

IMMIGRATION APPEAL TRIBUNAL

Heard at Field House
On: 29 October 2003
Prepared: 7 November 2003

Before

Mr Andrew Jordan
Mr D.R. Bremmer JP

Between:

Claimant

and

The Secretary of State for the Home Department

Respondent

For the claimant: Mr M. Kuznicki, counsel
For the Secretary of State: Miss N. Hough, HOPO

DETERMINATION AND REASONS

1. The claimant is a national of Serbia. The Secretary of State appeals against the decision of an adjudicator, Miss Rebecca Caswell, following a hearing on 11 February 2003 dismissing the claimant's asylum appeal but allowing her human rights claim. The adjudicator's decision was in response to the decision of the Secretary of State to refuse both claims.
2. The claimant was born on 30 March 1969. She is an ethnic Albanian and a Roman Catholic. She married a Roma in 1990 and the couple have two children. As a result of her marriage, the claimant's family disowned her and she and her husband set up home in the village of Rajinice, in southern Serbia. Unfortunately, her husband was killed. The claimant believes that he had been branded as a collaborator and traitor.

3. The adjudicator dealt with the current risk faced by the claimant in paragraphs 21 onwards of the determination. In paragraph 24, however, the adjudicator rejected the asylum claim based on imputed political opinion because she felt the local police were in a position to protect her. In addition, she did not consider the claimant would be persecuted on the grounds of her Roma ethnicity because the claimant herself was not Roma although she has two children of mixed ethnicity.
4. The adjudicator formed the view that the claimant would not be able to re-establish herself with her two children in the current climate in the Presevo area or in any other part of the country. She said:

"She has never had employment. She has no family to support her; she has not yet acquired skills which would make her desirable in the employment market. She would face great difficulties as the head of a female-only household. From the CIPU Report at 6.71 onwards it is clear that women are entitled to equal pay for equal work, maternity leave, participation in government and politics. They are active in political and human rights organisations. There are women's rights groups. However, none of this is likely to help the appellant find a way to support her family in the current patriarchal society in the area."

5. In addition, in paragraph 23 of the determination, the adjudicator considered the appellant's mental well-being. She was categorised as suffering from anxiety, distress, grief reaction and possible post-traumatic stress disorder. The adjudicator did not consider the claimant was in a favourable psychological state to help her children and herself make the move back to Serbia successfully. She, therefore, concluded in paragraph 25 that she would not be able to establish a viable family life for herself and children in any part of Serbia.
6. The Secretary of State appeals against the adjudicator's decision allowing the claimant's Article 8 claim. It is common ground that the claimant will be returned to Serbia accompanied by her two children. Her son was born on 29 September 1991 and is now aged 12. Her daughter was born on 6 July 1995 and is 8. The family will, therefore, be returned as a unit, thereby avoiding a violation of the claimant's rights to continued family life. Miss Hough submitted that the adjudicator's reliance upon the fact that the claimant has never been in employment and has not yet acquired the skills that would make her desirable in the employment market, was wrong in law. We agree that the employment prospects of the claimant are not material when considering whether the claimant's return will violate her moral and physical integrity.
7. The adjudicator also relied upon the state of the claimant's mental health. Dr R. C. Rigby, of the Woodside Surgery, wrote on 9 October 2002 to say that the claimant joined the practice in July 2001, suffering

from poor sleep and nightmares, headaches and anxiety. See page 295 of the claimant's bundle. He believed most of her headaches were due to stress and anxiety concerning her situation but that she had obtained some benefit from fluoxetine and Dothiepin. He suspected she had a degree of cervical spondylosis or early arthritic change in her neck, which may have caused some headaches.

8. At page 294 of the claimant's bundle, Helena Hutchings, Sure Start Counsellor, from the Woodside Surgery wrote on 17 December 2002 to say that the claimant had been referred to the clinic in April 2001 suffering from marked anxiety symptoms. For a period between September 2001 and July 2002 (10 months) the claimant attended weekly sessions and "appeared to be suffering symptoms related to post-traumatic stress." Ms Hutchings stated that, through counselling support and medication, the claimant was able to express some of her distressing feelings and grief. By December 2002, it appears the claimant had returned to counselling as her levels of anxiety and distress had increased during her grieving process. The letter ends by saying that it would be highly likely that the claimant would be further traumatised and acutely distressed if she and her children were to be returned home.
9. There is also a medical report from a Consultant Psychiatrist, Dr K. Laudin beginning at page 304 of the bundle. In a report dated 28 July 2003, it emerges that the claimant was referred to the Mental Health Community Centre in April 2003 with depression and anxiety. Apparently, she was not responding to antidepressants. She was described as being moderately depressed but did not have any suicidal plans or thoughts of harming her children. There was a change in medication. At the bottom of page 304 it is said that it was probable the claimant had not completed the grieving process. A contribution to her depression was the sudden death of her husband combined with her departure from Serbia and her inability to work through the grieving process. The report goes on to say that the claimant has benefited from regular contact with the Centre, that her depression has not deteriorated and has not required admission to hospital. It is said that should she cease to receive treatment, her depression is likely to deteriorate and this may endanger life. On page 3 of the report, it is said that the claimant has not been referred to any other health care practitioner. It might, therefore, be beneficial to the claimant for her to be referred to a member of the community mental health team experienced in psychological work. As far as we are aware, this has not occurred.
10. There are a number of references in the medical evidence to the relationship between the claimant's mental health and death of her husband, with the associated grieving process. There is at least one reference to her depression being related to leaving Serbia. There is little to suggest that a return to Serbia would, in itself, result in a deterioration in her mental health. There is direct evidence that she

has no suicidal tendencies or is liable to harm others, including her children. Her medication is conventional, albeit the depression has shown a stubborn reluctance to respond to some of the medication tried upon her. The course of counselling is now completed. There is no other reference to treatment.

11. In accordance with the decision in Razgar, it is necessary to consider the differential impact that is likely to occur on return to Serbia. The medical evidence does not establish that her mental condition will substantially or significantly deteriorate by reason of a return.
12. Mr Kuzmicki, who appeared before us on the claimant's behalf, submitted that the adjudicator found the claimant could not establish a *viable* life on return to Serbia. He told us that it was not simply a question of her returning with her children as a family unit. He said there must be *effective, viable and proper* family life. He submitted that the adjudicator had identified a number of ways in which family life would be lacking in these qualities, were the claimant to be returned to Serbia. It is not clear to us what is meant by a viable life in this context. We do not, however, consider that the fact the claimant has never had employment, has no family to support her and has not yet acquired skills that would render her useful in the employment market renders her life in Serbia any less viable than in the United Kingdom where the same conditions prevail. We are concerned to consider whether, in accordance with the decision in Ullah, conditions in Serbia will be such as to amount to a practical violation of her Article 3 rights. We do not consider that they will be.
13. The background material contained in the October 2003 CIPU Report supports this view. In paragraph of S.5.34, it is said that Serb citizens are legally entitled to free health treatment although years of neglect and corruption have seriously damaged the health service. When the new government took over in October 2000, it found widespread abuses and misappropriation of funds, describing the situation in the health service as "critical". In late 2000, the entire health system depended on foreign aid. In 2001, the health service suffered from an extreme lack of resources at all levels and in all places, an urgent need for restructuring, poor organisation and chronic inefficiency. The state of the health service is, not surprisingly, reflected in the overall health of its population. The mental health of the population has also deteriorated. Substantial, even massive, consumption of sedatives suggests one-half of the population is reliant upon them. Treatment for medical health disorders is, however, available, although facilities are limited.
14. Mr Kuzmicki also drew our attention to paragraph S.6.88 of the CIPU Report to the effect that women refugees and internally displaced people, especially households headed by single females and widows, face particular problems, including difficulties in obtaining documentation of their husbands' deaths that would entitle them to

pensions. Against that, however, it has to be said that the claimant is not a refugee, nor an internally displaced person.

15. We accept that, tragically, the conditions in present Serbia are not to the high standards possible in all European countries. That does not mean, however, a return to Serbia establishes a breach to the high standard required under Article 3. In our judgment, on consideration of the background material, the adjudicator was in error in her conclusion that the claimant's return to Serbia would result in a breach of her human rights. The reasons that she gave for coming to that conclusion are not sustainable and amount to an error in law. Accordingly, the appeal is allowed.

Decision: The appeal of the Secretary of State is allowed.

Andrew Jordan
Vice President
7 November 2003