

Heard at Field House
On 3 February 2003

APPEAL NO HX51935-2001
SL (Medical Facilities-PTSD)
Serbia CG [2002] UKIAT
07178

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
12 March 2003

Before:

Mr R Chalkley (Chairman)
Mrs W Jordan
Mrs S I Hewitt

Between

Sokol Luli

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Ms R Dassa, Counsel instructed by Fitzgrahams, Solicitors, appeared on behalf of the appellant. Mr I Graham, a Home Office Presenting Officer, appeared on behalf of the respondent.

DETERMINATION AND REASONS

1. The appellant, a citizen of the Federal Republic of Yugoslavia (Serbia) appeals with leave of the Tribunal against the determination of an Adjudicator, Mr T Holder, promulgated on 21 August 2002, dismissing his appeal against the decision of the respondent on 16 March 2001, to direct his removal after refusing asylum.
2. The grounds of appeal refer to the fact that the Adjudicator found the appellant to be credible and accepted that he was suffering from post traumatic stress disorder. They alleged that the Adjudicator erred when dismissing the appellant's Article 3

and Article 8 claim in that as a person suffering from post traumatic stress disorder he would probably not be able to be treated for the same in Serbia due to his ethnicity and that the actual return of the appellant to Serbia would exacerbate the condition. It was also claimed that it is highly likely that he would have to be treated by a Serbian psychiatrist which, it was alleged, would breach the appellant's "moral and physical integrity" and subject him to further degrading and inhumane treatment. In granting leave, the Vice President said that the issue of the appellant suffering adverse reaction when treated by a Serbian therapist, which was dismissed as being too speculative by the Adjudicator, may be arguable.

3. We advised Counsel that we had received a fresh bundle, which had been delivered late accompanied by a letter of 30 September from her instructing solicitors. We handed the bundle to her and told her that we would not accept late submitted documentation. The Tribunal pointed out that in any event the essential documents comprising the medical reports referred to by the Adjudicator in his determination appeared to be in a bundle which had been submitted to the Adjudicator and which we had read.
4. Ms Dassa submitted that the Adjudicator should have allowed the appellant's claims under Articles 3 and 8. The adverse effect that return would have on the appellant should have been taken into account along with the fact that in all likelihood the appellant will be treated by a Serbian doctor and the fact that treatment was unlikely to be available for him in Serbia. She referred us in particular to paragraph 5.27 of the Country Information and Policy Unit report, which spoke of the state of the health service in Serbia being paralleled by the deterioration in the health of its population. The mental health of the population was said to have deteriorated and "massive consumption of bensadine, bromazepam and diazepam, suggests that one in every two people in Serbia are reliant upon sedatives". The Country Information Policy Unit reports did not suggest anything but a low level of service available to people. Two medical reports submitted on behalf of the appellant indicate that he should not be returned to Serbia.
5. Counsel referred us to the report of Dr K K Zakrzewski and the report of Dr Nigel Higson. In his report, Dr Zakrzewski indicated that the appellant would initially suffer an elevation of his anxiety on return to Serbia and overall distress, which, the doctor felt, should be met with a fairly immediate therapeutic response. He indicated that it was possible that the appellant would be able to received similar treatment to that recommended in larger cities, for example Belgrade. He

suggested also that there remains a strong possibility of the appellant reactivating the strong cultural obligation of avenging the death of his family. In his report, Dr Higson was of the opinion that the appellant had suffered long term psychological damage secondary to post traumatic stress disorder and would suffer such for many years. He was of the opinion that the appellant would be at increased risk of personal psychological distress and of committing injury to others should he be returned to his native country. In response to a question from the Tribunal, Counsel told us that the treatment recommended by Dr Zakrzewski in his report of 28 May last, namely some 24 to 30 sessions of specialist psychological therapies and possibly anti-depressant medication had not been commenced. Counsel suggested that the appellant was deeply disturbed and at the moment was unwilling to commence treatment given his fears about return to Serbia. She told us that he was not in receipt of medication and that there were not up-to-date medical reports available. The appellant was simply reluctant to attend for any therapy at the moment.

6. For the respondent Mr Graham pointed out that the medical report of last May suggested that the appellant should receive medication and treatment. However, it is clear that the appellant has not received any medication and has not sought any treatment.
7. In Mr Graham's view, the appellant was in no worse position than many others in Kosovo. He has been in the United Kingdom since 2000, but sought no treatment for his severe illness, which has been diagnosed by two doctors, despite its availability. The appellant had sought no treatment for his illness following his arrival in the United Kingdom in 2000 until he was sent for a medical report in connection with his appeal. There is no evidence before the Tribunal now that he has not been well enough to receive treatment in the United Kingdom.
8. As to the appellant's fear of being treated by a Serbian, this is pure speculation on his part. There must be some doubt as to whether or not he is in need of any treatment. He is in employment and there is no evidence to suggest that he has been so ill that he could not carry on with his employment. Mr Graham accepted that the standard of medical care available for Serbs might not be as efficient as it is in the United Kingdom, but despite this there would clearly be no breach of his human rights. Finally, he submitted that if the appellant had been as ill as is suggested by the medical reports, he would not have been able to undertake work and yet, according to paragraph 4 of the Adjudicator's determination, he is working.

9. In her closing submissions to us, Ms Dassa reminded us that the Adjudicator had made positive findings of credibility. She asked us to bear in mind that the author of the medical report recommending treatment had spent some three hours with him and it was clear from his notes accompanying the report that the examination was thorough. She confirmed that there was no additional medical evidence available in respect of the appellant. It was, however, likely that the appellant would have to be treated by a Serb on his return and this in itself would cause him to suffer further degrading and inhumane treatment.
10. We reserved our determination.
11. The Tribunal have very carefully read the very detailed and careful determination of the Adjudicator. The Adjudicator had before him the two medical reports; that prepared by Dr Zakrzewski followed a three hour consultation with the appellant. The author diagnosed the appellant as suffering from post traumatic stress disorder. It said,

“The degree of this disorder is severe and consistent with the description of traumatic events as above. Mr Luli’s PTSD is approximately two and a half years duration and has not been reported and treated so far.”

He suggested treatment, comprising 24 to 30 sessions of specialist psychological therapies and possibly treatment with anti-depressant medication. He suggested that the prognosis with the treatment is normally good and resolution of most of the symptoms should take place within a year. Some level of distress related to this disorder was likely to remain for several years to come. The report of Dr Higson, which is dated 8 March 2002, expresses the opinion that the appellant is suffering from long term psychological damage secondary to post traumatic stress disorder. There was nothing to indicate how Dr Higson is qualified to make this diagnosis. However, it has of course been confirmed by the psychiatric report prepared by Dr Zakrzewski. Dr Higson recommended counselling from a specialist in post traumatic stress disorder.

12. We have carefully considered the objective material before us. This included the Amnesty International 2001 report, the US State Department report of 2001 (which were both in the appellant’s bundle) as well as the more recent Country Information and Policy Unit report. The Tribunal noted that a recent UNICEF report concluded that the public health system in Serbia does not meet the minimum needs of the population. When the new government took over in October 2000 it found widespread abuses and misappropriation of funds and described the situation in the health service as “critical”. The

report suggests that one in every two people in Serbia are reliant upon sedatives. The state of the health service in Serbia is clearly not as good as it was and not as good as it is in the United Kingdom. However, there clearly are health services available for the appellant.

13. The Tribunal were concerned to note that despite Dr Higson's report, prepared as long ago as March last year that the appellant should receive counselling, he has done nothing about seeking treatment. He has subsequently seen a psychiatrist who has confirmed the diagnosis made by Dr Higson and recommended 24 to 30 sessions of specialist psychological therapies and possibly also anti-depressant medication.
14. It was suggested to us by Counsel, that the appellant is deeply disturbed and unwilling to commence treatment, until the uncertainty about his immigration status is resolved. However, she did not adduce any additional medical evidence before us. We note from the Adjudicator's determination that the appellant is working. While it might be the case that keeping himself occupied with work has no adverse effect on his condition and might well be beneficial, it seems to the Tribunal that it would have been in the appellant's best interests to at least have embarked on the course of treatment prescribed by the psychiatrist.
15. So far as the appellant receiving therapeutic treatment in Serbia is concerned, the Adjudicator noted that the psychiatrist was of the view that such treatment would probably be available in the larger cities in Serbia. We agree with the findings of the Adjudicator in paragraph 52 of his determination. We consider the possibility of an adverse reaction by the appellant to a possible Serbian therapist treating him to be too speculative. In any event, the appellant has done nothing to receive treatment in the United Kingdom during the past eight months.
16. Looking at the evidence in the round, we find that the Adjudicator did not err in law in dismissing the appellant's claims under Articles 3 and 8. This appeal is dismissed.

R Chalkley
Vice President