Heard at Field House
On 6 August 2002

Appeal No CC57909-2001

BS (IFA – Mixed Ethnicity) Kosovo CG [2002] UKIAT 04254

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

17 September 2002

Before

Mr S L Batiste (Chairman)
Mr R Baines JP
Mr D M Froome

BESIM SADIKU

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, a citizen of the Federal Republic of Yugoslavia (Kosovo), appeals, with leave, against the determination of an adjudicator, Mr I S Kulatilake, dismissing his appeal against the decision of the Respondent on 4 July 2001 to issue removal directions and refuse asylum

2. Ms Y Adedje represented the appellant. Mr M Pichamuthu, a Home Office Presenting Officer, represented the respondent.

3. Leave was granted on the basis that it was arguable that the adjudicator did not give sufficient reasons for his conclusion that it would not be unduly harsh to expect the appellant to relocate to another part of Kosovo and he erred in his conclusion that in those areas the appellant's mixed ethnicity would not become known.

4. The appellant came to the UK in 1999 when he was 19 years old. He is now 22 years old. His father, who was of Albanian ethnicity, died during the conflict in Kosovo when the family home was burned down with him inside it. His mother, who is of Serbian ethnicity, has gone back to Serbia and the appellant has lost touch with her.

5. The basis of the appellant's current claim is that he fears return due to his mixed ethnicity. In this he relies on the UNHCR's current advice, dated April 2002, in the following terms.

> "While most Kosovo Albanians are able to return without protection

difficulties, there are certain categories of Kosovo Albanians who may face serious problems, including physical danger, were they to return home at this time. These include Kosovo Albanians in ethnically mixed marriages and persons of mixed ethnicity. Claims from persons who fear persecution because they belong to one of these categories should be carefully considered in order to ascertain the need for international protection. Claims not falling in these categories may be considered in accelerated procedures."

6. The adjudicator's basic findings are contained in paragraphs 16-19 of the determination, which states as follows.

> "The evidence before me shows the appellant lived all his life in the district of Prizren. It is also the evidence, the appellant's mother, whose present whereabouts the appellant does not know, has since returned to Serbia. I accept the appellant's mixed ethnicity is likely to be known to those in his village and perhaps also in the district of Prizren. It is also the evidence that the appellant had no call up for arms by the KLA. Accordingly I find that at the time the appellant left Kosovo in May 1999 he was not under any pressure from the KLA, and neither is there evidence he had been threatened, beaten by KLA supporters, or for that matter from other Kosovan Albanians. The evidence before me is also insufficient to find the burning of the appellant's house with his father had anything to do with his father's mixed marriage.
>
> I cannot ignore the concerns of the UNHCR in their report of the risks to those like the appellant and against the bitter ethnic conflict that raged in Kosovo, the appellant's fears for returning to Prizren I find are real……. This is because I find KFOR and UNMIK will not be able to protect the appellant in his village
>
> However I do not consider it would be unduly harsh to expect the appellant to relocate perhaps to Pristina where his mixed ethnicity will not be known and moreover where the appellant would be better placed in finding employment and housing."

7. Ms Adedje did not challenged the findings concerning the KLA or on the burning of house. She argued however that the finding that the appellant's mixed ethnicity was known not just in his village but also in the district of Prizren, meant that he would not be safe anywhere in Kosovo because there would be people who would be likely to recognise him, particularly given the high level of internal displacement within the province. Also the appellant's natural emotional reaction to being returned to the area where his father was killed in his burning house, meant that internal relocation would be unduly harsh. In short she argued that there was no viable internal flight option and in any event it would be unduly harsh to expect the appellant to return to Kosovo now.

8. Mr Pichamuthu, in his submissions, argued that each case has to be determined on its own merits. It would not be unduly harsh for the appellant to relocate to Pristina and there was no real risk that his mixed ethnicity would be known to the authorities there or to anyone else. He relied on the assessment of the Tribunal in the case of Rexhapi concerning official documentation and information.

9. The Tribunal reserved its decision.

10. The crux of this appeal is whether there is a real risk that the appellant's mixed

ethnicity would become known, were he to relocate to an area of Kosovo outside his home district of Prizren. Related to this, is the associated question of whether such relocation would be unduly harsh.

11. When the appellant left Kosovo in 1999, he was a 19 year old working on the family farm in a small village in the district of Prizren. His evidence at his asylum interview was that he and his family were discriminated against because of their mixed ethnicity. The adjudicator correctly found that there was no evidence of treatment, which went beyond such discrimination and that the burning of the family home and death of the appellant's father were not related to his mixed marriage. Indeed in the context of the objective material, which showed that the Serbians burned many Albanian homes at that time, it is not surprising that this finding has not been challenged by Ms Adedje. There is nothing in the evidence to suggest that the appellant was particularly prominent or well-known in his home area. Ms Adedje suggested that the adjudicator's finding that the appellant would be unsafe in Prizren district meant that there were large numbers of people in that area, who would recognise the appellant and know that he was of mixed ethnicity. The Tribunal does not consider that either the evidence or the adjudicator's findings justify that assertion. The adjudicator found that the appellant's mixed ethnicity would be known in his own village and given the antipathy of ethnic Albanians towards Serbs and people of mixed ethnicity, there would not be a sufficiency of protection available to him there. He realistically extended this to the Prizren district. In doing so, he did not make the finding that the appellant or his family were widely known in the district as a whole. Prizren is however the administrative centre of the district and it was appropriate to draw as it were a cordon sanitaire around his home area where there might be a real risk of ill-treatment as described by UNHCR.

12. However, even though Kosovo is a relatively small area overall, the Tribunal finds that the adjudicator was not in error in concluding that the risk did not extend beyond the appellant's home district, for example to Pristina and that there was accordingly a viable internal flight option. The appellant was only 19 in 1999 when he left Kosovo. He had not come to the notice of the KLA. He was not particularly well-known or prominent even in his home area. As his father was of Albanian ethnicity there is nothing in his name or behaviour that would now suggest mixed ethnicity to those who were not aware of it. He would not be living with his mother, who is of Serbian ethnicity. On the evidence before us we endorse the conclusion reached by the Tribunal in Rexhapi (which was not challenged by Ms Adedje) that “we have no evidence before us to indicate that there is at any stage at which either vis-à-vis officialdom in the form of such matters as ID or driving licences, or for any other purpose, a person would have to reveal his mother's ethnicity or that in any other circumstances it is a matter which might become apparent.”

13. The only risk is that he might be recognised by a person who knew him from his village as being of mixed ethnicity and that that person or would be motivated to cause difficulties for him. We do not consider that that risk is sufficient to constitute a real risk of persecution or of serious ill-treatment. We agree therefore with the adjudicator that there is a viable internal flight option to Pristina.

14. That leaves the question of undue harshness. As Ms Adedje said, he will obviously have been affected by his father's death, even though he did not witness it himself but was told about it later. Unfortunately many people in Kosovo share similar experiences, but that does not mean per se that such a person cannot return to Kosovo

now in the changed circumstances following the ejection of the Serbian authorities. There is no medical evidence before us to suggest that the appellant has any specific and material medical reasons to prevent return. The adjudicator found that the appellant would actually be better placed in finding employment and housing in the Pristina area, and that conclusion is broadly supported by the objective material. The Tribunal concludes therefore that the appellant's return to Pristina would not be unduly harsh.

15. This disposes of the appellant's asylum and Article 3 claims., Ms Adedje mentioned, en passant, article 8 but as is clear from paragraph 20 of the determination, the appellant's representative rightly in our view did not wish rely upon it then, and it is not a live issue before us.

16. For the reasons given above this appeal is dismissed.

Spencer Batiste
Vice-President