

IMMIGRATION APPEAL TRIBUNAL

Alfred Buba, Skender Rama (KLA - Deserters) Kosovo CG [2001] UKIAT 00003

Date heard: 18/07/2001

Date notified: 03/08/2001

Before:

John Freeman (Chair)

A G Jeevanjee

Mr N Kumar JP

(1)Secretary of State for the Home Department, (2)Alfred BUBA
Appellant

(1)Skender RAMA, (2)The Secretary of State for the Home Department
Respondents

Determination and Reasons

Representation:Miss S Iqbal (counsel instructed by Anooma & Co) for Rama. Miss G Thompson (counsel instructed by Andrews) for Buba. Mr J Harper for the Secretary of State

These are appeals, with leave, from decisions of adjudicators on appeals by Albanian citizens of the former Kosovo autonomous province of the Federal Republic of Yugoslavia, as follows:

- a) Mr ACB Markham David, sitting at Swan St on 10 April, allowing an asylum and human rights appeal from directions for removal as an illegal entrant on 31 January;
- b) Mr M Rush, sitting at Swan St on 12 January, dismissing an asylum appeal from directions for removal as an illegal entrant on 28 April 2000.

Both appeals raise essentially the same question, so we heard them together. It is whether there is now any scope for finding real risk on return to Kosovo for someone who has deserted from, or refused to join the former KLA. Other questions arise on each, to which we shall come in due course. The grant of leave to Buba suggests that the adjudicator appeared not to have made a credibility finding; but he did say

"...the overwhelming objective evidence [is] totally against anything that the appellant has produced either in relation to his subjective fear or in relation to the objective situation."

2. The most recent and authoritative evidence on whether or not there is risk for such a reason comes in the UNHCR updated position paper of March 2001, read together with its predecessor. What is conspicuous by its absence in the March paper (under the heading of 'Persons with Special Protection Needs', where it used to appear) is any mention of a risk from the former KLA. The reason can be seen from the summary of

the previous evidence at paragraph 6.30 of the Home Office country assessment (April 2001): the only two incidents described, neither of the greatest seriousness, date back to 1999, and the UNHCR had been reduced to speculating that numerous other cases had gone unreported. No doubt it was realized that no suggestion of any general risk to "draft evaders" or "deserters" from the former KLA was any longer viable.

3. In the case of Rama, the adjudicator found his expressed fear of punishment for refusing to join the KLA (at some time before he came here in September 1998) was well-founded; but this was on the basis of the previous UNHCR position paper, of March 2000. Clearly that finding cannot stand; nor could any equivalent one now be made. The human rights claim in Rama did not add anything to the merits of the appellant's case on the facts, but stood or fell with the asylum one. Miss Iqbal argued that Rama might be seen as a collaborator with the Serbs; but the only basis for that was his refusal to join the KLA, and UNHCR cannot have meant to include that as a ground for risk by the back door, while shutting it out by the front. Her other argument was that he faced a particular risk from the KLA, having been asked to join it by an elder in his own village. We do not see that this would make any present fear he had well-founded; but, if it did, then there is nothing to make it unduly harsh for a healthy single man of 27 to stay in Pri?tina, to where he would be returned.

4. The same result must follow on Buba's main claim, to fear persecution for failing to join the KLA. This was highly dubious even before the latest UNHCR report: as the adjudicator pointed out, Buba had managed to stay in his village till March 2000. We think the adjudicator was right at the time in the credibility finding he made (see paragraph 1 above), and doubly justified by the view UNHCR have now taken. There is another point taken in Buba's case, which is that he is at risk because of being a Roman Catholic. He himself conceded before the adjudicator that he never had had any trouble for that reason; but Miss Thompson argued that there was nevertheless a real risk of it. This was based on two documents. The first is a photocopy of a letter (bundle pp 5-6) from the London office of UNHCR to the Home Office: it has been so badly done (we hope not deliberately) that the date is nowhere to be seen, and Miss Thompson realistically conceded that it cannot be inferred from the contents. That is the most crucial point in a developing situation of this kind, and we declined to take any notice of this effectively undated document. The other document is the March 2000 UNHCR position paper, which does say (its page 13)

Although there is no clear cut evidence of Catholic Albanians being persecuted specifically on religious grounds, there may be certain areas within Kosovo where Catholic Albanians are likely to come under suspicion for collaboration, and where they are therefore at risk.

First there is no evidence to suggest, in the absence of any previous trouble, that Buba's home area was such a one; but what is more, this passage has not been reproduced in the March 2001 position paper, and it must follow that UNHCR no longer see any real risk from this source.

Secretary of State's appeal in Rama allowed Appeal of Buba dismissed

John Freeman

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