mr Chenciner prepared a second report and he gave oral evidence at the hearing.

6. The first report of Mr Chenciner is dated 30 September 2009. That was the report before the judge and before His Honour Judge Pearl. A second report was prepared for the hearing before us on 27 January. At the end of the first day of hearing and after we had heard submissions from both representatives Mr Collins indicated that he wished to make further written submissions. These were received at the beginning of February but with them was included a document from Mr Chenciner entitled "Further submissions re asylum appeal of Mrs S L" and are referred to herein as the third report.

Evidence: First and second reports of Mr Robert Chenciner.

7. Mr Chenciner is well known for his reports on conditions in the countries of the Caucasus to which he has travelled over many years. He was, however, last in Azerbaijan in 2003. In paragraph 1.2 of his first report, he gave his gloss on the appellant's family circumstances, stating that after her father had been killed in 1991 her mother had remarried an ethnic Azeri Muslim and converted to Islam with the appellant's upbringing changing from Christian to Muslim "with strict regulation of her as a daughter". He noted, however, that she continued to attend a Lutheran church until she had left Azerbaijan. He said that the appellant had two brothers, the eldest, S, being a strict Muslim, and the youngest, O, being a Christian (he had in fact transposed their names). He noted that the appellant said that her step-father worked in "offshore oil gas industry metal construction", her eldest brother worked in the fish industry and her younger in furniture construction. Her mother had worked as a nursery teacher.
8. Having referred to the appellant's relationship with D's father, he then described the appearance of the various ethnic groups in the Caucasus.
9. In paragraph 2.1.1 he stated that in Azerbaijan, as in other Caucasian countries, marriage was important as re-affirming order in society and clan structures. Initial negotiations were controlled by parents and if the prospective bride or groom wished to refuse marriage, that must be done early on in the negotiations. Wedding festivities are expensive and the status and future of both families were linked to a good marriage. He went on to say:-

"Traditional Azeri families reflect a macho male patriarchal society and if a daughter were to upset the rules of conduct, the social consequences for both families is shame and disgrace with possible violent reprisals according to customary law based on avenging family honour."

10. He added:-

"With regard to the appellant, her step-father and Islamic religious half-brother, following her widowed mother's remarriage and conversion to Islam, would view having a child outside wedlock as a family insult, especially if that child were noticeably different i.e. black. It is a disgrace against the family honour and a denial of the important societal process of marriage in union with another suitable Azeri family. The result is that they would want to take violent continual revenge on her, even after divorce for dishonouring their name and losing the family a structural kinship opportunity as well as a possible substantial sum of money in dowry. Her mere presence in Azerbaijan with her child would likely be seen as a constant reminder of their perceived dishonour and they would do whatever was necessary to remove her, to beat her and punish her, or to prevent her working or otherwise leading a normal life - and even kill her."

Having referred to a book which he called a “Caucasian Romeo and Juliet” published in 1937 which set out the tragic consequences of a mixed love match he then referred to the planned murder of Sardar Bibi, a British born ethnic Pakistani, in January 2003, who was killed by her cousin because she persuaded her father to allow a love match as opposed to an arranged marriage.

11. He said:-

“In terms of local customary law having an illegitimate black child would be a festering and public source of disgrace to the family. Accordingly by traditional unwritten rules, her stepfather would kill her with impunity unless she fled away from the community.”

He then referred to an Institute for War and Peace Reporting article written in August 2006 (Social taboos are slowly being lifted on women marrying men from other countries. 9 August 2006 Samira Ahmedbeili, CRS Non 352, IWPR) and said that there was a long way to go before international marriages were accepted in Azerbaijan.

12. He referred to a 2001 “comment from Azerbaijan which stated that Azeri women found themselves under tight societal restrictions regarding dating, marriage and divorce”. Young people and especially young women are expected to live at home and with their parents until they marry. The restrictions on young women are strongly reinforced by the social fear of what older men and women would think and say about that.

13. He referred to a report entitled “Women’s issues, update 22 June 2004 Fact Sheet Azerbaijan at a glance” which stated that divorce was legal in Azerbaijan but society would not let people divorce if they kept living together even if the marriage was pretty much finished and moreover that Baku-ites estimated that about 60% of young people married for love while 40% found themselves in family arranged marriages. The percentage of arranged marriages was higher in the outlying areas of the country.

14. He added:-

“Comments on traditional life in rural Azerbaijan - as opposed to Baku the relatively cosmopolitan capital where she lives - would apparently apply to her and her child not being accepted, were she to relocate.”

15. He then referred to the harassment the appellant would be likely to suffer saying that she might be insulted if she went shopping with her child with terms such as “prostitute” and that she would face societal discrimination.

16. He referred to the *blat* favour system which would mean that as an unprotected woman the appellant would frequently be expected to grant sexual favours in return for state co-operation at a local level. He referred to a report which said that about

30% of women experienced sexual harassment at work, 55% of all women had experienced sexual harassment and in 15% of the cases the perpetrator was the stepfather.

17. He then referred to the *adat* or customary law stating that it was likely to be followed by her traditional Islamic half-brother and stepfather. As she had not followed her mother in converting to Islam, she had had a child out of wedlock and was not married and that as her son was “recognisably half black” which would mean that, even if she married an Azeri, it would not disguise her son’s ethnicity. He went on to say:

“She has accordingly besmirched her stepfather’s [large] family and clan honour. Accordingly by traditional unwritten rules, [*adat*] his family or in-laws or other linked agents would punish her or kill her with impunity unless she fled away from the community e.g. Azerbaijan”.

18. He stated that in Azerbaijan there had been a return to a traditional customary law against a background of government corruption and often impotence.
19. He explained that *adat* had originally arisen in isolated regions such as mountains, steppes or desert where there were “endogamous societies and lawlessness”. As it had become more developed it had been adopted as a parallel law system especially in areas where there was a power vacuum caused by conflicts and wars, generally in villages and agrarian societies. With urbanisation it had evolved in the towns.
20. He then referred to Georgia accepting Russian “protection” before stating that before their conquest of the Caucasus in 1859 the Russians had defeated the charismatic Imam Shamil from Dagestan who had been unable to impose Sharia law over customary law.
21. He stated that *adat* was based on honour and applied to a defined kinship group – the “sib” which is smaller than a clan but larger than a family. The legal framework of *adat* was based on “an eye for an eye” and was usually interpreted as material compensation for damage “for example a cow, but can also result in killings”.
22. He then referred to blood feuds which could arise from:

“an untoward advance to a woman, disgrace of family honour by (for example a scandalous broken wedding agreement, or bride kidnapping, usually by a suitor who could not afford the bride price or because he was from a different and unacceptable religion or ethnicity much of which may apply here”

before going on to say that a rare positive aspect of the Soviet regime was the abolition of the blood feud in the Caucasus.

23. Mr Chenciner then returned to the position of ethnic Russians in Azerbaijan stating that before 1991 they had held most sensitive civilian jobs. However, thereafter there

was an exit of ethnic Russians from Azerbaijan until 1996, when that exit stopped and life in the Republic had returned back to normal. He stated however that “Over the past ten years the number of Russians living in Azerbaijan has fallen to 141,700 or 1.8% of the population from a figure which was thought to be approximately 5.3% of the population in 1989. Most ethnic Russians live in Baku. It is said on government estimates they made up 8% of the population of 2 million. He indicated that many young ethnic Russians would, on graduation from high school or university leave for Russia where there were greater employment opportunities.

24. He referred to anti-Russian prejudice and the fact that Russian was no longer the main language and said that Azerbaijanis were justifiably anti-Russian.

25. He also stated that:-

“As with anti-Armenian racism in Azerbaijan where virtually all Armenians have left there are no reports of anti-African racism because there are virtually no black people there. The only reports of black people in Azerbaijan are foreigners who are temporary residents – a few students in the State Oil Institute, perhaps a few other students, and a few diplomats. One man from the Sudan was murdered in a mass shooting in the State Oil Institute on 30 April 2009.”

26. He went on to refer to anti-Arab prejudice.

27. He gave details of the *propiska* registration and relocation system and stated:-

“If you are moving address, then your local authority is required to see your previous residence permit [sic] ... If Miss L were now to live without *propiska* she would be constantly stopped and detained by police. Criminalised and outlawed, she would be denied accommodation, care or education for her son, employment, healthcare and police protection such as it is.

She stated in a reply question 2.6 that she had an internal passport but lost it. If she returned to her local registration office, called by the Russian name *ovir*, she would be given a copy after explaining how it was lost and paying charges and likely bribes. If you don't have an internal passport you can't get a *propiska* stamp on it. To get an internal passport you need to give basic information: married/divorced; name of husband; name and ethnicities of parents. The catch 22 is used by Azerbaijani authorities to prevent Azeri refugees from Armenia and Nagorno Karabakh and others from the Caucasus [such as Chechens] – unless they pay bribes – from registering or getting some legal status as an IDP or forced migrant.”

28. He added:-

“Miss L would likely meet with no cooperation from the Azerbaijani authorities, who were not even giving *propiskas* to Azeri refugees. The only exceptions are made to wealthy businessmen known to the authorities who pay large bribes to officials. This criminalises the businessmen and can be used for control and extortion by the authorities.”

29. He commented that given that the appellant was a Lutheran Christian it would be a contributory factor in that "Police would likely ignore requests from a Protestant Christian if she asked for protection from a family blood feud or honour killing". Having set out details of the persecution of Baptists in Azerbaijan and other converts to Christianity he referred to the position of Muslims in Azerbaijan who were repressed during the Soviet period and said that this had created deep prejudice against Orthodox Christians who although discouraged, were allowed to worship.
30. With regard to employment which was controlled by the state he stated:-
- "a denial of employment is another form of State discrimination in Azerbaijan, usually used against perceived oppositionists. Most employment in Azerbaijan is linked to state enterprises or local government. This would likely affect the appellant as a Christian ethnic Russian who cannot speak Azeri."
31. He referred to meeting a Scottish lawyer who told him that virtually all employment in Azerbaijan was controlled by government agencies with the exception of specialists employed by international oil companies and associated businesses.
32. He commented that it was plausible the appellant's son would be bullied at nursery and school because he is black and his mother is Russian and unmarried. He stated that this was similar to the bullying of part-Armenian children.
33. In section 4 of the report he summarised the appellant's position as follows:-
- "To repeat the main risk appears to me to be from the appellant's traditional family in the form of a punishment to the appellant and her son for besmirching family honour according to *adat* customary law. In her case she risks severe beating or being put to death. If she returned without her young son, i.e. if she abandoned him, then there would be a lower level of risk to her. The risk is increased because the corrupt police would be unwilling or unable to protect her or her son for a combination of reasons: her Russian ethnicity, her Lutheran religion, her son being black, their not being able to speak Azeri. She is at further risk from the traditionally minded police and public as a woman on her own with a noticeably illegitimate child and a climate of sexual harassment and in a society where domestic violence is considered a private family matter. The child is at risk of psychological abuse and of further physical bullying in school in a corrupt education system and, in the street, because of his colour and the rarity of black people in Azerbaijan. While she lived at home she had protection from her step-father, an ethnic Azeri, which has now disappeared. She and her child do not speak Azeri, so if returned, because of the compulsory Azeri language laws, she would be unable to get a state-linked job, where the state is the main employer, and education would be in Azeri."
34. Attached to his report were appendices dealing with human rights setbacks in Azerbaijan, police corruption, prison conditions, the *blat* system and lack of peace prospects for Nagorno-Karabakh.

35. He then commented on anti-Armenian racism in Azerbaijan and the position of Azeri Internally displaced persons (IDPs) who were being expelled from Nagorno-Karabakh and Armenia.
36. With regard to the political system he referred to the virtual dictatorship of President Aliyev.
37. Shortly before the hearing Mr Chenciner had produced an updated report endorsing his previous report. In a section which referred to black visitors he stated there were very few black people in Azerbaijan, there were virtually no black visitors and no black permanent residents.
38. He referred to the position of a black footballer for whom a football club had been unable to obtain a work permit, before noting that there were a number of Azerbaijani basketball players who appeared to be Afro-American.

Oral evidence of Mr Chenciner on 27 January 2012.

39. In his oral evidence, Mr Chenciner referred to a report from the European Commission against Racism and Intolerance (ECRI) which had stated that, in Azerbaijan, progress had been made in a number of fields. He stated that he accepted there had been some improvement but stated that progress related to things to which the government agreed but had not necessarily implemented. He stated that there remained virtually institutionalised racism against Armenians which meant that other forms of racism were likely to thrive.
40. He was referred to the position of the Ombudsman and said that matters that were referred to him were merely referred back to the police. He then went on to say that the Lezghins considered themselves second class citizens and did not complain about discrimination against them. However, they came from a remote area.
41. Mr Chenciner added that the authorities took the view that if matters which were problematical were not recorded, they could pretend that there was no racism and would therefore be able to get foreign aid. He accepted, however, that Azerbaijan had substantial oil revenues, but stated that these were often siphoned off by the family of the President.
42. He referred to the inability of the appellant to move to an area outside Baku stating that in other areas there was great pressure on facilities. Ethnic Azeris would obtain preference in any event.
43. He emphasised that in order to obtain work *blat*, that is a favour, would be required by the person giving the appellant work. He referred also to *krisha* protection – the protection which a woman would normally have as part of a family.
44. He said that the Azerbaijani State Statistical Committee's report has stated in 2009 11.5% of live births have been born outside an officially registered marriage.

45. He was referred to the letter from the Foreign and Commonwealth Office dated 14 January 2011 which stated that:-

“RE: “Is there any evidence that single mothers with a mixed race child (Caucasian/black) would suffer societal discrimination or that the mixed parentage child would?”

In general it should be noted that Azerbaijan acceded to the Convention on the Elimination of All Forms of Discrimination against Women in July 1995 and Articles 25 and 26 of the Azerbaijani constitution declares all people as equals.

The advice from our Embassy in Baku is that it is socially acceptable for Azerbaijani’s to marry a non-ethnic Azeri, but the majority of these marriages are to Turkish, Russian, British or other Muslim Middle Eastern Nationalities. Marriages to Black and Chinese minorities are less common as there are very few black and ethnic minorities in Azerbaijan, and therefore children of mixed race are rare.”

46. He stated that it was difficult to form any idea of the climate of racism in Azerbaijan as there were so few “blacks” there but taking into account the position of the Armenians, the few Yazidi Kurds and other ethnic groups the situation was not good. He emphasised that it would be difficult for the appellant to move to a remote area as she would have to de-register and then re-register. Moreover, outside Baku society was more traditional and many ethnic Azeris, from Nagorno-Karabakh and Armenia would be higher up the queue. He added that Turkish spouses were certainly welcome and that many Russians had been in Azerbaijan for some time – mixed marriages had been encouraged in Soviet times. He emphasised that children born outside wedlock were uncommon in Azerbaijan and said that other children and teachers would ostracise a black child and that teachers would encourage that. He accepted that there were Chinese in the Caucasus but said that they would mostly live in their own barracks and indeed those working for BP, in the oil industry, would live in their own compounds.
47. He was referred to the Freedom House report which indicated the steps which the appellant could take to obtain help but he said that the appellant would have difficulty in approaching the authorities for help because of corruption and that the authorities would not help anyone without some return. Complaints of misbehaviour by the authorities would be ignored.
48. He was referred to evidence from NGOs including those in the human rights sector. He said that they would listen to the appellant but they would be unable to give her any effective help and indeed they mainly assisted Azeris. Their mandate was to assist Azeris, refugees and internally displaced persons.
49. He was referred to the ECRI report but said that he believed that there would be some censorship by the ECRI – they would not want to compromise themselves. Although groups such as the Roma or other minorities were not recognised as

having particular needs, the reality was that the prejudice against Armenians led to a climate of state sponsored racism.

50. Russians, he stated, would have difficulty in education because Azeri was the state language, although Russian was still the language of commerce in Baku.
51. It was put to him that the appellant's stepfather had allowed the appellant to travel to Turkey by herself and indeed to travel to England. He stated that he would probably not like her travelling but if she had not converted it might not be an issue. He indicated that a lot of young women from the Caucasus would travel to Istanbul to shop.

3rd report of Mr Robert Chenciner

52. In this report Mr Chenciner stated that he had been asked to submit references about the existence of a traditional patriarchal society in Azerbaijan. Having stated that access in Azerbaijan for ethnographical fieldwork was limited because it was a police state, he referred to fieldwork which had taken place since 1991, after the collapse of the USSR, which referred to the survival of traditional patriarchal society. He stated that that fieldwork supported his reports.
53. He first referred to a footnote in a paper of 2002 by a Fatima Zafiri on the importance of honour "*namu*" in Azerbaijan, with regard to women's misbehaviour, especially sexual misbehaviour which was thought to bring shame and dishonour not only on her but on her male protectors. He stated that that had been noted in other writings, including that of a Farideh Heyat whose report, published in 2006 had referred to the notion of *namus* regarding women's sexual conduct being "still strong in seemingly cosmopolitan Baku".
54. He referred to a report from a Nayereh Tohidi, whose fieldwork in 1991 had been published in 1996 and indicated that Azeri men "held on to anything associated with sexuality and *namoos* (honour) as an essential part of their national identity, a Soviet legacy". He then referred to a report by Dr Tamara Dragadze regarding her fieldwork in Azerbaijan in 1988-1991. He stated that her report had examined whether or not a resurgent Islam had been responsible for traditional disadvantages of women and that she had concluded that it had. Dr Tamara Dragadze, had emphasised "further education discrimination" from early arranged marriages.
55. A United Nations Population Fund Report referred to a number of patriarchal traditions, cultural assumptions about gender roles having emerged and then referred to the conclusions of the Azerbaijan Gender Information Centre which had stated that in almost all party programmes women were regarded primarily as mothers and guardians of tradition.
56. Section 3 of Mr Chenciner's further report referred to recent reports of "honour killings" involving Azeris "in Baku, in country parts of Azerbaijan, Russia and Germany". He only referred to one incident in Baku which took place on 2

November 2010 when a Baku resident, aged 28, had “knifed” his sister. Mr Chenciner stated that the man had been immediately arrested and had confessed that he had committed the murder because of “honour”.

57. There was a report of an 82 year old mother and her 54 year old daughter being killed in Serirabad about 170 kms south west of Baku. It was stated that the police were investigating the cause because there were no apparent witnesses.
58. In the Jalilabad region of Azerbaijan a man had killed his daughter, stabbed her husband and four other members of her family during a domestic quarrel in September 2011.
59. Mr Chenciner stated that an “honour killing” had been reported in St Petersburg and that an unnamed immigrant from Azerbaijan living there had been charged in April 2009 for hiring two other Azerbaijanis to kill his 21 year old daughter for wearing a miniskirt. An Azeri had also been sentenced in a court in Klebe in Germany as an accomplice to a Kurdish father who, in March 2009, had murdered his 20 year old daughter, because she had lost her virginity, in an “honour killing” in spite of earlier attempts by German social workers to protect her. The girl’s brother had apparently lured her with an Azeri friend to a lonely country road near the Dutch border before killing her.
60. He then referred to asylum being granted to an Azeri gay artist in France in 2011 who feared an “honour killing” because he was homosexual.
61. Finally, he referred to complaints from Azerbaijani officials about the ECRI reports in which an Azerbaijani official had called reports of intolerance as absurd.
62. He said that he would describe the appellant’s stepfather as a societal Islamic man – he reached this conclusion because the appellant’s stepfather worked in the oil industry and he said that it was probable that he would have liked the appellant to convert but was used in the Soviet Union “to dealing with things as they are”.
63. He stated that *adat* would have nothing to do with Islam as such. Russians who had lived in Azerbaijan would get “Caucasianised”.
64. He was referred to his comment in his report that in Dagestan he had learned that around about 1993 a girl had been murdered by her father for talking to a boy. He stated that the society was a “clan society” and that the grapevine would be very active. He said that everybody in Baku would ask about you wherever you went.
65. With regard to the appellant finding work, he stated that *blat* would be likely to be required. He accepted the medium of schooling under the Soviet Union had been Russian and that Azeri had only been adopted as the language for education in 2001.

Other background evidence.

66. We have considered the reports of Mr Chenciner and the background documentary evidence before us which comprise, *inter alia*, the State Department reports for 2009 and 2010, the Freedom House report "Freedom in the World, Azerbaijan" 2010, the Freedom House report "Nation in transit" 2011, the US State Department report on trafficking in Persons, 2011, the ECRI report of May 2011, the UN report on the rights of the Child March 2011 and the evidence from the British Embassy in Baku. A full list of the background documentation we have considered is at Annex 2 of this determination. We will address Mr Chenciner's evidence below but it will assist if we first summarise our evaluation of the other background evidence.
67. Having considered the State Department reports we accept that Azerbaijan has a "democratic deficit" and that there are restrictions on freedom of speech, prison conditions are poor and there is considerable corruption. We, however, note that the 2010 report refers to the major local human rights NGOs as being the Association for the Protection of Women's Rights, and a number of human rights organisations.
68. The section in that report on women refers to rape being illegal and carrying a maximum 15 years sentence and refers to cases of rape being brought against 15 persons as well as other cases of gender based violence being brought. However, there are no government sponsored programmes for victims of rape or domestic violence. The report states that:

"Women nominally enjoy the same legal rights as men; however, societal discrimination was a problem. Traditional social norms and lagging economic development in the country's region continued to restrict women's roles in the economy, and there were reports that women had difficulty exercising their legal rights due to gender discrimination. Women were underrepresented in high-level jobs, including top business positions. A local NGO reported that women's salaries were on average 70 percent of men's salaries."

What we consider to be telling is that the State Department reports makes no reference to the "*adat*" system nor to any incidences of "honour killings".

69. We reach a similar conclusion when reading the US State Department report on Trafficking in Persons, 2011. There are clearly attempts by the Government of Azerbaijan to stop the exploitation of women and provide some support for those who have been trafficked. The reality of course is that this appellant has not been trafficked and that report is not relevant to her situation. We note that the EU working paper on the European Neighbourhood Policy refers to 50 NGOs addressing women's issues, the rights of children to free education, which is compulsory up to the age of 17, and minimum free health care for children although the US State Department Report of 2010 refers to the standard of education and health care for children as being low. The Data Base of gender focal points in Azerbaijan refers to 64 women's organisations including a number concerned with the protection of women from violence. The 2007 report on the implementation of that policy, refers

to the establishing of women's counselling centres and states that freedom to practise religion is largely secured.

70. The Freedom House "Nation in Transit 2011: Azerbaijan" report refers to the ruling elite strengthening their authoritarian grip on the country in 2010. It refers to the judiciary as being inefficient and rife with corruption although judicial independence was guaranteed by the legislation. It refers to effective stifling of debate in the media. It contains nothing on the position of women in Azerbaijani society. Other documents provided again made no reference to the place of women in Azerbaijani society. The Amnesty International report "the Spring that never blossomed" of November 2011 refers to the stifling of political dissent. The documentary evidence before us also contained a number of UN reports submitted by the Azerbaijani government on the implementation of the Convention on the Rights of the Child in March 2011. The ECRI report of May 2011 refers to measures to combat racism, particularly regarding the position of minorities and the role of the Ombudsman in dealing with cases of racism and discrimination. Detailed reports dealing with the implementation of the aims of the Convention on the rights of the Child, set out the various steps taken by the Azerbaijani authorities to implement those provisions and records some success in educational provision. A report from the Office of the United Nations High Commissioner for Human Rights (OHCHR) "Committee on the rights of the child reviews report of Azerbaijan" dated 17 January 2012, indicated that the Committee Member acting as Rapporteur for Azerbaijan, Sanphasit Koompraphant, had congratulated Azerbaijan on its new legislation on child protection and social care but "had regretted the absence of a competent national mechanism to supervise and coordinate government agencies on the implementation of the Convention". The report also comments that forced early marriage deprived some children of their rights.
71. The European Commission against Racism and Intolerance report on Azerbaijan dated May 2011, referred to progress being made since their previous report in 2007 and stated that the role of the Ombudsman was becoming increasingly well known. The school curriculum now catered for minorities, including teaching in Azerbaijani, Russian and Georgian. The report referred to improvements in access to health care for the entire population. It did refer to discrimination against people of Armenian origin which had led to some of them facing discrimination in finding work, and to landlords who were reluctant to let their properties to Chechens. A reference was made to abuse by law enforcement officials in their dealings with minorities.
72. We have considered the report by Nayereh Tohidi on the "The Intersection of Gender, Ethnicity and Islam in Azerbaijan". We accept that it refers to discrimination against women (although we noted the comment that "nevertheless men do help with domestic chores") and we accept that there is discrimination in the work place.

Submissions made by Mr. Tufan on 27 January.

73. In summing up, Mr Tufan relied on a skeleton argument which referred to a number of EU and UN initiatives in Azerbaijan and stated there was clear evidence of increased tourism in Azerbaijan, particularly around Baku. He referred to the partnership and cooperation agreement between the EU and Azerbaijan signed in 1996 and ratified by Britain in 1998. That plan referred to economic and political cooperation between the EU and Azerbaijan and he referred to part of the agreement referring to continued access to high quality education for all. There were also plans to enhance agricultural and rural development.
74. Mr Tufan referred to Azerbaijan taking part in the European Neighbourhood Policy with the European Union which set objectives for partnership with neighbouring countries based on the strong commitment to shared values and political, economic, and institutional reforms.
75. With regards to the treatment of women in Azerbaijan, the skeleton argument referred to the Treaty for the Rights of Women (known as the Convention on the Elimination of All Forms of Discrimination against Women) to which Azerbaijan was a party. Under Article 18 of the Convention, Azerbaijan had submitted a report regarding the treatment of women.
76. He referred to a UN Report covering the period 1996 to 2004 which referred to the definition of discrimination against women in the Azerbaijani constitution and the legal protections given to female employees. He emphasised that it appeared that Azerbaijan had now signed virtually all international conventions designed to eliminate all forms of discrimination against women and to grant them universal rights and freedoms. He referred to Article 6 of the law of the Republic of Azerbaijan which stated that all children had equal rights and referred to the US State Department Report which sets out that education is compulsory, free and universal until the age of 18. The State Department Report had stated that:-

“The law requires the government to protect the rights of children with regard to education and healthcare. In practice, government programmes provide a low standard of education and healthcare for children.”
77. He pointed out that Azerbaijan had signed the UN Convention on the rights of the child in July 1992 and later ratified the Convention’s optional Protocols.
78. With regard to the treatment of ethnic Russians in Azerbaijan he pointed out that there was evidence that Russians served in state bodies, in central administration as heads of administration, directors of city and district police bodies and that although the Russian population in Azerbaijan was declining as Russian migrants moved back to Russia, 80%, according to the 1999 census of economically active Russians, were employed compared to 83.7% of the total economically active population as evidence that Russians were coming to terms with their minority status.

79. He referred to the European Commission Report against Racism and Intolerance (ECRI report) of May 2011 and stated that that showed the authorities continued to support cultural activities of national/ethnic minorities and provide the general school curriculum in three languages (Azerbaijani, Russian and Georgian). At primary school level, several minority languages were also taught. There were a number of locally distributed newspapers published in minority languages and some bodies and provisions existed for the purpose of ensuring that the media showed respect for diversity in their work.
80. He went on to refer to the UN Report on the Convention of the Rights of the Child dated March 2011 which showed that there were many cultures and nationalities living in Azerbaijan. Nine languages had been taught at elementary school level, especially those of ethnic minorities. He stated that the European Commission Report against Racism and Intolerance of May 2011 stated that out of 19,000 to 20,000 offences registered each year in recent years, no complaint had been lodged by a victim alleging that he or she had suffered discrimination or racism. Racist violence did not appear to be a problem within Azerbaijan.
81. The skeleton argument stated that it remained the Secretary of State's position that the question of whether a single woman of Russian ethnicity with a child born outside wedlock who is mixed race might endure some difficulty or hardship would depend on a case by case analysis. Generally speaking, the treatment received by such an individual and her child would not amount to treatment in breach of Article 3 or persecution.
82. In his further submissions, he emphasised there was no evidence whatsoever that the appellant's stepfather would operate any system of *adat* – he pointed out the fact that the appellant had not been compelled to convert. Moreover Baku had a population of approximately 1.5 million and there was no reason therefore why the appellant should come to the attention of her family should she return.

Submissions made by Mr Collins on 27th January

83. In his submissions Mr Collins emphasised that the judge had found the appellant to be credible, with a caveat which he said could only be to the effect that the appellant was not credible in her claim that she was entitled to international protection as a refugee.
84. He referred to the appellant's comment at interview that her family considered that she had committed a shameful act, that she had been threatened and that she would be found and killed. In her statement she had said that she feared revenge on the basis of "cultural laws and traditions" which was clearly a reference to *adat*.
85. It was his submission that the appellant would not have a sufficiency of protection in her home area and that moreover internal flight was not open to her. He criticised the fact that the respondent had not produced her own expert witness.

86. Finally, in his written submissions he emphasised that the rights of both appellants under Article 8 of the ECHR had not been vigorously argued before the judge and that at the date of the decision in this case Section 55 of the Borders, Citizenship and Immigration Act 2009 was not in force. At the date of the hearing before the judge the ramifications of Section 55 were not as clear as had since become apparent. Although he referred to the judgment of the Court of Appeal in **AG (India) v SSHD [2011] EWCA Civ 1191** which indicated that a Tribunal could make their own assessment of the rights of a child under Section 55 of the 2009 Act, he asked us to follow the guidance of Blake J in **T (Section 55 BCIA 2009 - entry clearance) Jamaica [2011] UKUT 00483**. In that it was indicated that, where there had been no hearing of the substance of an appeal at all, and no findings of any kind, then the scheme of the Tribunals, Courts and Enforcement Act 2007 did not assign the functions of primary fact finding to the Upper Tribunal. Mr Tufan did not demur and we have therefore not made any finding on the rights of the appellant and D under Article 8 of the ECHR.

Submissions made by Mr Collins on 16th April.

87. In his further submissions, Mr Collins first addressed the issue of internal relocation before referring back to the respondent's bundle of background evidence. He referred to documents which referred to the discriminatory treatment of all minorities and stated how unusual it was for any single woman to live by herself let alone with a child born out of wedlock "and further let alone a black/mixed race child" and therefore he stated it could not be reasonably expected that the appellant could live away from the family home.
88. Referring to the fact that the judge had said that the appellant had said that her family would find her and would kill her he asserted that the judge had accepted that that was what the appellant believed and said that therefore the threat must be a real one and therefore the appellant, he argued, should not be expected to live in the same city.
89. In his written submissions he went on to refer to a report from Thomas Hammarberg which indicated that the situation regarding human rights in Azerbaijan was "far from satisfactory". He referred then to a Human Rights Watch Report dated 22 January 2012 which stated that Baku had a long way to go to meet its international obligations. He quoted at length about the position of women who are raped, emphasising that there were no laws on spouse abuse and no government sponsored support for victims of rape.
90. He went on to say that while he accepted that there were a large number of NGOs operating within Azerbaijan, located in Baku, one report had quoted an NGO official as stating that:

“We have all the laws in the world protecting women’s rights, mostly passed by the Soviets. But that does not mean that all Azeri women live in good conditions. He emphasised there were no government sponsored programmes for victims of violence.”

91. He then referred further to a claim that the judiciary “does not provide a genuine mechanism to remedy violations of human, property or civic rights ... the system is also rife with corruption and deeply inefficient” (agreed objective bundle 2 pages 5 to 18). Having referred to an OHCHR Report, he argued that it was clear that some progress in human rights had been made but that had started from a very low base.
92. He referred to the ECRI report which he emphasised also indicated that progress on human rights started from a low base before referring to the second report of Mr Chenciner and arguing that that showed the seriousness of the problems which the appellant would face. He emphasised that the appellant would face real problems obtaining employment and housing in Baku without any patronage or “*krisha*”.
93. He stated it was clear that the respondent had accepted that being a single mother of herself “may be considered scandalous by some outside Baku” and stated that the situation in Baku would be little different.

Submissions made by Mr Tufan on 16th April

94. In reply Mr Tufan first commented on the fact that Mr Chenciner referred to his third report as “further submissions” and stated that it was clear that Mr Chenciner was not acting as an unbiased expert but as an advocate who was producing evidence in support of the appellant. He referred to Section 10 of the Practice Directions dated 10 February relating to expert evidence. He asked us to note that the reference to *adat* in Mr Chenciner’s original reports no longer featured in his third report. He referred to the historic nature of much of the research on which Mr Chenciner relied and stated that his argument that information did not emanate from Azerbaijan because it was a police state was unrealistic given the large number of NGOs there and indeed the amount of research that had been undertaken.
95. Having referred to the specific instances of “honour killings” to which Mr Chenciner referred, he asked us to conclude that Mr Chenciner was not an expert on Azerbaijan, as he had not visited that country for many years.

Legal framework

96. In considering this appeal we note the legal framework established by the Refugee or Person in Need of International Protection (Qualification) Regulations SI2006/2525 (the “Protection Regulations”) and the Statement of Changes in Immigration Rules CM6918 (the “amended Immigration Rules”). Together, these implement EU Council Directive 2004/83/EC on minimum standards for the qualification status of third country nationals or stateless persons or refugees or as persons who otherwise need international protection.

97. The burden lies on the appellant to show that, on return to Azerbaijan, there is a real risk that she would face persecution for a Refugee Convention reason or treatment contrary to her rights under Article 3 of the ECHR.

Discussion and conclusions

98. In considering all the above reports, other than those of Mr Chenciner, the outstanding feature is that there is nothing in them which indicates any “honour killings” or ill treatment of women because they have broken any code of “honour” or any religious taboos. The reports indicate that, despite high levels of corruption, steps are being taken to meet the obligations set out in the various Conventions dealing with human rights to which Azerbaijan is a party. Political dissent is not tolerated; but for those like the appellant, who are non-political Azerbaijanis, are not of Armenian origin, and are not internally displaced persons there has been an improvement in living standards, although from a low level and protection of their rights. Although we would conclude that women do not have equal rights of men, there is nothing to indicate that crimes against women go unpunished. There are organisations monitoring the welfare of women.
99. Clearly, the reports of Mr Chenciner and his oral evidence put forward a different perspective on what would happen to women, who like the appellant have had children outside marriage who are of mixed race on return. We have set out the content of his reports above. In his first two reports (but not in the third) he emphasises the factors of *adat* and religious beliefs which could lead to such women coming to harm from their families. In the third he refers to *namus*. We found it particularly telling that, in his first two reports, the only instances he could give of “honour killings” related to the killing of a daughter by her father in Dagestan in 1993; and to the killing of a girl in Britain ten years later. He produced no examples whatsoever of an “honour killing” in Azerbaijan in either rural areas or in Baku. It was only in the third report that he mentioned the killing of a girl by her brother in Baku - the sole instance of an “honour” killing there. What is also relevant is that the brother was immediately arrested and there was nothing to indicate that he was able to act with impunity. While it was Mr Chenciner’s contention that because Azerbaijan is a police state instances of “honour killings” would not be reported that is clearly wrong when this killing was reported and we consider it relevant that there would appear to be scope for reporting due to there being a very large number of NGOs in Baku, information from which is in the reports before us.
100. We note the other instances of killings to which Mr Chenciner referred in that report. One was in St Petersburg and another in Germany. Mr Chenciner referred to two other reports in Azerbaijan. One concerned a killing in the Sabirabad region of Azerbaijan 170 km south west of Baku of an elderly mother and her daughter: there was nothing to indicate that it was an “honour killing” and we consider that Mr

Chenciner erred in implying that this was an “honour killing” when he stated that “there is no time limit on honour killings” as it was reported that police were still investigating this incident because there were no witnesses. The other concerned a killing in Slar village in Jalilabad region in Azerbaijan where a man had killed his daughter, son-in-law and four other members of her family “on a domestic quarrel”. Again there is nothing to indicate that that was an “honour killing”. The reference to the gay Azerbaijani receiving asylum in France because of his fear of being killed by his brother in an “honour killing” is also not of assistance in our consideration of this appellant’s claim.

101. We would also point out that Mr Chenciner’s references to ethnographical field work, some of which took place 20 years ago do not really assist us in considering women such as this appellant who could return to Baku, as it appears to relate to men in rural communities, and we consider that it may well have lost its relevance over time. We accept that there is discrimination, certainly in rural Azerbaijan, against women who are considered as inferior to men; but that is very different from evidence that there is a real risk of a woman whose behaviour is seen as affecting the honour of her family being killed (or otherwise seriously harmed) by members of it. The article on “Veiled women in Azerbaijan” by Yuliya Gureyeva to which Mr Chenciner refers does clearly set out the position of women in Azerbaijan, particularly from an Islamic perspective, but there is nothing in that article to lead us to conclude that there is a real risk of being killed (or seriously harmed), for a woman who offends her family’s sense of honour. Ms Cornell’s article on “The Politicization of Islam in Azerbaijan” assists as it talks of traditional family structures but it refers to matters such as the curfew for local young girls and the importance of female chastity: it does not set out any sanctions which girls who transgress the *namus* code might face. The absence of any reference to “honour killings” in that article is, we consider, relevant to an assessment of the position of those girls who do not comply with their family’s concept of how to behave. We also note that there is evidence that there are a large number of single mothers in Baku, although how many of those women are divorced and how many of the children are illegitimate is not clear from the evidence before us. Mr Chenciner stated that approximately 11% of live births are to women who are not married but that does not indicate how many of these women are in stable relationships. The article on single mothers in Azerbaijan does indicate that there are some benefits which are handed out by the State, albeit small, when no payment is obtained from the father.

102. In his first report Mr Chenciner refers to the importance of marriage in establishing the status of the family and therefore the pressures put on women to marry into families chosen by their own family. However, the statistics to which Mr Chenciner refers state that about 40% of young people in Azerbaijan marry for love and although he states that a family might kill a girl who did not follow their choice of husband there is no evidence cited in support to say that that is the case. He refers to the importance of family honour and reprisals for the disgrace of a family member

but we note that he also indicated that one effect of Azerbaijan having been a member of the Soviet Union was that blood feuds were abolished.

103. He refers to the *krisha* system which is the help given by the family in obtaining work or other benefits – that we accept. He also refers to the system of *blat*: a system of favours, possibly sexual, that may be expected by some officials or employers to obtain work or other benefits, which we again accept. We also accept that sexual harassment may go unchecked. However, there is nothing to indicate that the system of *blat* is used in such a way as to mean that those who refuse to give such favours will face ill treatment which would amount to persecution or treatment contrary to the woman's rights under Article 3 of the ECHR. Similarly, there is nothing to indicate that the sexual harassment which might be experienced would cross the high threshold so as to amount to treatment contrary to the rights of the woman under Article 3 of the ECHR.
104. It is the claim of Mr Chenciner that as this appellant is a Lutheran Christian she would not receive protection from the police. There is simply nothing to back up that assertion. Moreover, Mr Chenciner claims that as an ethnic Russian the appellant would face discrimination. He also claimed that discrimination would be faced by Russians and by those who were not Muslims. While we accept that ethnic Russians may face some discrimination that discrimination certainly does not amount to persecution or cross the threshold of Article 3 ill treatment. While we accept that many ethnic Russians have left Azerbaijan in the past, that appears to be because they had greater work opportunities in Russia itself, and it appears that the outflow of ethnic Russians has now lessened and is now largely because of work opportunities in Russia. We note that Russian remains the language of commerce in Azerbaijan and that it is still a language which is taught in schools. We cannot conclude that those of Russian ethnicity in Azerbaijan would face persecution because of their ethnicity.
105. Mr Chenciner refers to the *propiska* system of registration and the difficulties there would be in internal relocation, in that the individual who would wish to move would be required to de-register and re-register. However, despite his reference to that requiring the payment of a bribe there is nothing to indicate that de-registering and re-registering would not be possible provided, of course, that the individual was able to prove that they were a citizen of Azerbaijan who had lived there legally in the past - we accept that the position of Lezghins or Azeris might well face difficulties in registration and obtaining documents that would entitle them to residence.
106. The central contentions in Mr Chenciner's reports were that the religious beliefs and the cultural ethos among parts of the population would mean a single unmarried woman who had had a mixed race child might be at risk from members of her family. He referred to the concept of *namus*. He also asserted that Muslim families might also enforce their moral code by harming such women. The reality, however, is that the background documentation which we have considered does not back up that

assertion. While Mr Chenciner states that there is prejudice against orthodox Christians because of the oppression of Muslims in the past and that the police would be unlikely to give protection to a woman who feared an honour killing because she is not a Muslim, there seems nothing to substantiate his assertions in that regard.

107. Our overall conclusion must be that although an unmarried mother with a mixed race child in Azerbaijan might face discrimination or be the victim of gossip, there is nothing to indicate that there is any reasonable likelihood that they would face persecution from either the State or their families or other agents of persecution for a Refugee Convention reason nor that they would face treatment contrary to their rights under Article 3 of the ECHR or that the State would not provide a sufficiency of protection for them.

Conclusions

108. Having considered all the evidence before us we conclude:

1. Azerbaijan is a country with high levels of corruption and there is clear evidence that political dissent is not tolerated.
2. There is nothing to indicate that the State would in any way penalise unmarried mothers (approximately 10% of mothers) or those who have mixed race children. There are in place some support mechanisms for single parents.
3. In order to access benefits, accommodation or work a residence permit (a *propiska*) is required. There is nothing to indicate that Azerbaijanis who have lost their *propiska* would be unable to obtain a replacement. Children have access to education. There is some evidence that Government officials may require *blat* - a system of favours - from those who need to obtain housing or other benefits but there is nothing to suggest that that system is universal and would mean that those who refused to offer *blat* would be shut out from accommodation, schooling or other benefits.
4. Although the Azerbaijani Government has ratified most Conventions relating to human rights and the compliance with the norms therein is improving, the reality is that the improvement is from a low starting point. Many NGOs dealing with human rights exist in Baku and there is also an Ombudsman to whom complaints can be made.
5. Although in the early 1990s there was discrimination against those of Russian ethnicity the situation for them normalised by 1996. Ethnic Russian make up approximately 8% of the population. Prejudice may still exist but 80% of Ethnic Russians are in work - only slightly fewer than those in work in the population as a whole (83.7%).
6. There is some discrimination against Christians but there is freedom for Christians to practice their religion.
7. Azerbaijani society, particularly in rural areas, is traditional and attitudes to women are conservative - nevertheless approximately 10% of mothers are unmarried. Family support networks (*krisha*) are a strong feature of family life and benefit family members, for instance when obtaining work.
8. Although the concept of family honour among more traditional families in Azerbaijan (*namus*) exists there is nothing to indicate that there is a real risk of

honour killings or other ill-treatment of those who are considered by members of their families to have brought dishonour on the family. Nor is there any indication that there would not be a sufficiency of protection for those women.

9. Azerbaijan is a traditional society and those who do not fit in, such as those of mixed race may well face discrimination and prejudice. Armenians and Lezghins are particularly likely to face discrimination.
10. There is nothing to indicate that a single parent without parental support or her child would face treatment which would either amount to persecution or cross the threshold of Article 3 ill treatment.

Consideration of the appellant's claim.

109. We have set out above our consideration of the background evidence relating to the position of single mothers with mixed race children in Azerbaijan. We now place the appellant's claim in the context of those findings.
110. We would first comment, however, that it is the preferred practice to base country guidance cases on appeals in which there have been clear findings of fact by the judge in the First-tier. In this case, the judge's conclusions are ambiguous as it is not clear whether or not the judge accepted that the appellant was credible when she said that members of her family had threatened to kill her or whether she merely found credible the appellant's story of her family background and her history since she came to Britain. The central issue, of course, is whether or not the appellant would suffer persecution for a Convention reason if she returned.
111. In effect, His Honour Judge Pearl found that, in reaching her findings of fact, the judge had not taken into account the evidence in Mr Chenciner's report – evidence which should be considered when assessing whether or not the appellant's fears are well-founded. We have analysed that evidence above and set out our general conclusions in paragraphs 106 above. However, as it is not entirely clear what the findings of the judge were we have to reach findings on relevant parts of the appellant's evidence ourselves.
112. Before we do so, however, there are a number of matters central to the appeal which we consider that we can determine in short form before setting out in greater detail the task before us. Firstly, the judge, having noted the evidence of Mr Chenciner regarding the colouring and features of various peoples in the Caucasus found that the appellant looked of Russian descent and that D's colouring was more "coffee coloured" than "black" and therefore, but for the fact that his hair was curly, he might not look so different from those of Turkish ethnicity. We have seen photographs of D. We can only conclude that he looks exactly what he is – a mixed race child of European and African parentage.
113. Secondly, the issue of whether or not the appellant was entitled to asylum because of her particular social group has been raised. Again we consider that the appellant's

social group – an unmarried mother with a mixed race child – is a social group such that, should she suffer persecution because of her membership of that group, that persecution would be for a Convention reason.

114. Thirdly, it was not argued before us that the appellant's fear of persecution was a fear of persecution by the state. Rather it is argued that her fear of persecution is from actors of persecution, namely her family from whom, at its highest, she claims that she might suffer death or physical harm, or that she would suffer discrimination from the general public at such a level as would amount to persecution or treatment contrary to her rights under Article 3 of the ECHR.
115. We have set out in annex 1 what the appellant had stated in the screening interview, at interview and in her statement and the evidence she had given to the judge as recorded in the determination.
116. It is arguable that what the judge accepted was only the appellant's history in Britain and the details given of her family in Azerbaijan, and that it is not clear whether or not she accepted the appellant's assertion that she had been told by her family that she had brought dishonour upon them and that she would be killed on return. Clearly the judge considered that the appellant's reason for claiming asylum was because she was concerned about her son if she returned to Azerbaijan, and in particular wanted to regularise her position here so that her son would have access to education in this country. However, although it is not an altogether satisfactory factual basis for our decision, we consider it appropriate to accept that the judge's findings of fact included accepting the appellant's report of the comments that had been made by her family as to what would happen to her on return. The judge clearly did not accept that the appellant would be killed on return.
117. It is a very considerable leap between accepting that the appellant's family had said that she would be killed if she returned and concluding that there is a real risk that this is what would happen to the appellant on return.
118. Although we have set out our general conclusions above, we must consider the particular circumstances of this appellant when we consider whether there is any risk that is personal to her and her son. We have first considered whether or not there is a reasonable likelihood of the appellant's stepfather or other family members harming her. We have considered the cultural and religious factors which might have bearing on their attitudes and actions.
119. We note that her stepfather had worked, it appears, in the offshore oil gas industry in metal construction and that her mother was a teacher. One of her brothers works in fishing and the other makes furniture. They live in Baku, a city described by Mr Chenciner as having some sophistication. These are not uneducated peasants living in a remote area of the countryside where we would expect to find the most traditional attitudes. While it is claimed that the appellant's stepfather and her brother are devout Muslims the reality is that, although her mother converted, the

appellant was able to go on attending the Lutheran Church and was not forced to convert to Islam nor was her elder brother. The appellant has not indicated that any pressure was put on her to change her religion. She was able to work outside the home and had a succession of jobs in Baku and there is no indication that any pressure was placed on her to enter into an arranged marriage. Indeed, she was allowed to travel to England, un-chaperoned, and had travelled outside Azerbaijan in the past.

120. Taking all these factors into consideration there is nothing to indicate that her family were so strict in their attitude towards her that they would consider that the only way they could maintain their sense of honour would be to harm the appellant. We consider that it is telling that Mr Chenciner referred to the appellant's step father as a "societal" Muslim and stated that, having lived through the Soviet era he would be likely to "take things as they are".
121. We note that the appellant herself stated that she thought that her mother would "come round" when she saw D and we consider that the appellant's delay in claiming asylum, and indeed the way in which she appeared to place weight on her concerns about her child and her child's education, indicates that she herself might well not have believed that her family would harm her on return.
122. However, it is the appellant's claim that because of the cultural factors which are prevalent in Azerbaijan, her family would harm her. It is not argued that there are any other potential actors of persecution. Mr Chenciner has talked of the system of *adat* - the issue of family honour or indeed "honour killings". The issue therefore for us is to consider whether those factors would be so strong that, despite the factors which we have set out above, the appellant's father or other members of her family would still decide that she should be harmed. We consider that there is nothing that would lead us to conclude that the particular facts of this appellant and her family would mean that, exceptionally, the appellant's family would harm her on return.
123. We would repeat that there is nothing in the background evidence to indicate that "*namus*", or the religious beliefs of her step-father or brother would mean that she would be at risk of serious harm from them. We would again emphasise that there being, perhaps, one instance of an "honour killing" in Baku is an insufficient basis for finding that there is a real risk that this appellant would face harm. The only evidence that she would be at risk comes from the assertions of Mr Chenciner and we consider that he is not an entirely dispassionate expert in this case. We would add that we consider that in any event, in Baku there are functioning police and courts, and that these would be able to provide protection to the standard set out by Stuart-Smith LJ in his judgment in **Horvath** [2000] UKHL 37.
124. Rather than the appellant facing persecution from her family we consider that their responses would go no further than perhaps shunning her and refusing support.

125. Nevertheless we accept that women in Azerbaijan are treated as inferior to men and there is, for example, discrimination in the work place. We accept that family support is important, under the concept of *krisha*, and we accept that it would probably not be available for this appellant, given that we also accept that it is likely her family would not wish to have anything to do with her. They would clearly not be welcoming. The appellant would therefore, in effect, be on her own, if she returned to Baku. It is, however, a city of between 1.5 and 2 million people, and so she would not be forced to live near her family. She would, having had the necessary identity card, be entitled to a *propiska* or residence permit to enable her to live in Baku. As to her son, we believe that D also would be entitled to live there. They would not be separated.
126. The next issue we have considered is whether or not the appellant would face discrimination in Baku which would amount to persecution or treatment contrary to her rights under Article 3 of the ECHR. We accept that there is discrimination in Baku, and that there is underlying racism (although discrimination appears to be largely directed against Armenians or Lezghins). The reality is that the appellant's son might well be the only child in Baku of mixed African and Russian descent. We consider that it is likely that, as stated in the letter from the Foreign and Commonwealth Office, the appellant would be the victim of gossip and that she might well be shunned by neighbours or those whom she passed in the street.
127. Mr Chenciner considered that because she would not have access to the *krisha* system, the appellant would have difficulty in obtaining a job. We note that the appellant has, in the past, worked in a restaurant, and as a receptionist in Baku. She has clearly learnt English whilst she has been in Britain and, although we accept Mr Chenciner's comment that there are many highly qualified Azerbaijanis, we consider that there is no evidence that she would be shut out of the workplace. The evidence does not indicate that she would not be able to get work in Baku: particularly because she has, of course, worked there in the past.
128. We also accept that corruption is commonplace, and a system of favours may operate when looking for housing or work. We do not, however, consider that for the appellant having to negotiate through such a system or to face such discrimination amounts to persecution or treatment contrary to her rights under Article 3 of the ECHR. The reality is that there are programmes to assist unmarried mothers and there is health care which would be open to her.
129. There is no evidence other than the assertions of Mr Chenciner and the appellant, that D would face discrimination, such as to amount to persecution. We accept that the fact that he is illegitimate and of mixed African/European descent would at best mean that he would stand out from the rest of the population, and at worst that he would be shunned; but we do not believe that the treatment he would receive would cross the high threshold of persecution or Article 3 ill treatment. We note the terms of the various reports that deal with education and the rights of the child and the rights of a child to education. Although there might well be discrimination against unmarried mothers, or those with mixed race children, there is nothing in the papers

to indicate that there would not be mechanisms for ensuring that the appellant's rights in respect of education for her son were met.

130. Taking all these factors into account, the submissions of Mr Tufan and Mr Collins and the background evidence before us as well as the various reports of Mr Chenciner, we have concluded that there was not, for someone in the position of the appellant, that is an unmarried mother with a mixed race child, a real risk that she would face persecution or treatment contrary to her rights under Article 3 of the ECHR on return to Baku.
131. We consider Mr Collins was correct to state that the issue of the Article 8 rights of both appellants was not before us. It was not argued before the judge, and it has never been argued on appeal that she should have dealt with those rights. Mr Collins is quite right to emphasise that at the date of decision Section 55 had not been enacted and the ramifications of that Section, and indeed consequent developments in case law, are such that those issues must be considered before the appellants are removed and that it would be inappropriate in this case for us to act as primary decision makers.
132. As we have found that the appellant would not face persecution in Baku, the issue of internal relocation is not relevant in this case. There is nothing to indicate that the appellant might be entitled to humanitarian protection, nor was this argued before us.

Decision

133. For the reasons set out above, although a material error of law was found in the judge's decision, on remaking it we reach the same result, and dismiss this appeal on asylum, humanitarian protection and human rights grounds (Article 3).

Signed
Upper Tribunal Judge McGeachy

Date

ANNEX 1.

Evidence of the appellant and the findings of and conclusions of Judge Malins.

1. At the screening interview the appellant stated that she had come to Britain on holiday but had met her son's father, who was black. She was in love with him, believed that they would get married and she did all that he said. He was violent and they were now separated.
2. Asked if she could briefly explain why she could not return to Azerbaijan, she stated:-

"My parents would not accept my child because he is black. When I was at school a child was being discriminate [sic] because of the colour of his skin and I do not want that to happen to my child. I can hide but I cannot hide my child for the rest of his life and the culture and mentality of the people is different. About three or four months ago, in Azerbaijan, there were a few black students who got shot and killed."
3. On 27 July 2009 she was interviewed in detail. She said that she had a mother and two brothers in Baku in Azerbaijan. Whenever she tried to phone her mother, her mother would put the phone down on her because she had had a child by a black man and her family thought that they had been disgraced by this. Her mother had said that she did not need a daughter like the appellant and the family had turned their backs on her. She said that she had been warned by her mother not to return as the family were not interested in having any contact with her and that she would be found wherever she was in Azerbaijan.
4. Asked who would find her, she said that her whole family would: "Our blood relations. You know we are Muslims. I am not a Muslim but we live in an area where we are surrounded by Muslims."
5. Asked if she had been threatened, she replied "Yes" and asked what her family said they would do to her she replied that they had said:-

"We will find you and we will kill you. It is not nice to say what they are saying and they say your brothers will find you, your relations will find you. You brought shame on our family. We can't look people in the eye. You've disgraced us."
6. Much of the rest of the interview related to the behaviour of the second appellant's father and what the appellant was doing in Britain.
7. She was then asked if she was afraid of being persecuted because her son was of mixed race and she replied:-

"Correct.

I remember when I was still at school in our neighbourhood there was one black boy. Everybody bullied him, verbally, assaulted him, laughed at him. They said – look at you, you’re black, we’re white, where did you come from? A year before I graduated from school I stopped seeing him around, he was taken to a different country. He wasn’t there anymore.”

Asked about her religion she said:-

“We are Christians.

Our faith is the Christian faith but the customs follow Azerbaijani customs, Muslim traditions they are surrounded by Azeris they follow Azeri customs, way of life but my family are of the Christian faith.”

7. She said that she had left school at 15 or 16 and had worked in a kitchen and then at the airport and in a restaurant. She had also worked as a receptionist.
8. Again asked about her family she said:-

“They knew I had a boyfriend, but they didn’t know he was black. I knew they wouldn’t be happy that I got involved with a black man. I thought that when I married him, they would accept it. I thought I would be living here in London and nobody would be able to harm me.”
9. It was only after she had sent a photograph of her son to her mother and they found out that she was not married that they had started threatening her. They had then turned their backs on her.
10. The interviewer then asked if her family had threatened to kill her if she returned to Azerbaijan and she replied “yes”.
11. She stated that her mother had married a Muslim man – her father had died when she was 7. Her eldest brother did something with fish and the second worked in the furniture business. Her mother had been a nursery teacher. Her stepfather worked on “metal constructions in the sea”. The extended family which she had was on her mother’s side rather than on her step-father’s. She stated that she had applied for asylum because all her friends had told her that she would not be able to hide herself and her child and that she should give herself the chance to become legal here – she was worried because she would soon need schooling for her child.
12. Before the appeal the appellant prepared a statement in which she stated that her eldest brother, S, was a Christian and her other brother, O, was a Muslim with very strict views. She had had a typical Christian upbringing before her father died but when her mother remarried their lives had changed to “in effect Islamic upbringing”. She said that she had been restricted from doing things that were perceived as non-Islamic.

13. She said that she and her son's father had decided to stay in Britain because they were aware of the overt racism in Azerbaijan.
14. She went on to say that she believed that if she returned to Azerbaijan that would expose her to some risks as D was of mixed race. Her family had told her that she should not return home. She had sent photographs and her brother had called her a stain on the family history and said that it was a matter of honour. She said that she missed her mother tremendously and that she did not wish to put herself and her son in danger if she returned to Azerbaijan. She did not believe that the police would offer her protection.
15. She referred to comments in the refusal letter which had stated that bullying was not persecution. She said that she could not accept that as the treatment she would receive from other adults would be far more serious and that "persecution potentially leads to murder and is systematic and wilful harm to me and my son".
16. She referred to the treatment of Armenians in Azerbaijan and stated that persecution came from an early age as at school education was biased against the Armenians. A young black boy would face worse.
17. Referring to a comment in the letter of refusal which stated that racial minorities face sporadic racism she stated that she accepted that and that:-

"I have even had threats made to me by my family."

She stated that she had committed a sin that was punishable in the eyes of her family. She also feared attacks from the white community and that her son would face a lifetime of racial discrimination and violence. He would face active discrimination which she stated was the consequence of persecution.

18. In the determination the judge, having referred to what the appellant had said at interview and in her statement and noted what was stated in the letter of refusal set out her credibility findings in paragraph 9:-

"9. **My Findings: Credibility**

I found the appellant to be a credible witness, subject to the caveat explained below. I accept the appellant's account of her actual personal situation, given in her witness statement dated 24th November 2009, her replies at interview and at the appeal hearing.

However, the core of the appellant's asylum claim is to extrapolate from the fact that she has a mixed race child, the claim that there is a real risk that the treatment she would receive in Azerbaijan on account of her status as the unmarried mother of a mixed race child - would be sufficiently serious, to amount to persecution or a breach of Article 3 of the ECHR or raise the need for humanitarian protection. I examine this claim carefully below: my conclusions

will lead to a separate conclusion as to whether or not, I am able to find this crucial part of the appellant's evidence, credible."

19. She then went on to refer to the issues in the appeal noting that in his submissions to her Mr Collins had stated there were three main issues:-

"Internal relocation; the objective evidence on persecution and sufficiency of protection."

20. Having noted the comments of the expert witness, Mr Robert Chenciner, and his comments relating to anti-black prejudice in Azerbaijan, she stated that Mr Chenciner had quoted no examples of Azerbaijani revenge killings or lesser sanctions against people in a similar position to that of either appellant but had referred to a murder of a British born ethnic Pakistani in 2003 and had then referred to "her Muslim step-family honour system according to customary law".

21. Having considered country guidance and background documentation, she went on, in paragraph 15, to note that the appellant had described the discrimination which a child at her school who was black had suffered and said that in her view, the appellant's comments were that she had to apply for asylum to enable her and her child to become legal because she would need schooling for him and therefore could not hide here any longer indicated the principal reason why the appellant wished to claim asylum here. In paragraph 16 she said:

"16. Conclusions: Credibility

The final cumulative conclusion which I am compelled to make following on from the previous paragraph, is that the appellant is not credible in her claim that she is entitled to International Protection as a refugee, nor to succeed in her other appeals: I find that she has failed to reach the requisite (albeit lower standard) of proof in the evidence both objective and subjective. This finding answers the question left outstanding at the end of paragraph 9 above."

The judge therefore found that the appellant did not have a well-founded fear of persecution or treatment contrary to her rights under Article 3 of the ECHR.

ANNEX 2

Decision of His Honour Judge Pearl dated 24 March 2010

1. Having heard submissions from both Mr Collins and Mr Tufon, I have decided that this is a case where there has been an error of law by the Immigration Judge.
2. She accepts that the thrust of the Appellant's account as credible (Para 9) subject to certain caveats.
3. She deals with the expert evidence of Dr. Chenciner in a brief comment at para.18: "What is said in this in relation to the Appellant's situation falls far short of being able to make up for the deficiencies in the remainder of the appellant's claim."
4. The report at page 20 states as follows: "... the main risk appears to me to be from the Appellant's traditional family in the form of a punishment to the appellant and her son for besmirching family honour according to *adat* customary law. In her case she risks severe beating or being put to death".
5. This observation by Dr. Chenciner is not addressed in the determination of the IJ, and therefore there is a clear error of law, based on inadequate reasons for the conclusions arrived at by the IJ.
6. As this is possibly the first case of its kind, the matter should be referred to the Country Convenor, for him or her to decide whether the case should be heard before more than one Judge of the Upper Tribunal.
7. The matter should be listed to be heard in the Upper Tribunal, and Sheikh and Co should be asked for dates of Dr Chenciner's availability, as it will be essential for him to be present and to give evidence.

Annex 3.

Index of Documents considered

1	The Intersection of Gender, Ethnicity and Islam in Azerbaijan, Nayereh Tohidi	1997
2	Veiled women in Azerbaijan: Gender, Islam and Modernity, Yuliya Gureyeva	2003
3	UN Committee on the Elimination of Discrimination Against Women Consideration of Reports Submitted by State's Parties under Article 18, of the Convention on the Elimination of All Forms of Discrimination Against Women	March 2005
4	EU Commission Working Paper: European Neighbourhood Policy	2 March 2005
5	The Politicisation of Islam in Azerbaijan, Svante E Cornell (Silk Road Paper)	October 2006
6	European Commission Against Racism and Intolerance Report	15 December 2006
7	EU Commission Working Paper: European Neighbourhood Policy Implementation Report	2007
8	UN Committee on the Elimination of Discrimination Against Women Consideration of Reports Submitted by State's Parties under Article 18, The Convention, the Elimination of All Forms of Discrimination Against Women and concluding comments	February 2007
9	Database of Gender Focal Points in Azerbaijan	October 2007
10	First Report of Robert Chenciner	30 September 2009
11	US State Department Report: Human Rights in Azerbaijan	11 March 2010
12	European Commission Progress Report Azerbaijan (Taking stock of European neighbourhood policy)	12 May 2010
13	US State Department background note	14 June 2010

14	Report by Thomas Hammerby Commissioner for Human Rights of the Council of Europe	29 June 2010
15	Foreign & Commonwealth Office Country of Origin Information Service	12 January 2011
16	Initial Report Submitted by the Republic of Azerbaijan under Article 12 of the Optional Protocol for the Convention of the Rights of the Child - the Sale of Children, Child Prostitution and Child Pornography	30 March 2011
17	US State Department Report 2010	April 2011
18	European Commission Against Racism and Intolerance on Azerbaijan	30 May 2011
19	Freedom House Report. Freedom in the World Azerbaijan	27 June 2011
20	US State Department Report Trafficking in Persons Report	June 2011
21	US State Department Background Note Azerbaijan	17 June 2011
22	Council of Europe Observation on Human Rights Situation in Azerbaijan	28 September 2011
23	Report of the Office of the High Commissioner for Human Rights "Committee on the Rights of the Child Reviews Report on Azerbaijan"	17 January 2012
24	Human Rights Watch: Azerbaijan	22 January 2012
25	Second Report of Robert Chenciner	25 January 2012
26	Third Report of Robert Chenciner	1 February 2012