

CURED1041UK011

Question(s) at stake:

Whether the appellant, an unmarried woman with an illegitimate mixed-race child, would face upon return to Azerbaijan a real risk of persecution under the Refugee Convention or treatment contrary to Article 3 of the European Convention on Human Rights (ECHR).

Outcome of the ruling:

“An unmarried mother with a mixed-race child in Azerbaijan might face discrimination”, prejudice, and sexual harassment, but they are generally unlikely to “face persecution from either the State or their families or other agents of persecution” within the meaning of the Refugee Convention (para. 107). They are also unlikely to face treatment in breach of their rights under Article 3 of the ECHR.

“Although the concept of family honour among more traditional families in Azerbaijan (*namus*) exists”, there is no evidence “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” (para. 108). There is also no evidence to suggest that ‘sufficiency of protection’ within the meaning of the 1951 Refugee Convention would not be available to women in this position.

In light of the Country Guidance (CG) findings, the Upper Tribunal concluded that SL, the unmarried woman in question, would not face persecution in Baku. Therefore, the appeal was dismissed.

Topic(s):

- [Immigration and Asylum](#)

Keywords:

Tag(s):

Author(s):

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Country:

[United Kingdom](#)

Official citation:

SL (Unmarried Mother with Mixed Race Child) Azerbaijan CG [2013] UKUT 00046 (IAC)

Link to the decision:

<https://tribunalsdecisions.service.gov.uk/utiac/37436>

ECLI:

No ECLI number / ECLI number unknown

Date:

13 February 2013

Jurisdiction / Court / Chamber:

Upper Tribunal (Immigration and Asylum Chamber)

Remedy / Procedural stage:

Appeal from the First Tier Tribunal (Immigration and Asylum)

Previous stages:

- On 24 March 2010, the Upper Tribunal found that the FTT determination erred in law.
- On 11 January 2010, a Senior Upper Tribunal Immigration Judge issued a reconsideration order.
- On 25 November 2009, the FTT dismissed SL's appeal against the Home Office (HO) decision. SL then requested a reconsideration of the dismissal decision.
- On 6 August 2009, the HO refused SL's application for asylum and served a removal notice on SL and her child.

No official citations of the previous stages are available.

Subsequent stages:

- No information found.

Branches / Areas of law:

Administrative law; Asylum law

Facts:

The appellant, Ms SL, and her child, DL, were citizens of Azerbaijan. SL arrived in the UK in October 2004. After travelling to Antigua in December 2004, SL returned to the UK in January 2005. The appellant overstayed her 'leave to enter', which expired in April 2005 (para. 2). She gave birth to DL in 2007 and applied for asylum on 13 July 2009. SL was of Russian ethnicity and a Christian. Her son, DL, "a mixed race child of European and African parentage" (para. 112), was born outside marriage.

The basis of SL's asylum claim was that her family would inflict physical harm or death on her upon her return to Azerbaijan, and that her son would suffer a level of discrimination from community members that "would amount to persecution or treatment contrary to [their] rights under Article 3 of the ECHR" (para. 126). The appellant claimed that her family had told her they would kill her upon return to Azerbaijan because she had brought dishonour to the family by giving birth to an illegitimate child.

Expert evidence concluded that the appellant's traditional family was bound to punish SL, by way of severe beating or death, in accordance with the customary law (*adat*), for damaging their family honour. The First-Tier Tribunal (FFT) found the appellant's account of the death threats she received from her family credible. However, the FFT dismissed the appeal because it did not accept that SL would face persecution on return to Azerbaijan. Upon reconsideration, the Upper Tribunal found that the determination of the FFT contained a material error of law because it had failed to provide adequate reasons for rejecting the conclusions of the expert evidence.

The current appeal before the Upper Tribunal was heard as a Country Guidance case on the risk of persecution faced by unmarried women with mixed-race children in Azerbaijan*.*

The respondent's position was that the question of a woman and her child in that position "would depend on a case-by-case analysis" but that the treatment faced by individuals would generally not be persecutory in nature (para. 81). Nor would it amount to a breach of their rights under Article 3 of the ECHR. Referring to the Convention on the Elimination of all Forms of Discrimination Against Women Convention (CEDAW), the Azerbaijani constitution and other national legislation, which provide women and minorities with protection against gender, racial, and religious discrimination, the respondent argued

that Azerbaijan was a signatory of “virtually all international conventions designed to eliminate all forms of discrimination against women and to grant them universal rights and freedoms” (para. 76). The Respondent argued that national statistical data, according to which 80% of Russians were economically active in Azerbaijan, was evidence of their successful social integration despite their minority status. Moreover, factors such as the availability of a multilingual (Azeri, Russian, and Georgian) school curriculum across the country, the teaching of minority languages in school, and the publication of local newspapers in minority languages served as further evidence that minority groups did not face persecution in Azerbaijan.

Regarding the appellant, the respondent argued that there was no evidence that SL’s stepfather would impose the customary law system onto the appellant given that he had not previously sought to force SL to convert to Islam. Lastly, internal relocation would be readily available to SL should she face persecutory treatment.

On the other hand, the appellant noted that she was found to be a credible witness in support of her claim that she had received death threats from her family. She feared revenge since according to the local customary law, she had committed a shameful act and had dishonoured her family. Additionally, SL argued that she would face real problems with housing, employment, and obtaining a residency permit in Baku without a male patronage. Referring to country reports on corruption within the judiciary, the lack of state support for victims of gender-based violence, as well as discriminatory attitudes towards women and minorities among the judiciary, state officials, and the general public, SL argued that neither sufficiency of protection nor internal relocation would be available to her or her child.

Ruling:

The Upper Tribunal heard extensive country background information and expert evidence in oral and written form. The ruling can be divided into two main parts. The first is concerned with giving Country Guidance on the risk of persecution faced by unmarried women with mixed-race children in Azerbaijan. The second is concerned with determining the appeal of SL and her child.

Country Guidance

The most important conclusions are the following:

1. Azerbaijani society is traditional, and attitudes to women are conservative, particularly in rural areas. Those who do not fit, especially ethnic minorities such as Armenians and Lezgins, are reasonably likely to face discrimination and prejudice. “Family support networks (*krisha*) are a strong feature of family life” and are important when obtaining work (paras 108, 7 and 9).
2. “[T]he concept of family honour among more traditional families in Azerbaijan (*namus*) exists” (para. 108). However, there is no evidence indicating “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” (para. 108). There is also no evidence to suggest that ‘sufficiency of protection’ within the meaning of the 1951 Refugee Convention would not be available to women in this position. (paras. 101, 106, 107 and 108)
3. There is no evidence to indicate that single mothers with no family support and her children would be subjected to treatment persecutory in nature or contrary to their rights under Article 3 of the ECHR. (paras. 107 and 108:10)
4. Unmarried women amount to about 10% of mothers in Azerbaijan. There are some state benefits, albeit small, available to them. There is no evidence to suggest that single mothers or women who have mixed-race children would be penalized by the state. (paras. 101 and 108,3)
5. “Azerbaijan is a country with high levels of corruption where political dissent is not tolerated” (paras. 108, 1).
6. A residency permit (a *propiska*) is required to obtain benefits, accommodation, employment, and education. The evidence indicates that some state officials may seek favours (a *blat*), which could include a bribe or sexual “favours, from those who need to obtain housing or other [state] benefits” (para. 3). However, the system is not universal and those who refuse to offer *blat* are not completely prevented from accessing state benefits. (paras. 103, 105 and 108, 3)

7. The Azerbaijani government has ratified most human rights conventions. Nonetheless, the country's ombudsman and many NGOs continued to express concerns regarding compliance with human rights legislation. (para. 108, 4)
8. Ethnic Russians in Azerbaijan are not persecuted on ethnic grounds. Although they faced discrimination in the early 1990s and prejudice may still exist, ethnic Russians make up 8% of the population, 80% of which are economically active. (paras. 104 and 108, 5)
9. Although Christians face some discrimination, they have the freedom to practice their religion. (para. 108, 6)

Determination of the appellant's case

The appeal was allowed and the decision of the FTT was set aside for containing an error of law. However, in rendering its decision, the Upper Tribunal came to the same conclusion as the FTT. As such, the appeal was dismissed "on asylum, humanitarian protection, and human rights grounds" (para. 133).

The most important findings are the following:

1. The appellant belongs to a Particular Social Group – an unmarried mother with a mixed-race child. On this ground, she may suffer treatment that would amount to persecution under the Refugee Convention. (para. 113)
2. The Upper Tribunal accepted the FTT findings of fact concerning the appellant's credibility, including her claim that she received death threats from her family. (para. 116)
3. There is no evidence to indicate that SL's family were so conservative in their attitude towards her that they would consider that the only way they could maintain their sense of honour would be to kill or otherwise harm the appellant. (paras. 120, 122)

The Upper Tribunal came to this conclusion by noting that her parents work and live in Baku. Therefore, they "are not uneducated peasants living in a remote area in the countryside where we would expect to find the most traditional attitudes". Furthermore, the appellant was not forced to convert to Islam, despite her stepfather and brothers being devout Muslim. Nor was she forced into an arranged marriage. She was allowed to work in Baku and to travel outside Azerbaijan unchaperoned. (para. 120)

4. In the event of a risk of honour killing, a functioning police and court system would be able to provide a sufficiency of protection to SL in Baku for the purposes of internal relocation (*Horvath v SSHD* [2000] applied) (para. 123).
5. Rather than persecute the appellant, SL's family is likely to shun her and refuse support. Given the importance of the *krishna* system of family support, the appellant is likely to face difficulty finding employment. However, due to SL's previous employment history in Baku and her newly acquired English language skills, the Upper Tribunal ruled that there was no evidence SL would be denied employment. (paras. 124-125, 127, 129)
6. Given the *blat* system of favours and the high corruption levels, SL is likely to face discrimination when seeking to obtain housing and employment. The level of discrimination would not amount to persecution or treatment contrary to her rights under Article 3 of the ECHR. (para. 128)

DL, being an illegitimate child and of mixed Afro-European descent, would visibly stand out from the rest of the population and may be ostracized or shunned. However, this would not amount to persecution under the Refugee Convention or to a treatment contrary to his rights under Article 3 of the ECHR. (para. 129)

In reaching this conclusion, the Upper Tribunal noted that the country background evidence indicated that DL's rights to education would be met despite the discrimination and prejudice he may face.

7. In light of the finding that SL "would not face persecution in Baku, the issue of internal relocation" was not considered (para. 132).

Main quotations on cultural or religious diversity:

- “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 [...] Although we would conclude that women do not have equal rights of men, there is nothing to indicate that crimes against women go unpunished.” (para. 98)
- “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 [...] 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.” (para. 99)
- “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 position of women in Azerbaijan, particularly from an Islamic perspective [...] there is nothing [...] 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.” (para. 101)
- “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.” (para. 106)
- “We have considered the cultural and religious factors which might have bearing on their attitudes and actions. 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 [...] 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.” (paras. 118-119)
- “[I]t 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’ [...] 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.” (paras. 122-123)

Main legal texts quoted in the decision:

International law

- Convention on the Elimination of all Forms of Discrimination against Women (adopted 18 December 1979, entered into force 6 December 1984) (CEDAW)
- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)
- 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 (No longer in force; date of end of validity 21 Dec 2013; repealed by Directive 2011/95/EU)
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 (ECHR)
- UN Convention on the Rights of the Child (adopted 30 November 1989, entered into force 2 September 1990) (UNCRC)

Domestic law

- Immigration Rules (adopted 23 May 1994, entered into force 1 October 1994)
- Refugee or Person in Need of International Protection (Qualification) Regulations SI2006/2525 (adopted 18 September 2006, entered into force 9 October 2006) (Protection Regulations)
- Section 55 of the Borders, Citizenship and Immigration Act 2009 (not in force at the time of the decision)
- Statement of Changes in Immigration Rules CM6918 (hereafter the amended Immigration Rules)

Cases cited in the decision:

- *Horvath v SSHD* [2000] UKHL 37

Commentary:

The Risk of Honour Killings Faced by Women with Illegitimate Children of Mixed Race in Azerbaijan

The Country Guidance (CG) system is an integral part of the UK immigration system. They involve the evaluation of a large body of evidence related to the general social and political conditions in a specific country, as well as the particular circumstances of an individual case. CG decisions have a binding effect on subsequent cases concerning similar issues and factual evidence (Clayton and Firth 2018: 389).

The case of *SL* is part of a small but consolidated judicial trend in the UK regarding honour-based crimes under the remit of the Refugee Convention and the ECHR.

Historically, asylum applications based on the fear of an honour killing or other honour-based violence have been notoriously difficult to claim successfully. Firstly, honour-based claims are likely to fail on evidential grounds. Although available data is scarce, according to the United Nations Population Fund (UNFPA), around five thousand women globally are believed to be murdered by family members each year as a result of honour-based violence (UNODC 2018:30; UNGA 2012: para. 44). Often, crimes such as honour killings either go unreported or are labelled as suicide or homicide in national statistics (UNODC 2019). Secondly, even cases in which the judiciary is satisfied that there is a real risk of an honour killing or other honour-based crimes, asylum claims can fail on other grounds, such as the availability of the option to relocate internally.

For example, in *IM (Pakistan) v SSHD* [2018], the appellant claimed that if he were returned to Pakistan, he would be at risk of honour-based violence or death because he had reneged on an agreement to marry his cousin, the daughter of a high-ranking police officer. The Upper Tribunal rejected his asylum claim on the basis of insufficient evidence. The conclusion was reached despite extensive country background and expert evidence regarding the high numbers of honour killings in Pakistan. Similarly, the asylum claims in *KA and Others (Domestic Violence – Risk on Return) Pakistan CG* [2010], *R (On the Application of Javed) v SSHD* [2014], and *R (On the Application of MS) v SSHD* [2012] were all rejected. This is because internal relocation in Pakistan and India was found to be a viable alternative when there is risk of honour-based violence. The availability of internal relocation was also the reason behind the dismissal of an asylum claim concerning the risk of honour-based violence in Kurdistan (see *K.A.M. v Judicial Review of a Decision of the SSHD* [2010]).

The case of *SL* continued this conservative trend. In providing Country Guidance on the risk of harm of “an unmarried mother with a mixed-race child in Azerbaijan” (para. 107), the Upper Tribunal found that women in this position, as well as

their children, are reasonably likely to face discrimination and prejudice. However, it concluded that such treatment would not cross the threshold of persecution under the 1951 Refugee Convention nor treatment contrary to their rights under Article 3 of the ECHR.

In *SL*, the Upper Tribunal reviewed the position of women in Azerbaijani society by referring to country background reports from a wide range of sources, including UN Committees, EU bodies, the US State Department, and NGOs. It carefully considered the country background evidence to the extent that it could draw its conclusions based on the information included in the reports, as well as on what evidence was missing. For example, at paragraph 68 of the judgement, the Upper Tribunal noted the following regarding a report on gender-based violence, gender discrimination, human trafficking, and traditional social norms that restrict women's development in Azerbaijan: "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'."

The Upper Tribunal did not give weight to the expert evidence submitted in support of the appellant's case because the expert witness had not visited Azerbaijan for the past 20 years and some parts of the opinion were not supported by other reports. As such, the appellant's case failed on evidential grounds: there was simply not enough evidence to support her case. This highlights the importance of up-to-date anthropological and socio-legal evidence in asylum-based judicial proceedings.

Regarding the situation of *SL*'s child, the Upper Tribunal briefly assessed the position of minorities in Azerbaijan. It noted the steps taken by the Azerbaijani authorities to implement international treaties, such as the UN Convention on the Rights of the Child. It reviewed the school curriculum and found that it included no racist or discriminatory remarks towards minority groups and catered to the needs of minority groups by providing teaching in the Azeri, Russian and Georgian languages. The Upper Tribunal accepted it was highly likely that the child was going to experience discrimination and bullying at school due to being mixed-race. It held that this would not amount to persecution or treatment inconsistent with his rights under Article 3 of the ECHR because the child would still be able to attend school and his single mother would have access to some basic state support. However, scholars, such as Pobjoy (2015), argue that a child-approach to assessing persecution is vital because discrimination may not affect an adult as much as it would a child who is more vulnerable and whose identity is still developing.

The case of *JA (Child – Risk of Persecution) Nigeria* [2016] UKUT 00560 provides an illustration in this regard. In *JA*, the Upper Tribunal considered what "being persecuted" means from the perspective of a child and held that the discrimination faced by individuals with albinism in Nigeria would amount to persecution in the case of children but not of adults (see *CURED122UK001* for a full analysis). By contrast, a similar child-approach was not adopted in *SL* [2013].

Lastly, the Upper Tribunal discussed at length the cultural aspects of life in Azerbaijan, including social customs that influence perceptions of lone women with illegitimate children. According to the customary law, or *adat*, women in this position, as well as those trafficked or raped, are to be put to death in order to restore their family honour (Heyat 2007; McCarthy 2018; UNDP 2007). The Upper Tribunal reached the conclusion that although Azerbaijan is a conservative society in which traditional gender norms prevail, especially in rural areas, the discrimination faced by women in the appellant's position, and their children, would not be persecutory in nature. The Country Guidance was not challenged and no new cases with a similar factual basis have been presented before the courts since *SL*. As such, the case remains good law.

Literature related to the main issue(s) at stake:

Case-law cited in the template commentary:

- *IM (Pakistan) v SSHD* [2018] EWCA Civ 626
- *KA and Others (Domestic Violence – Risk on Return) Pakistan CG* [2010] UKUT 216 (IAC)
- *K.A.M. v Judicial Review of a Decision of the SSHD* [2010] CSOH 43
- *R (On the Application of Javed) v SSHD* [2014] EWHC 3468 (Admin)
- *R (On the Application of MS) v SSHD* [2012] EWHC 3370 (Admin)

Reports cited in the template commentary:

- UNGA 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences' (New York 2014)
- UNODC 'Global Study on Homicide: Gender-Related Killing of Women and Girls' (UNODC 2018)

Academic literature cited in the template commentary:

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- Pobjoy, Jason. 2015. "The Best Interests of the Child Principle as an Independent Source of International Protection". *International and Comparative Law Quarterly* 64(2): 327–363.
- UNDP, *Azerbaijan Human Development Report: Gender Attitudes in Azerbaijan: Trends and Challenges* (UNDP 2007), available at <<https://hdr.undp.org/content/gender-attitudes-azerbaijan>> accessed on 30 June 2020.

Other literature:

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