

Appeal No: HX/27083/2001

**DH (IFA - Albanian) Kosovo CG [2002]**

**UKIAT 07056**

## **IMMIGRATION APPEAL TRIBUNAL**

Date of Hearing: 19<sup>th</sup> December 2002

Date Determination notified:

..06 March 2002..

Before:

Mr C M G Ockelton (Deputy President)

Mr J Barnes

Mr D K Allen

Between:

**DRINI HYSI**

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

### **DETERMINATION AND REASONS**

1. The Appellant is a citizen of the Federal Republic of Yugoslavia. He appeals to the Tribunal against the determination of an Adjudicator, Mrs S Charlton-Brown, in which she dismissed his appeal against the Secretary of State's decision of 18<sup>th</sup> September 2000, issuing directions for his removal from the United Kingdom, asylum having been refused.
2. As can be seen from the previous paragraph, the date of decision in this case is prior to the commencement of October 2000 and therefore Mr Graham, who appeared for the Secretary of State before us, conceded that human rights issues did not arise and the appeal proceeded on the basis of an asylum claim only. Ms Ahmad, instructed by Hopkins Reynolds & Co appeared on behalf of the Appellant.
3. The Appellant was born on 16<sup>th</sup> February 1983 and came to the United Kingdom in January 2000. He claims to be from Mitrovica

and he adopted before the Adjudicator his self-completion questionnaire and statement. He said that he had no remaining family in Kosovo and that his father had been killed during the war in a bomb blast, and his mother died shortly afterwards. The Adjudicator found some difficulties with the Appellant's credibility. She noted that in the SEF form, he did not appear to refer to the death of his parents, or indeed any specific problems that he himself had. She contrasted this with the latest statement about the death of his father and mother. One of the grounds of appeal before us is a lack of clear credibility findings on the Appellant's claim. This is a matter to which we shall return shortly.

4. He claimed before the Adjudicator that after his parents died he stayed in the village until May and then went to Albania where he remained for some six months, and then went back to Kosovo for a week, going firstly to Pristina and then to Mitrovica, but decided to leave as people were being killed, his house was destroyed and he had nowhere to stay. He did not approach KFOR or UNMIK for assistance, as he did not feel safe.
5. Returning to the Adjudicator's determination and the issue of credibility, we think it is right to say that the Adjudicator did not make clear credibility findings as to her views of the truthfulness of the Appellant's account. She noted, as we have said, the contrast in his evidence about the death of his parents, and went on to query why, when his parents died at the beginning of 2000, he did not leave sooner. She went on to say, at paragraph 8.5, however, that irrespective of credibility the real issue was whether even if one accepted his account, the country situation had now changed to make it safe for him to return there. She stated that, despite her doubts about his credibility, in view of the change in the country and the radical change as she saw it in Kosovo, that he did not face any real risk on return. She noted aspects of the objective evidence and mentioned various relevant cases at paragraph 8.6.
6. Ms Ahmad has produced a helpful skeleton argument, which deals firstly with a point concerning a document that was not made available to Counsel for the Appellant at the hearing, although it seems to have been taken into account by the Adjudicator. It seems that we do not have that document before us, although Counsel for the Appellant at the hearing before the Adjudicator managed to persuade the Adjudicator to provide a copy subsequent to the hearing. There is no indication, however, in our view, that this document, which seems to relate to the situation concerning returnability of vulnerable persons, had any material effect on the Adjudicator's reasoning or conclusions.
7. The Adjudicator noted, at paragraph 8.8 of the determination,

that she agreed with the Respondent's comment in the refusal letter that the Appellant appeared to be a young, single man in good health, and that it would not be unduly harsh to expect him to relocate. She also noted that there was no medical evidence to substantiate the contention that the Appellant was traumatised.

8. We consider that there is no material error in the Adjudicator's determination in this regard, although we would like to remind Adjudicators of the importance of ensuring that relevant documents are seen by representatives. We make no comment adverse to this Adjudicator in this regard since this claim has not been put before her and she has not had the opportunity to comment.
9. Ms Ahmed went on to deal with the issue of internal flight in her skeleton argument. In essence, her conclusions are to be found at paragraph 5 of the skeleton concerning the reasons why internal flight is not an option. This, we should say, is premised on the basis that, taken at its highest, the Appellant's claim is that he has a well-founded fear in Mitrovica. We did not understand Mr Graham to dissent from this as a proper way of dealing with this appeal and therefore, although we note the problems that there are with the Adjudicator's findings, we consider that she can be taken to have accepted the claim at its highest in paragraph 8.5, after which she went on to consider issues of internal flight.
10. The essential points of Ms Ahmed's argument in this regard are the Appellant's age, noting that he left Kosovo when he was sixteen, and it is the case now that he is nineteen and will be twenty in some two months. She also makes the point that he has spent important years of his life in the United Kingdom, growing up and making friends, and before us emphasised the fact of his absence from Kosovo for some three years as a relevant factor to difficulties on return. She also makes the point that he has no close family remaining in Kosovo, given that his parents, on his claim taken at its highest, have been killed and his house has been destroyed. She also makes the point that he suffers trauma as a result of his parents being killed in the atrocities associated with war, and she reminded us that at paragraph 6.5 of the Adjudicator's determination, his evidence is recorded concerning the problems that he saw when he returned to Mitrovica after his trip to Albania, where people were being killed and his house was destroyed, and he had nowhere to stay. She also reminded us at paragraph 6 of her skeleton argument, that the issue of undue harshness must be considered, taking into account the cumulative effect of a whole range of disparate considerations as referred to by Brooke LJ in Karanakaran.

11. Taking the case at its highest, and accepting that the Appellant has a well-founded fear on return to Mitrovica, the question is one of whether it would be unduly harsh to expect him to return to Kosovo and to go elsewhere than Mitrovica. He would be likely to return to Pristina and Mr Graham reminded us that he had spent at least a few days there on his return from Albania, and therefore is presumably not totally unacquainted with that town. There is no indication that he suffers from health problems. He is a young man who, as of today's date, is nineteen and indeed nearly twenty. He would be returning to a situation in Kosovo radically different from the situation when he left. No doubt he would experience difficulties, as indeed very many, if not most, of the people in Kosovo are likely to be experiencing difficulties, but he would be returning into a situation where, as a young Albanian man, he could reasonably be expected to play his part in seeking to rebuild the area and he would not be at risk from Serbs in the areas to which he would return and we consider that, bearing in mind the factors put before us by Ms Ahmad, and the situation in Kosovo generally at this time, returning to Kosovo elsewhere than Mitrovica would not be unduly harsh for him.
12. We therefore dismiss this appeal.

D K ALLEN  
VICE PRESIDENT