ar 01 Appeal No. CC00879-

FV (Article 8 FAQs) Kosovo CG [2002] UKIAT 06562

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 5 December 2002

Date Determination notified:

17/02/2003

Before:

Mr J Barnes (Chairman)
Mr M W Rapinet

FARUK VESELI

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation
For the appellant : Miss M. Samimi, counsel, instructed by Aaronson & Co.
For the respondent : Miss A. Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of the Federal Republic of Yugoslavia from Kosovo and is of Albanian ethnicity. He appeals against the determination of an Adjudicator, Mr S. Kaler, dismissing his appeal against the respondent's decision to refuse him asylum and give directions for removal as an illegal entrant. An application for leave to appeal had originally been refused by the Tribunal. That refusal was quashed by the Administrative Court on 13 March this year. The basis for such a decision was that it is arguable that the Tribunal's reasoning in relation to the claimant's Article 8 ECHR submissions is flawed.' The Tribunal therefore granted leave to appeal on 29 April this year.

2. The appellant arrived in this country on 31 December 1993 with his father who sought asylum, naming the appellant as his dependant. The appellant was at that time a minor, born on 15 December 1976. The father returned to Kosovo in 1997 and the appellant then applied for asylum on his own account

on 4 October of that year. That application was refused on 3 October 2002 and removal directions to Kosovo were issued on 28 November.

3. The basis of the appellant's claim is that he and his family encountered considerable difficulties at the hands of the Serbs and that his father was fearful that his two sons would be called to enlist in the Serb army and therefore took the decision to travel with them to the United Kingdom in December 1993. His father returned to Kosovo in 1997 in the hope that the situation had improved but left for the United Kingdom in 1998 after being ill-treated by the Serbs. He returned to Kosovo in June 1999 because his wife and other children were still there. The father had informed him that call up papers had been served by the KLA pressing for information as to why he and his brother were not fighting for the KLA. He has an uncle in this country who is prominent and active in the LDK party, his activities being carried out mainly from this country.

4. Following Dyli the Adjudicator dismissed the appeal under the Refugee Convention on the basis of the current position in Kosovo. The appellant raised other issues during the course of the hearing, in particular he claims that the family in Kosovo was being harassed by reason of his uncle's involvement with the LDK. He further claimed that he was at risk at the hands of the KLA because he had failed to respond to call up papers. The Adjudicator deals with these issues in paragraphs 45 to 47 of the determination. We record what he states:

> '45. I have assessed the appellant's claim in the light of the case law and the objective material. I bear in mind that the appellant has to prove his account credible on the lower standard of proof. The appellant's credibility has been challenged. It has not been explained to my satisfaction why the appellant did not mention in his interview that his family had encountered difficulties that caused them to move around, nor did he mention his uncle's involvement with the LDK. He was not interviewed as a new arrival, which in many cases causes an asylum seeker great anxiety owing to his new surroundings and fear of numerous unexpected questions. This appellant had submitted a full statement and was represented. It was not until February 2001 that he mentioned his uncle's political position, and it was not until the hearing that he mentioned the he was no longer in contact with his parents.
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> 46. The appellant first sought asylum because of fear of the Serbs. He then changed the basis of his application and said he feared the KLA. He said that his father had received call up papers, but when pressed about these, he said that the papers had been shown to his father and taken away, which is why he could not produce any documents. None of this

> appears to be plausible, and I did not believe the appellant. Then he added another aspect to his claim by saying that he was in danger because of his uncle's activities. He did not explain why he did not submit earlier that these would put him at risk.
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> 47. The respondent conceded, and I accept, that Mr Fehmi Veseli holds a prominent position in the LDK in the UK. However, I do not accept that a would be placed in jeopardy on return because of the prominent position of the uncle. Furthermore, I do not accept that the appellant would be placed in jeopardy on return because of the prominent position of the uncle. Furthermore, the up-to-date UNHCR categories do not mention LDK activities as being at risk, and in this case, the appellant is not actively involved. There are few reports of violence against families of prominent LDK members. His father has returned, and I do not accept that he has been pursued or driven from his home for the reasons already stated above.'

5. The Adjudicator dealt with the Article 8 claim somewhat summarily in paragraph 54 of the determination which reads as follows:

> 'The appellant has an extended family in the UK. He does not live with them, but no doubt relies on them for support and guidance. The mere fact that he has relatives here does not establish that he has forged a family life. He has family in Kosovo. My analysis of Article 8 does not lead me to conclude there would be a derogation of the appellant's rights under Article 8 if this appellant's asylum application were refused.'

6. We agreed with Miss Samimi and Miss Holmes that the only issue to be determined by the Tribunal was the claim under Article 8. Miss Samimi sought leave to call the appellant and an uncle of his, both in court (not the uncle who was active in the LDK) and we agreed to receive that evidence, notwithstanding the fact that no application to call witness evidence had been made prior to the hearing. Miss Samimi, who appears to have been most inadequately instructed by her instructing solicitors, sought a short adjournment so that she could confer with the appellant and his uncle. We agreed to this and put the case back in our list. On the resumption of the hearing Miss Samimi informed us that, following consultation with the appellant, it would appear that he has recently sought hospital treatment for a pain in his head and neck and there is a possibility that he might be affected psychologically, though in what way she was not able to tell us. She asked that the case be adjourned in order that medical evidence could be produced. We refused this on the basis that if the appellant was seeking to adduce medical evidence in support of his Article 8 claim he has had ample opportunity to do so since the Administration Court's decision in March of

this year. We agreed, however, to defer the promulgation of our determination until Miss Samimi had had an opportunity to submit any medical evidence that she might consider to be relevant and agreed that if we considered such evidence to be relevant we would reconvene to raise with the representatives any issues arising from that evidence. We gave Miss Samimi fourteen days from 5th December to produce such evidence.

7. We received evidence from the appellant. When asked what his position would be were he to be compelled to return to Kosovo, he informed us that he had a much better life here with his family and a higher standard of living. He informed us that he lives with his uncle, Hxelal Veseli, and that there is a close knit family here. He informed us that this uncle maintained him financially as he is not able to work. He had embarked upon a course relating to tourism at a college in this country but had been compelled to give it up because he did not receive any state support. He informed us that he had not heard from his parents for the last two years and has lost touch with them. He has a brother in Kosovo and has not been in touch with him either. He has not developed any trade or skills in this country. He confirmed that his uncle, Hemeli Veseli, had been involved with the LDK and has been making efforts to trace his parents but without success. His other uncle, Hxelal, had made similar attempts. He also has a brother and sister in Kosovo. He was asked about his health and told us that he was in a state of distress which made it difficult for him to concentrate because of his anxieties in relation to his appeal. He was asked when he had last been in touch with his solicitors, his solicitors having previously applied for an adjournment of the hearing on the basis that they had not been able to obtain instructions from him and such application having been refused, he informed us that he had not been in touch with them since last year. It was pointed out to him that he had had a case pending in the Administrative Court in March of this year and he appeared to be somewhat vague as to when he had last contacted his solicitors. He informed us that he had been detained some six months ago by the Home Office and had to report regularly. The detention had been for five days in a detention centre and he then confirmed that he had been in touch with his solicitors then and had also been in touch with them about six weeks prior to the hearing. He informed us that they were unable to find the file and they had not been terribly helpful in informing him of the current position in regard to his appeal. He informed us that he was given tablets for the pains in his head and back. He informed us that the family come from Pristina.

8. We received evidence from Mr Hxelal Veseli who confirmed that he and his family supported the appellant. He expressed the view that on return the appellant would find it difficult to obtain employment and that there would be no future for him in Kosovo. We were told that there is a considerable extended family of approximately sixty persons, of whom some thirty remain in Kosovo, the remainder being here. The family is mainly from Pristina though various extended members of the family come from other parts of Kosovo. When questioned about the attempts made to track down the appellant's parents and siblings, he confirmed that his brother, Fehmi, and he had made attempts so to do but without success. The brother is no longer active in the LDK and he informed us that there was considerable animosity towards the LDK in Kosovo and that because of his brother’s connection

with that party the appellant's father had been harassed and the family had been compelled to move from place to place. He confirmed that he had spoken to neighbours who informed him that they were aware of the fact that the family were safe but were not able to give him an address. The appellant's father had been in the LDK for a brief period. He confirmed that there has been no contact with the parents of the appellant for two years or so. When questioned as to how the appellant spends his time as he appears to be without any occupation in this country, he told us that the appellant is conversant with computers and spends a considerable amount of time on a computer at home.

9. Miss Samimi in her submissions emphasised the strength of the relationship between the appellant and his uncle, Fehmi and his uncle Hxelal with whom he is currently living. She stressed the fact that the appellant has been here for nearly ten years, having arrived in 1993 and that there are twenty-nine members of his family in this country, all of whom appear to have indefinite leave to remain. She stressed the fact that the appellant had lost contact with his immediate family and as a result of this had built up a close relationship with his family in this country, in particular his uncle, Fehmi, who regards him as his son, and the uncle with whom he lives and his numerous cousins and other more remote members of his family. In her view, it would be disproportionate to return the appellant to Kosovo now. She stressed the dangers arising from depleted uranium in Kosovo but, when questioned by us as to whether there was any evidence of depleted uranium in the area from when his family comes, she was unable to draw our attention to such evidence.

10. Miss Holmes in her submissions accepts that there is a family life here and that to return the appellant to Kosovo would be an interference with that family life. However, she submitted it would not be disproportionate. The appellant would not lose touch with his family in this country. He is a young adult in a position to adapt to a change of life. He will be returning to the area in which he was brought up and, she submitted, to his parents and two siblings. She questioned the evidence before the Adjudicator and the evidence which has now been put before us by the appellant and his uncle that it had been impossible to make any contact with the appellant's family in Kosovo. She stressed that there are thirty relatives in Kosovo and that it would be most unlikely that, through this network, contact with the family could not have been made. She similarly stressed that, although the uncle Fehmi is no longer a member of the LDK, nevertheless he had been a prominent member in this country and must have extensive LDK connections in Kosovo who would be able to assist, if they had not already done, so in tracing the appellant's family. The appellant is better qualified than most returnees as he has a sound command of English and, according to his uncle's evidence, is able to operate computers. He should be able to obtain employment with an NGO or similar organisation. She drew our attention to paragraph 56 of the Tribunal's determination in the case of Nhundu and Chiwera (01/TH/00613). This reads:

> 'This proposition would seem to hold good whether what is involved is extradition or removal. Article 8 being a

> qualified right, assessments of the risks posed by removal must be balanced against the interests of the state and the wider community in the maintenance of effective immigration control. It is legitimate therefore for the state to remove an appellant unless the threat posed to his Article 8 rights would have the effect of nullifying those rights completely. We note that even in respect of Article 6, a right less qualified in time than Article 8, Strasbourg has only been prepared to consider a decision to remove a person contrary to this right if in the country of origin he would face a "flagrant denial" of the right to a fair trial. See MAR v UK (28038-95) (Dec January 16, 1997).'

11. In considering this appeal, we have regard to the evidence before us as at the date of the hearing rather than the evidence that was available at the date of decision. In so doing, we follow the recent starred decision of the Tribunal (presided over by the President) in the case of S and K [2002] UKIAT05613. We drew the attention of both parties to this case and neither party requested a short adjournment in order to consider it. Both parties were content that we should deal with the evidence on the basis we have indicated.

12. We will deal first with the witness evidence which we have received. Insofar as both witnesses indicated their inability to trace the appellant's family in Kosovo, we find such evidence to be lacking in credibility. In paragraph 47 of the determination the Adjudicator finds 'His father has returned, and I do not accept that he has been pursued or driven from his home for the reasons already stated above.' We entirely endorse that finding and further endorse the reasons given by the Adjudicator for that finding. To those reasons we would add that we do not accept that by reason of the uncle, Fehmi's involvement with the LDK in this country, the father would have been harassed and driven from his home and from pillar to post. The father ceased his membership of the LDK upon his return to the country, we are informed by the witness, Hxelal. The uncle Fehmi is now no longer involved. The objective evidence would indicate that there was considerable tension between the LDK and PDK parties in the run up to the 2000 elections. These elections were won by the LDK but the PDK is a participant in the government, the LDK not having won an overall majority. The PDK controls the post of the Deputy Prime Minister. The working relationship between the various ethnic groups within the recently elected assembly appears to be reasonably good, the only friction being with Serbs. We would therefore reject the contention of the appellant and the other witness, his uncle Hxelal, that the father has been harassed to a degree which necessitates him abandoning the family home by reason of his association with the LDK.

13. Furthermore, we find the evidence with regard to the attempts to trace the appellant's parents and siblings incredible because it is apparent from the evidence of Mr Hxelal that this is a very extensive family, comprising, he tells us, some sixty members of whom thirty or so remain in Kosovo. We accept Mr Hxelal's evidence that they do not all live in the Pristina area from whence the appellant's family come. But it is apparent from Mr Hxelal's

evidence that this is a fairly close knit family. There are twenty-nine members in this country, we are informed by Miss Samimi and by Mr Hxelal, and they are obviously in close contact with each other, the thirty others remaining in Kosovo. We find it inconceivable that through this extensive family network the whereabouts of the appellant's parents and siblings are unknown. Mr Hxelal informed us that he has spoken to neighbours of the family in the Pristina area and has been assured that they are safe but for some reason, which he was not able to give us, the neighbours were either unable or unwilling to provide information as to exactly where the family was living. We find this to be quite implausible. The family have been well established in the Pristina area, clearly for a number of years, and is clearly well known in that area. They would appear to have a fairly extensive network of friends and neighbours and we just cannot believe that if Mr Hxelal has been in contact with these friends and neighbours and has expressed the concern of the family in this country to trace the family in Pristina, such information would have been withheld by the neighbours.

14. Furthermore, there is the source of information that can arise through the LDK. It is not disputed that the uncle in this country appears to have played a fairly prominent part in that movement, largely when based in the United Kingdom. However, he claims to be well known to Mr Rugova, who is the leader of the party in Kosovo and currently the Prime Minister. It may well be that he has ceased his activities for the LDK now but he has been working with the party, according to the evidence he gave the Adjudicator, since 1990. We just cannot accept that during the intervening twelve years he has not created such a network of political friends in Kosovo that he is unable to call upon those friends to attempt to trace his brother and family. The contention with regard to the position of the LDK and animosity towards it, we reject for the reasons we have already given. We are of the view that through this network, assuming the network of the family and the family and the neighbours and friends do not produce any information as to the whereabouts of this branch of the family, that the LDK would be able to trace the family. For these reasons, therefore, we totally reject the evidence of both the appellant and his uncle, Hxelal, that it has been impossible to trace the appellant's parents and siblings in Kosovo. The remaining parts of the evidence we are prepared to accept as credible.

15. It follows from this, therefore, that we are of the view that the whereabouts of the appellant's parents and siblings is known both to the appellant and to his uncles in this country or if not known can easily be ascertained.

16. We accept that the appellant has established a close family relationship in this country with his two uncles and in particular with the uncle, Fehmi. We accept that the uncle, Hxelal, and possibly the other relations were all responsible for supporting the appellant financially and with his other material needs in this country. It would follow from this that to return the appellant to Kosovo would be an interference with that family life. The question is whether or not such interference would be proportionate, bearing in mind, as we must, the Secretary of State’s obligation to maintain an immigration policy. On the one hand there is the undoubted argument that the appellant has now been here for a considerable period of time. He has

undoubtedly benefited from this country and what it has to offer and certainly he would no doubt create a good future for himself in this country and, we have no doubt whatsoever, that he feels much more secure and very much happier here than he would be in Kosovo. On the other hand he does have his immediate family in Kosovo. He has his parents and two siblings and an extensive network of some twenty-five other members of his extended family in Pristina and throughout the province of Kosovo. He is a young man in apparent good health. He has no wife or family or commitments. He has a command of the English language, he gave his evidence in English and he speaks extremely good English. He is obviously able to operate computers, as we are informed by his uncle. His computer skills, combined with a sound knowledge of the English language, would, in our view, in the circumstances currently prevailing in Kosovo which is in need of building up an infrastructure, including a proper bureaucracy and the necessary support for the various institutions which are in existence and need to be created, be in demand, were he working for an NGO or otherwise. We have little doubt that he will be able to obtain employment readily with these skills at his command. That being so, we therefore do not consider that it would be disproportionate for the Secretary of State to return this appellant to Kosovo.

17. For these reasons the appeal is dismissed.

M W RAPINET
VICE PRESIDENT