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Heard at Field House
On 9 October 2002

APPEAL NO HX12355-2002
AI (Mixed Ethnicity – Albanian/Bosnian) Kosovo CG [2002] UKIAT 05547

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....2 December 2002.....

Before:

A R MACKEY (Chairman)
MRS M E MCGREGOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

and

Ahmedin Isufi

RESPONDENT (CLAIMANT)

Representation

For the appellant:	Mr M Blundell, Home Office Presenting Officer
For the respondent (Claimant)	Miss S Panagiottopoulou of Counsel instructed by Sheikh & Co, Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals with leave against the determination of an Adjudicator, Mr P D Ievins, promulgated 5 July 2002 wherein he allowed an appeal against the decision of the respondent who had issued removal directions to the Federal Republic of Yugoslavia (FRY) following refusal of asylum and human rights claims. The Adjudicator allowed the appeal under both the Refugee Convention and Article 3 and 8 of the European Convention on Human Rights (ECHR).

2. The Adjudicator's Determination
The Adjudicator found that the claimant was a 27-year old married man from Kosovo. His father was ethnic Albanian and his mother Bosnian.

He was Muslim by religion and came from the northern part of Mitrovica. There was no Presenting Officer present but the appellant gave evidence and was represented by Miss Panagiottopoulou at the hearing. The Adjudicator decided that as the removal directions had been given only to FRY that he should consider the risk so far as it ascertained to both Kosovo and Serbia.

3. The Adjudicator found the claimant's parents were of mixed ethnicity. He stated that: "Because his mother was Bosnian, and spoke Serbo-Croat, she would be seen as allied to the Serbs". The appellant stated that his sister had been granted refugee status in this country and that he had stated that his wife, child and parents-in-law were still in Kosovo. He claimed that he dare not return to Kosovo because of his mother's origins. She had a Serbian surname which was set out in a birth certificate that he produced in support of his claim. He stated that his family had been expelled from their home area and moved to the town of Kqeq which was some 10 to 15 kilometres from Mitrovica towards Pristina. He said they were evicted in early 2000 in Kqeq. He lived with his parents-in-law. While at Kqeq a KLA man named B came around every so often. The claimant feared that if he returned to Kosovo B would kill him because his mother was different and spoke Serb. He did not consider that his wife and infant child were at risk as they were looked after by her parents.

4. After taking into account the objective country information including the UNHCR position paper on minorities, of April 2002 the Adjudicator concluded (paragraph 29) there was a serious possibility that if he were returned to the north of Mitravica he would be persecuted as the Serbs were suspicious of him because he was part ethnic Albanian. He did not consider that the type of protection that could be offered by KFOR or UMIK in the north of Mitravica could be described as "either sufficient or effective".

5. He then went on to consider the risk to the appellant in Kqeq. There he considered the fear to be more of B and went on to accept that the fear was both subjectively and objectively well founded. He considered that the risk to the claimant of persecution was on account of his mixed ethnicity and actual or imputed political opinions. He then stated that there was a serious possibility that the risk of persecution would extend to the whole of Kosovo. His reasoning for this appears to be that the appellant would have to produce his documentation, including his birth certificate, and it would readily be apparent what background and ethnicity the claimant had.

6. He further considered that it would be unduly harsh to require the claimant to relocate to Serbia as he appeared to know no-one in Serbia, would have no home and his mental state was precarious. He also concluded that the risks to the claimant would be a breach of Article 3 of the ECHR and also Article 8. He noted the medical evidence produced in support of the claim which stated that the claimant's removal to

Kosovo would occasion a significant worsening of his already severe mental illness and that there was a diagnosis of suicide risk.

7. The Appellant's Submissions

Mr Blundell adopted the four grounds of appeal submitted in support of the leave application. During the course of the hearing the first ground which related to the claim that the Adjudicator had applied too high a standard in relation to sufficiency of protection, Mr Blundell conceded that this ground may not have force but based on the other grounds it was unnecessary to reach conclusions on the issue of sufficiency of protection as there was no prior proof of a real risk of persecution or maltreatment to this appellant that was required prior to consideration of whether there was sufficiency of protection or not.

8. The most substantive ground relied on was that the Adjudicator had not properly addressed the issue of an internal flight alternative (IFA). The claimant would be returned to Pristina and failed to show that it would be unduly harsh for him to be relocated there. In addition the Adjudicator had failed to link harassment with a well-founded fear of persecution.

9. It was also submitted that the Adjudicator had placed undue weight on the claimant's mixed ethnicity and that he did not fall within the category of those having special protection needs. He relied on the determination of the Tribunal in Rexhepi (May 2001) where a Kosovan Albanian applicant was married to a Bosniak and had a Serbian mother. In that determination it was concluded that if there was no reason to suppose that the applicant's ethnicity might become apparent then the applicant would not be in need of protection. It was submitted that the Adjudicator's finding in respect of the birth certificate was baseless.

10. Finally it was submitted that the claimant's mental condition would not engage Article 3 or 8 of the ECHR and that the Adjudicator should have considered European jurisprudence such as Bensiad and the recent decision of the Tribunal in Qomile Gashi [2002] UKIAT01053 where it was found that medical treatment for PTSD was available in Kosovo.

11. Mr Blundell laid particular stress on submissions that the Adjudicator had reached a flawed decision on the context of the Balkans by suggesting that mixed ethnicity involving Bosnian and Albanian Muslims would place applicants at risk in a similar manner to those with mixed ethnicity of Serb and Albanian. Both the Kosovan Albanians and the Bosniaks have been attacked by the Serbs and although there was distrust between Bosniaks and Kosovan Albanians, it was wrong to consider that such an ethnicity mix, would place an applicant at risk. He also submitted that the appellant claimed his fear was from fellow Kosovan Albanian citizens, not from a state authority, and thus the likelihood of other citizens becoming aware of the details of his birth certificate must be seen as remote. In relation to the IFA issue, he submitted that it was just as valid to conclude that this claimant could move from an area where he may be at risk of Serbs to Pristina as it

would be for any other Kosovan Albanian and would not be unduly harsh for him to undertake such a relocation. The conclusions of the Adjudicator at paragraph 31 were inadequate and invalid on this issue. Beyond this the issue of Serbia was not relevant as the claimant would be returned to Pristina.

12. In relation to the claimant's medical conditions, he submitted that the proportionality assessment required under Article 8 of the ECHR was clearly at a high standard as reflected in the determination in Bensiad. The suicidal risk for this claimant he submitted was speculative and the symptoms shown by Mr Bensiad were far more serious than was the case with this claimant and yet Mr Bensiad's claim had been refused as not reaching the required level to overcome the legitimate proportionality requirements.

13. The Claimant's Submissions
Miss Panagiottopoulou submitted to us that the claimant had been found to be a credible witness and that the medical condition and his emotional state were noted by the Adjudicator. No Presenting Officer had been before the Adjudicator and he had proceeded correctly in her submission. The conclusions of the April 2002 UNHCR report on minorities should be seen as strongly persuasive and the determination of the Adjudicator should be upheld.

14. In relation to the submissions made by Mr Blundell as to whether the claimant fell within one of the minority categories, set out in the UNHCR report, she conceded that there was no specific reference to people of mixed Bosnian and Albanian origins however it had to be noted that this claimant came from North Mitravica, a Serb dominated area, where he and his family had been in a minority who had been harassed and evicted. In her submission the Adjudicator had correctly found the claimant to be within an at risk group. She submitted that similar conclusions in relation to risks for those of mixed ethnicity were found in the recent determination of the Tribunal in Sejdru [2002] UKIAT04383. At paragraph 8 the Tribunal found that the appellant in that claim was a Kosovan Albanian who had been involved in a relationship with a Serbian girl and this became known to the KLA. The Tribunal referred to the UNHCR position paper of April 2002 and comments relating to ethnically mixed marriages and then went on to state:

> "The Tribunal are satisfied that in general terms UMIK and KFOR does provide adequate protection but each case must be looked at on its own circumstances. The distinguishing feature of this present appeal is that the appellant faces general hostility from his fellow Albanians because of his relationship with Violeta and may be at risk of reprisals from the KLA. In the light of the evidence in the US Office Pristina, Kosovo, 2001 report and the UNHCR OSCE report October 2000-February 2001 there is a likelihood that the appellant would find himself at the risk of persecution and be unable to look to UNMIK or KFOR for

protection. The Tribunal are satisfied that there is a risk which can properly be described as a real risk rather than a speculative risk that the appellant would face persecution on return to Kosovo."

15. In relation to the IFA issue, he submitted that it was incorrect to say that it had been improperly addressed by the Adjudicator as he had referred to possible relocation options in paragraph 9 (when dealing with the removal directions) and at paragraph 29, when referring to northern Mitrovica as being the home area where this claimant would have a well-founded fear of persecution on return. In addition there was reference at paragraph 30 to the risk to the appellant in the Kqeq area and again in paragraph 31 where the Adjudicator referred to the entire Kosovan province in relation to conclusions on mixed ethnicity. She submitted therefore that the IFA issue was covered at length and appropriately, including a finding that it would be unduly harsh for the claimant to relocate to Serbia.

16. She conceded that there was no specific reference to Pristina however the reference to the whole of Kosovo obviously included Pristina.

17. With regard to the grounds relating to Article 3 and 8 and the claimant's medical evidence, she submitted that the medical evidence provided in the psychiatric and general practitioner's reports in the bundle that was before the Adjudicator set out that the claimant was suffering from post-traumatic stress disorder and depression with suicidal intent. The claimant was also stated to be highly emotional.

18. She submitted that the determination in Bensiad did not need to be specifically addressed and that the conclusions in paragraphs 33, 34 and 35 were properly reached. In respect of Bensiad she submitted that the claimant's position could be distinguished from that of Mr Bensiad in that the psychiatric problems this claimant had a direct causal link to Kosovo which was not the case of Mr Bensiad in respect of his home country of Algeria. While noting the determination in Gashi she submitted that the position of this claimant was still one of vulnerability and that the Adjudicator had carried out the correct proportionality exercise balancing the risk and the suicidal ideation of this claimant.

19. On the grounds put forward by the Secretary of State, in relation to mixed ethnicity, she again referred us to the UNHCR report of April 2002 and that it had to be noted that this claimant was not a pure Albanian and would be seen because of his mixed Bosnian background, as a collaborator with the Serbs. His mother's name would identify him as it was clearly Slavic and not Albanian.

20. In relation to the risks and needs of the claimant to disclose his ethnic background, she submitted that the Rexhepi conclusions were not applicable to this claimant as his evidence had been accepted that he would be required to disclose evidence of his identity including the birth

certificate, but beyond this the birth certificate had not been challenged as being a bogus one. She therefore submitted that the appeal should be upheld.

21. We reserved our determination.

22. The Issues
We found the key issue before us to be whether an IFA was available to this claimant to Pristina or other parts of Kosovo away from north Mitravica? If the claimant was able to relocate to Pristina and it would not be unduly harsh or unreasonable to expect him to do so, then, clearly, the issue of whether he had a well-founded fear of persecution or otherwise in his home district of northern Mitravica is not a relevant consideration.

23. Assessment
The claimant submitted that his risk of persecution would arise from Kosovan Albanians, in particular B, this persecution he considered was for reasons of his mixed ethnicity and in particular his mother's Bosnian ethnic background.

24. The Adjudicator has clearly relied on the April 2002 paper (UNHCR position on continued protection needs of individuals from Kosovo), and the references to risks to minorities. We note from that report at paragraph 5 that it states:

> "While most Kosovan Albanians are able to return without protection difficulties, there are certain categories of Kosovan Albanians who may face serious problems, including physical danger, were they to return home at this time. These include:
> Kosovan Albanians in ethnically mixed marriages and persons of mixed ethnicity;
> Kosovan Albanians perceived to have been associated with the Serbian regime after 1990."

25. Paragraph 6 states that persons who fear persecution because they belong to one of these categories should be carefully considered and, at paragraph 7, it states that the claims of traumatised individuals such as victims of torture and egregious violence or witnesses to crimes of humanity will require special attention.

26. At paragraph 9 of the same report it states that the term of "minority" is used to describes persons who are in a numerical minority situation in a particular location regardless of their status elsewhere in Kosovo or the rest of FRY.

27. Further on at paragraph 11 it states that there have been improvements to the general situation in Kosovo and that these are having gradual impact on some minority communities in specific locations. However

"this does not imply that the risk of serious human rights violations has disappeared".

28. At paragraph 14 of the report it states:

> "UNHCR stresses that minority returns should take place on a strictly voluntary basis and based on fully informed decisions of the members of this community. Any such voluntary return movements should be properly coordinated and reintegration should be supported through assistance to ensure sustainability. Minorities should not be forced, compelled or induced to return to Kosovo."

29. The same report then covers various minority groups of concern including, Kosovo Serbs, Kosovo Roma, Ashkaelia and Egyptians, then Kosovo Bosniaks. The two paragraphs concerned state:

> "20 When compared to the situation of other minority groups, the security situation for Kosovo Bosniaks is relatively stable. Nonetheless this community faces various forms of mistreatment, including intimidation, harassment and discrimination, as well as isolated incidents of violence. Like other minorities, Bosniaks live in concentrated communities or enclaves, and have limited freedom of movement outside their places of origin, especially into the main urban centres due to fear of attack. As a result, a KFOR security escort is required for travel beyond certain perimeters. Their inability to use their language without risking being considered as ethnic Serbs outside the enclaves and areas contiguous to them, is a source of continuous hardship. All of these limitations restrict their equal access to social services and effectively undermine the means for the community to remain self-supporting in the province. This situation is a major cause of displacement for Bosniaks.
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> 21. The apparent advancement of inter-ethnic relations between Bosniaks and ethnic Albanians that has taken place in the last year should not be interpreted as having reached a level indicating a fundamental change in their general situation. Kosovo Bosniaks do not yet have full freedom of movement under secure conditions. It is therefore not possible to conclude that returns to this environment could be considered safe, dignified or sustainable in the longer term. Moreover, further concentration of Bosniaks into enclave-like locations would only increase the pressure on the coping mechanisms of the community and perpetuate the causes of displacement. Voluntary returns of individuals of Bosniak ethnicity based on an informed choice, which properly coordinated and supported by reintegration systems, might result in sustainable results. But hasty return movements which are not based on real choice could put those returned at real risk on the ground, as well as

potentially destabilising the whole return process for minorities in Kosovo."

30. This appellant however is not a Kosovan Bosniak. His father was a Kosovan Albanian, he speaks Albanian himself and he has a family in Kosovo who are not encountering problems. While it may be correct that he suffered some problems while living in north Mitravica the level of risk to him in Kqeq appears to us to be below that of a reasonable likelihood. The only risk noted by the Adjudicator was that from B. A risk from one person we do not consider has significant reality to it to invoke the requirement for surrogate international protection. Beyond this the claimant has the ability to move, with his family, or on his own, to Pristina. The objective country information does not indicate that this is a person who would be readily identified as a Serbian sympathiser or even a Kosovan Bosniak. His whole background indicates that he is a Kosovan Albanian. Risks to him of persecution or that there would be a breach of Article 3 of the ECHR on return to Pristina or Kqeq must be seen as extremely remote or speculative. The appellant is not one of the minority groups noted in the UNHCR report. His only area of potential risk is that he had a Bosnian Muslim mother who evidently spoke Serbo-Croat. The appellant does not appear to use that language and indeed spoke Albanian before the Adjudicator and set it out as his preferred language in his SEF questionnaire.

31. We are satisfied therefore that the submission of the appellant that an IFA is available to this claimant is a valid one. We consider the claimant could relocate to Pristina in Kosovo and that it would not be unduly harsh or unreasonable to expect him to do so. In Pristina he could seek protection from the KFOR and UNMIK security forces and the risks of persecution to him are below that of a reasonable likelihood.

32. Similarly, following the guidance of the Tribunal determination in Kacaj, we do not consider that there are substantial grounds for considering this appellant would be at a real risk of torture or inhumane or degrading treatment if sent to Pristina. We also do not consider that there would be a breach of Article 8 of the ECHR in this regard and follow the determination of Qomile Gashi and note that adequate medical treatment is available in Pristina. In addition the predicament of this appellant in Pristina would not be unduly harsh to the extent that it is beyond the high level required in the European jurisprudence. The appellant's predicament is by comparison below that of Mr Bensiad, who himself was not found to reach the required level for it to be disproportionate to the valid immigration control objectives.

33. Decision

The appeal is allowed. The claimant is not a refugee within the meaning of Article 1(2) of the Refugee Convention 1951. We do not consider there would be a breach of either Article 3 or 8 of the ECHR should this claimant be removed to Pristina, Kosovo, FRY.

A R Mackey
Vice President