

Heard at Field House
On 19 May 2004
Written 19 May 2004

NA (Kyrgyz Woman) Tajikistan CG [2004] UKIAT 00133

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

28 May 2004

Before

Mr S L Batiste (Vice-President)
Mr R Chalkley (Vice-President)
Mr R Hamilton

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of Tajikistan, appeals, with leave, against the determination of an Adjudicator, Mr D S Corke, dismissing his appeal against the decision of the Respondent on 25 April 2002 to issue removal directions and refuse asylum.
2. Ms K Cronin represented the Appellant. Mr A Sheikh, a Home Office Presenting Officer, represented the Respondent.
3. The Appellant's claim can be summarised as follows. She lived with her mother, her only living relative, in Zhergital in Tajikistan. She had no friends in Tajikistan. They were members of the minority Kyrgyz ethnic group. In June 2001, when she was 28 years old, she was walking along the street when she was abducted by a group of Tajik men in a car. She was taken out of town, beaten and raped. Her mother became ill as a result of stress when she told her about the attack afterwards. At the end of August 2001 the men came back and attacked the house, breaking windows shouting and threatening. The Appellant and her mother gave their savings to friends to safeguard them. The situation is not clear at this point (and Ms Cronin was unable to help us) as to whether the Appellant and her mother then went to stay with some Greek friends and later returned home, or whether they remained at home. At all events in November 2001 there was another attack on the house in which the men came and beat the Appellant and her mother. On 1 January 2002, the mother died. The Appellant went to live with her Greek friends but could not stay there for long. Fourteen days after the mother's death, the men came back to the family house and set it on fire. The incidents

were reported to the police without result. The Appellant came to the UK on 19 February 2002 and claimed asylum on 26 February 2002.

4. This appeal was previously remitted by the Tribunal to be heard afresh, save that the new Adjudicator was bound by a direction of that Tribunal that the positive credibility finding in respect of the rape incident reached by the previous Adjudicator in a determination that was otherwise set aside, was to be accepted as sustainable and credible.
5. In fact, although initially Ms Cronin challenged the Adjudicator's credibility findings as being Wednesbury unreasonable on the basis of the grounds of appeal, the Adjudicator essentially determined the remitted appeal on basis that all the material events described by the Appellant actually happened. However he found the Appellant to be a singularly unimpressive witness who was prone to exaggeration in a number of respects and particularly in the gloss she put upon these events. The Adjudicator described the examples of this. She gave inconsistent oral evidence about having no friends in Tajikistan but then, when questioned about having said that she stayed with the Greek family, said that they were personal friends, and then later said that they were friends of her mother's. She was vague in her account of the circumstances surrounding the rape. Though she said she reported the incidents to the police it emerged that she did not report the rape until a month after it happened by which time there was little the police could do about it. She did not tell the police about the attack on house in August. She did not go to or approach the prosecutors or local politicians. She explained this by saying that she was frightened of the police due to being Kyrgyz, but then acknowledged that she herself had never seen any violence used by the police against Kyrgyz people. The Appellant's written evidence implied that all the incidents had been perpetrated by the same group of Tajik men, but in cross-examination she admitted that she did not know the men who raped her and none of those men were involved in the attack on her house in August. She also conceded in cross-examination that all but one of the attackers in November were different from the previous attack but one of them looked like a person who attacked the house in August. Moreover, the house had been left without windows and this was an open invitation to thieves and vandals and therefore further attacks could not be attributed to any particular ethnic group. When the family house was eventually burned, the Appellant was not present and could not say who did it.
6. We should mention at this stage that the grounds of appeal, which were accompanied by written submissions, suffered from extreme and unnecessary verbosity, running to many more pages than the determination itself. Ms Cronin, who was not responsible for their drafting, helpfully produced at the outset of the hearing, a short precis of the points she wished to advance to us, for which we were grateful. Later in the hearing we agreed that a challenge to the viability of the Adjudicator's conclusion of internal relocation should be added to the précis, as the matter had been mentioned in the written submissions though was well buried amidst the excess verbiage. It is fair to say that none of the points made by the Adjudicator that we have described in paragraph 5 were challenged specifically by Ms Cronin in her submissions, save that she explained the vagueness of the Appellant's account of the events surrounding the rape in terms of the medical evidence as to her mental state, which is quite understandable.

7. There are therefore essentially undisputed findings about the specific facts of this appeal. As we shall describe later however, Ms Cronin did attack the conclusions that the Adjudicator drew from the facts in the light of the evidence as a whole, especially in relation to a 1951 Convention reason, causation, risk on return, sufficiency of protection, and internal relocation. We accept that there are some errors in the Adjudicator's conclusions, as we shall describe, but given the sustainability of his specific findings of fact, we are able to cure those errors.
8. On the basis of the facts as established the Adjudicator considered the objective material, about which we shall say more later, and concluded that the evidence did not show a course of conduct by ethnically motivated attackers, nor would there be any real risk of persecution or a breach of Article 3 on return. Alternatively there was a viable internal relocation option that would not be unduly harsh. Accordingly he dismissed the asylum and associated Article 3 appeals.
9. In reaching these conclusions the Adjudicator also took into account a psychological report from a consultant clinical psychologist who diagnosed post-traumatic stress disorder and a major depressive disorder resulting from the assault and rape. The Adjudicator did not accept the opinion that the claimant could not recover in her own country because there would be a constant exacerbation of the symptoms and that therapy should be carried out in Glasgow. This would infer that a rape victim could only recover from psychological trauma she were to leave the country she lived and went abroad for treatment. The objective evidence showed that there was psychiatric treatment available in Tajikistan.
10. The Vice President granting permission to appeal did so in respect of ground 2 only and the following terms .

“The grounds otherwise raise arguable issues relating to ethnic Kyrgyz in Tajikistan and (which it is submitted that the Adjudicator failed to adequately consider) and as to whether women who are risk of trafficking for economic or social profit and/or are capable of being described as vulnerable, are lacking a sufficiency of protection from the state and engage the Refugee Convention (a submission which the Adjudicator rejected).”
11. As we have said, Ms Cronin, in her submissions to us, did not directly follow the grounds of appeal. She did not pursue with any force the challenge to the Adjudicator's dismissal of the free standing Article 3/8 claim on health grounds, beyond stating that the country information showed that psychiatric care in Tajikistan is in a very poor condition but she could not press this aspect of the claim beyond that and had no instructions to withdraw it. Notwithstanding the limited psychiatric facilities available in Tajikistan, we consider that the freestanding appeal under either Articles 3 or 8 on medical grounds cannot succeed, given the medical and objective evidence before us and the guidance of the Court of Appeal in **N [2003] EWCA Civ 1369** and **Djali [2003] EWCA Civ 1371** on the high severity threshold required,. We therefore dismiss this aspect of the appeal, as the Adjudicator's conclusion on this point is not clear.
12. Turning to the appeal on asylum and associated Article 3 grounds, we have first considered the question of a 1951 Convention reason. The Adjudicator held in paragraph 27 that the Appellant did not face persecution on the grounds of her ethnicity as a Kyrgyz (this being a fact based assessment to which we shall return later) and

therefore could only qualify for asylum as a member of a particular social group. He considered whether any category of women in Tajikistan could constitute such a group. His findings on this point are not clear. He did not accept that "women in danger of being trafficked for economic or social profit" could constitute such a group as not every woman was at risk of trafficking. He then considered whether "vulnerable women without protection" were a particular social group but not seem to reach any conclusion about that. He then went on to find that "unmarried Kyrgyz women in Tajikistan" did constitute a "social group" on the basis of the "primitive" and "Sabine" attitude to them of some Kyrgyz men. However he made no reference to the legal basis on which he reached that conclusion.

13. Plainly Kyrgyz women could engage the protection of the 1951 Convention on the basis of their ethnicity if the facts permit. Whether they or any subgroup constitute also a particular social group for the purpose of the 1951 Convention turns upon the analysis made by the House of Lords in **Shah and Islam [1999] Imm AR 283 HL**. Ms Cronin argued that it was not necessary for the existence of this particular social group for there to be clear discrimination in law, if there was discrimination in practice. We do not agree. That is not what the House of Lords decided. This issue was considered by the Tribunal at some length in **[2004] UKIAT 00059 M Albania**. We adopt their reasoning. One passage explains their approach.

10. The Adjudicator dealt with matters at paragraph 21 of his determination as follows.

- “ The US State Department and CIPU reports confirm that violence against women remains a serious problem and that the police response is lax. Trafficking in women is a problem and police corruption and involvement is an issue.

- With all respect to the Adjudicator it seems to us that he has gravely misunderstood the effect of Shah and Islam in that rather generalised approach which does not suggest any active undermining of the position of women in Albania by the provisions of the law.”

14. We agree with the Tribunal in M Albania that an essential feature of the House of Lords' conclusion that women in Pakistan are a particular social group was precisely because the law of Pakistan itself undermined their position in clear and unambiguous terms. There is no such evidence in relation to Tajikistan. Indeed the evidence before us shows the contrary.
15. We should at this point mention that we have before us a reasonable volume of objective material concerning Tajikistan. There is an objective bundle from the Appellant's representatives which includes a report from Freedom House and the US State Department report for 2002, as well as an assessment of psychiatric care in Tajikistan, some general guidance notes from UNHCR that are not country specific, and an article from UNHCR confirming that Tajikistan has banned landmines, though how this latter document is relevant in this appeal is not clear. Ms Cronin in her submissions referred only to the Freedom House report and an expert report from Dr N Megoran commissioned by the Appellant's representatives for this appeal. Mr Sheikh produced for us a number of US State Department bulletins about Tajikistan and a profile on the Kyrgyz of Tajikistan.

16. The Tajikistan Human Rights bulletin dealing with discrimination based on sex and other reasons reports that
- “The constitution provides for the rights and freedoms of every person regardless of nationality, race, sex, language, political persuasion, or social status and also specifically states that men and women have the same rights; however in practice there was some discrimination against women.
- The criminal code prohibits rape (although not specifically spousal rape) which is punishable by up to 20 years imprisonment or, in certain circumstances the death penalty.
- The law accords women in equal rights with men however discrimination against women remained a problem. Traditionally there has been a high level of female participation in the workforce and in institutes of higher learning. There was no formal discrimination against women in employment, education, or housing; in urban areas women were employed throughout government, academic institutes and enterprises. However women faced diminishing educational opportunities and increasing poverty. Women legally are entitled to receive equal pay for equal work; however this regulation was not always enforced in practice.
- The criminal code protects the women's rights in marriage and family matters. Inheritance laws do not discriminate against women; however in practice some inheritance is passed disproportionately to sons.
- There were many local women's groups and NGOs headed by women that worked to improve the status of women. The government has a specific committee for women's and family affairs.”
17. Though there are problems in Tajikistan and there is some discrimination against women, it is plain that the constitution and the law of the country does not in itself undermine the position of women. Moreover the government is taking action to enhance women's position in society. We therefore disagree with Ms Cronin, on the basis of the interpretation of Shah & Islam contained in M Albania, that women in Tajikistan, or any subgroup of them as argued before us or before the Adjudicator, can constitute a particular social group. The Adjudicator made an error of law in finding that unmarried Kyrgyz women in Tajikistan do constitute a particular social group, but we can correct that error as we do.
18. We then considered whether there is any viable objective material showing discrimination/persecution of ethnic Kyrgyz on grounds of their ethnicity, or a lack of sufficiency of protection of ethnic Kyrgyz from the authorities against non-state agents, and whether the Appellant would be at real risk of persecution or a breach of Article 3 as a female Kyrgyz. Ms Cronin relied heavily in her submissions on the report commissioned from Dr Nick Megorum. He is a Fellow of Sidney Sussex College, Cambridge, who researches issues embracing nationalism, boundary disputes, state building and ethnic relations in Central Asia. He has an impressive CV and publications list, which features work relating to Kyrgyzstan, Turkmenistan and Uzbekistan. It does not reveal any publications relating to Tajikistan or that he has in fact visited that country. We say this not to diminish his professionalism. Indeed many of the things he says in his report are well sourced and corroborated in other objective material before us. However in certain key passages of his report he expresses himself in general terms about the situation in Central Asia rather than in Tajikistan. Thus he says that there is corruption and police brutality throughout Central Asia. That certainly is corroborated

extensively in the papers before us. He says on page 24 that there has been little research on the Kyrgyz minority of Tajikistan because it is too small to present a major separatist threat to state power in the way the Tajiks might in Uzbekistan and the Uzbeks in Kyrgyzstan. He puts the numbers of Kyrgyz in Tajikistan and at approximately 1% of the population after an outflow during and after the Tajik civil war of 1993/7. This conclusion is properly sourced and we accept it also. It shows that the authorities in Tajikistan do not see their Kyrgyz minority as a threat and that is significant in our assessment. He notes that there were some tensions between Kyrgyz and Tajiks in Kyrgyzstan in 2000, and there are ongoing the border difficulties between Tajikistan and Kyrgyzstan. Again we accept this. However, he then goes on to offer the following opinion in respect of the Appellant's ability to seek justice in Tajikistan.

“Vulnerable women are often liable to sexual abuse by police in Central Asia, who can generally act with impunity against women or other people who lack powerful family or other ties. This has been reported in numerous anecdotal ways, and I further learned of it through a colleague who worked in an NGO in Kyrgyzstan supporting the commercial sex workers. It is also something that I have witnessed first-hand on one occasion. Whilst this incident was in Kyrgyzstan, police cultures are very similar. In such circumstances it is quite possible that a vulnerable woman without money or the backing of importance, well-connected or forceful males could find no support from police.”

In his conclusion, he states further that the account of the Appellant is entirely plausible and that if true and she were to be returned to Tajikistan “I do not doubt that she would suffer any emotional traumas and the real danger of further physical abuse and attack.”

19. The Adjudicator did not disregard this report, as implied by Ms Cronin. He concluded that much of it was not particularly relevant and we agree. Insofar as it discussed the vulnerability of single women to bride snatching in Kyrgyz communities and the lack of marriage prospects for women over 20 and the social exclusion of rape that women, he was happy to accept it. However he was not clear about the view he took concerning the sufficiency of protection available to the Appellant from the police and the consequent risk to the Appellant. Nor did he address the specific points quoted in paragraph 18 above. We can make good that deficiency.
20. As we have said, Dr Megoran’s report did not show any personal experience of Tajikistan and this is particularly borne out in the crucial passage we have quoted in paragraph 18. His observations about the vulnerability of women to sexual abuse by police are generalised across Central Asia rather focused on Tajikistan. But it is not a part of the Appellant's case that she was sexually abused by the police. He reports unspecific anecdotal evidence from a colleague that the police can act with impunity against unprotected women but again this relates to Kyrgyzstan not Tajikistan, as does the example that Dr Megoran witnessed himself. This passage is not in our view sufficiently focused, or well sourced, or corroborated, to carry material weight. We asked Ms Cronin specifically whether there was any objective material relating to Tajikistan concerning a lack of sufficiency of protection from the police for the Kyrgyz. She was unable to identify any, apart from referring back to the passage in Dr Megoran’s report described above. This lack of corroboration in the objective evidence is striking. It may be that there is limited research as Dr Megoran states, but there is clear objective material about other aspects of life in Tajikistan and there are active NGOs in that country. We consider that if there were material ill-treatment of the

Kyrgyz minority to any meaningful extent there would be some mention of it in the country material. The reality, as Dr Megoran noted, is that the ethnic Kyrgyz are small in number and are not perceived or treated as a threat.

21. We also take into account the objective evidence we have quoted already concerning the position of women generally. Whilst there is discrimination, the Tajikistan government is actively engaged in promoting female rights and it would appear that the position of women in Tajikistan society is rather better than in other countries in Central Asia. As we have already quoted there is powerful legislation and action offered by the state in terms of the criminal law against rapists and traffickers. The area where the law is not much enforced according to the objective material is in relation to spousal abuse, but that is not relevant in this appeal.
22. Dr Megoran opines that the Appellant's claim is plausible. We do not doubt that. Sadly ill-treatment of women and rape and vandalism of property occurs in most countries in the world. The issue before us is whether there is a real risk that the Appellant will on return face ill-treatment of the severity amounting to persecution (and here ethnicity must be an ingredient if there is to be a successful asylum claim) or a breach of Article 3.
23. Ms Cronin referred us to passages in the Freedom House report on Tajikistan, which we have considered. It shows that as a consequence of the Tajik civil war as many as 25,000 male heads of household were killed and many women have been forced to provide for themselves and their dependents. Thus there are many single women providing for themselves and their families in Tajikistan. The report suggests that the status of women in Tajik society remains relatively low and that there is extensive discrimination particularly in the rural areas. This is a view that we have balanced with the other material we have described about the role of women in society. The status of women in Tajikistan may be relatively low compared to Western standards but the evidence suggests that it may rather better than in other countries in Central Asia. It also suggests that although Tajik law forbids discrimination based on ethnicity and language there is widespread discrimination against non Tajiks. However on analysis the main problems are with other ethnic communities, though the report describes occasional incidents of physical harm and regular discrimination. We have taken this evidence into account but it does not suggest that the problem is of the severity to constitute in general terms a real risk of persecution for Kyrgyz generally or Kyrgyz women in particular.
24. Ms Cronin argued on the basis of the objective evidence that the Adjudicator's conclusions risk, sufficiency of protection and the viability of internal relocation are wrong in law. She said the Adjudicator failed to take properly into account the combined risk of her ethnicity and her being a single woman. We do not agree.
25. Plainly the Adjudicator had the evidence as a whole in mind in reaching his conclusions. If anything the Adjudicator erred in the Appellant's favour in accepting that unmarried Kyrgyz women in Tajikistan constitute a particular social group because some Kyrgyz men find it acceptable to kidnap and rape them in order to marry them, and there is no evidence that they would be sufficiently protected by the state. The Appellant does not fit the profile for a person at risk in this way. At 28 she is above the age indicated in the objective evidence, when she would be at risk of abduction for

forced marriage among the Kyrgyz, or where she would be a target for traffickers. Whilst there remains a serious problem of spousal abuse in Tajikistan, rape of the kind experienced by the Appellant is regarded very seriously by the authorities.

26. The Adjudicator carefully assessed what actually happened to the Appellant and his conclusions are sustainable on the evidence before him. The Appellant did not report the rape to the police until a month after it happened and she did not know who had been responsible for the attack. She did not report the August attack on her house. In these circumstances it is difficult to see what the police could have done. She said she was afraid of the police and that is why she did go to them but the Adjudicator was entitled to conclude that this was contradicted by her own evidence that she did ultimately go to the police, and this does not indicate fear. Indeed in her oral evidence she conceded that she had never seen the police attack a Kyrgyz.
27. Obviously the rape occurred because the Appellant is a woman, but that does not comprise a 1951 Convention reason, as we have explained. The Adjudicator concluded on the evidence that the rape, for all its horror, was a single opportunistic event that was not racially motivated. He was entitled to reach that conclusion for the reasons stated. Ms Cronin submitted that if the rape were considered in the context of the other attacks on the Appellant and her home then plainly it demonstrated a concerted campaign against her due to her ethnicity and her vulnerability as a single woman. However the Adjudicator was entitled to his view that the Appellant had exaggerated the connections between the different events. There was no indication that the same people were involved in the different events. The rape involved an opportunistic kidnapping off the street. The other incidents were at her house. After the August incident the house appeared damaged, as the windows were broken and unrepaired. This could readily attract adverse attention from hooligans. The Adjudicator was entitled to take into account that although the Appellant had complained of previous discrimination, there had been no incidents in the 28 years prior to the rape that could approach even cumulatively the high threshold required to engage persecution and Article 3.
28. Contrary to Ms Cronin's further submissions the objective evidence does not support the view that the police would not offer a sufficiency of protection against a woman threatened with serious physical attack outside the context of marriage. On the facts of this appeal there was little the police could do if the complaint was not made until a month after the rape and the Appellant was unable to identify any of her attackers. The law imposes heavy penalties against rapists and traffickers and the evidence is that it is enforced and there are prosecutions. It is not clear from the determination whether the Adjudicator properly addressed sufficiency of protection in terms of the test described in Horvath. However we can remedy that defect and conclude for the reasons we have described in relation to the objective evidence that there would be a sufficiency of protection available, had the Appellant sought to engage it.
29. Moreover, even if the Appellant had a specific problem with a small group of non state agents who had targeted her in her home as a consequence of her ethnicity and vulnerability as claimed, the Adjudicator was entitled to conclude that this was essentially a local problem and that the Appellant had a viable internal relocation option elsewhere in Tajikistan that would not be unduly harsh. The objective evidence does not show a real risk that the problems she experienced in her home area would be repeated elsewhere, as Ms Cronin has asserted.

30. For the reasons given above this appeal is dismissed on all grounds.

Spencer Batiste
Vice-President