

Appeal No. HX56352-2001
SS (IFA - Relocation) Kosovo CG [2002] UKIAT 02869

IMMIGRATION APPEAL TRIBUNAL

Date heard: 27 June 2002
Date notified: 22.7.2002.....

Before: -

DR H H STOREY (CHAIRMAN)
MR A SMITH
MR D R BREMMER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SAZAN SHAHINI

Respondent

DETERMINATION AND REASONS

1. The appellant, the Secretary of State, has appealed with leave of the Tribunal against a determination of Adjudicator, Mr A C B Markham-David, dismissing the respondent's appeal against the decision of the Secretary of State giving directions for removal from the United Kingdom, having refused asylum. Ms M Banwait appeared for the appellant. Mr D Adams of Counsel instructed by Markandan & Co. Solicitors appeared for the respondent. To avoid confusion the respondent, a national of Federal republic of Yugoslavia, is hereafter referred to as the "claimant".
2. The Tribunal has decided to allow this appeal.
3. The adjudicator had allowed the appeal on the basis that the claimant, being of mixed Albanian - Serbian parentage, would have a well-founded fear of persecution in his home area of Gjakove. He had further considered that,

since the claimant's family lived in Gjakove, the claimant would not have a viable internal flight alternative.

4. The adjudicator found the claimant would face a well-founded fear of persecution in his home area. This arose from his acceptance of the appellant's evidence to the effect that in Gjakove he had been the victim of discrimination from both Serbs and Albanians on account of his mixed ethnic origins and to the effect that, shortly before he left Kosovo in mid-1999 he had been taken by the KLA and, in the course of a two-day detention, told by them to leave the country.

5. It is to be observed, however, that, in deciding he had no viable internal flight alternative, the adjudicator did not accept that this was because the claimant would continue to face a risk of persecution on account of his mixed ethnicity. He made specific reference in this regard to the Tribunal determination in the case of *Rexhepi* (HX/62256/2000) and said:

"I accept that if he returned to Gjakove, there is a reasonable likelihood that he would be recognised. The appellant was asked about the situation if he went to a different part of Kosovo. He replied that it might happen that somebody might recognise him, such as a neighbour, a Serb or someone from the KLA or someone he had been to school with. This is of course a possibility, but in my opinion a remote one. It does not amount to a reasonable likelihood.

...I do not accept that the appellant has any such well-founded fear of persecution in a different part of Kosovo."

6. We emphasise this aspect of the adjudicator's findings because Mr Adams on behalf of the claimant sought to argue that the claimant should have been recognised as still facing a real risk of being perceived by KLA remnants wherever he went in Kosovo as a traitor or as a Serb collaborator. He emphasised that the KLA had told him to leave the country, not just his home area. However, we consider that the adjudicator gave sound reasons for rejecting this argument. Even if they had killed the claimant's father and even if they suspected him of being a Serb, there was no evidence that the KLA in consequence had put him on any kind of list. Given his young age and the short period for which they detained him, we do not think it reasonably likely the KLA had any great interest in him. It was simply that it was possible he might be recognised as of mixed parentage by a neighbour, a Serb or someone from the KLA or someone he had been to school with.

7. We entirely agree with the adjudicator that on his own account the claimant had not shown that this possibility was anything other than a remote one. In this regard it should also be borne in mind that the appellant had an Albanian name and was happy for his asylum interview to be conducted in Albanian.

8. Thus the only question remaining, as the adjudicator correctly saw it, was whether it was unduly harsh to expect the claimant to relocate elsewhere in Kosovo, e.g. to Pristina.

9. His conclusion was:

“The appellant is a young man who is now 19 years of age. I do not think that it would be unduly harsh for him to relocate somewhere other than Gjakove save for the question of his family, namely his parents and sisters, who were all living at home in Gjakove at the time he left in June 1999. The appellant says he has not succeeded in making contact with his family since then. He has written letters but received no reply. He does not know what has happened to his family but there must be a reasonable likelihood that they are still living in Gjakove. In these circumstances, I have come to the conclusion that it would be unreasonable to expect him to relocate elsewhere.”

10. We find this conclusion to be unsustainable.

11. Putting to one side the oddity of saying, having accepted no reply had been given to letters, that it was reasonably likely the family are still living in Gjakove, it seems to us that the adjudicator failed to make a rounded assessment of whether return to live elsewhere would be unduly harsh. It may be that in certain situations the mere fact of having to live separately from one's family can give rise to undue hardship. But in this case, not only did the adjudicator expressly consider there were no other significant factors, but the evidence was simply to the effect that the claimant was a young man who was 19 at the date of the hearing. There was no satisfactory evidence that he suffered from any ill health or disability or that he had been severely traumatised. Given in particular the adjudicator's specific finding that the claimant was at not at real risk of being recognised as of mixed parentage outside his home area, there was therefore plainly an insufficient factual basis on which he could conclude that return elsewhere would cause him undue hardship.

12. For the above reasons the appeal is allowed. On the evidence before the adjudicator the claimant had a viable internal flight alternative.

**DR H H STOREY
VICE-PRESIDENT**