ZR (Risk on Return – Deterioration of Mental State – Medical Facilities) Albania [2004] UKIAT 00086

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 19 January 2004

Date Determination notified:

27 April 2004

Before:

Dr H H Storey (Chairman)
Mr D R Bremmer, JP

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation
Miss E. Dubicka of Counsel, instructed by Gregg Latchams Quinn for the appellant; Mr S. Walker, Home Office Presenting Officer, for the respondent

DETERMINATION AND REASONS

1. The appellant is an ethnic Albanian and a Muslim raised in the Lipjan region of Kosovo. Although the appellant's previous appeal against refusal of his asylum claim had been rejected in August 2002, the Adjudicator in that case had largely accepted his account was credible and in particular had accepted that he had been subjected to terrible difficulties in Kosovo and that his family had been dispersed.

2. By the time the appeal on human rights grounds came before the Adjudicator, Miss A.D. Baker, in March 2003, there was a considerable amount of evidence concerning the appellant's psychological difficulties. The Adjudicator reviewed this evidence and reached a two-pronged conclusion. On the one hand she found it:

> "not established that the appellant suffers from anything more serious than mild to moderate depression."

3. On the other hand she stated that:

> "I specifically reject the credibility of the worsening presentation as a result of this depression, leading to diagnosis of PTSD and the credibility of the presentation of being unable to answer questions and to communicate verbally."

4. She justified these negative findings by reference to "conflicting evidence concerning the appellant's presentation".

5. She found that "there is evidence of an improvement in self-care" largely based on his ability to effectively communicate in January 2003 with nurse Phil Harrison.

6. The grounds of appeal raised several contentions.

7. The first was that unfairness had been caused to the appellant by the delay in promulgating the decision : the hearing was on 11 March 2003 whereas there was no promulgation until 16 June 2003. However, we do not consider this ground is made out . Whilst the delay of just over three months is regrettable, she signed it on 6 June 2003 and we do not find in the circumstances of this case that it caused any failure on the part of the Adjudicator to adequately recall the evidence.

8. The second was that there was now to hand further medical evidence which it had not been possible to obtain in time for the hearing. The view of Dr Caroline Steere, Clinical Psychologist, and Dr Alison O'Connor, Consultant Psychiatrist, was now that the appellant cannot function independently and cannot cope unless he has social support. There were also indications of learning difficulties which was a separate issue from mental illness. Reference was also made reference to suicidal thoughts.

9. The third contention was that on the documentary evidence "there is an almost total lack of community services other than those associated with conflict trauma in Kosovo".

10. We are prepared to accept, in the light of the further medical evidence that the Adjudicator's findings on the medical evidence were questionable. To some degree she cannot be blamed for doubting the claims made about his medical condition because his doctors had not

found it easy to examine and diagnose him properly. But given the very specific assessments made by Drs Steere and O'Connor, we are satisfied that the appellant's medical condition has to be looked at in the light of their latest medical opinions.

11. Nevertheless we do not consider, even on the basis of the current medical evidence, that the appellant has shown that the decision of the Secretary of State to remove him is disproportionate. Ms Dubicka cited the case of Janusi, but as she recognised, the Court of Appeal has since given more specific guidance on cases involving ill health in N [2003] EWCA Civ, [2003] EWCA Civ and Djali [2003] EWCA Civ 1371. In the light of the principles set out by the Court of Appeal in these two cases, it is clear that the appellant could only show the decision was disproportionate if it posed a serious threat to his physical and moral integrity. We do not consider that it can be said to pose such a threat.

12. In the first place, although his current condition is the cause of some concern, it is not in the category of the extremely serious. Although his depression is now severe rather than being mild to moderate, he is still able to self-medicate at home. There is plainly a concern that he cannot function independently or cope on his own. If removal were to leave him isolated and without any support, then this aspect of his condition could become more consequential. However, for the reasons we go on to give, we do not think it is reasonably likely that removal would have that effect.

13. In the second place, although he has clearly been in need of support since he began to manifest symptoms of mental illness, it does not appear to be crucial to his mental state that the treatment he receives is specifically given by UK medical experts. Neither doctors Steere and O'Connor nor other medical experts who have done reports on this appellant described their professional care and treatment as being singularly essential to management of his mental difficulties.

14. These aspects of the appellant's situation are particularly relevant in this case because of the likely situation he would face on return to Kosovo.

15. Miss Dubicka has sought to persuade us that on return to Kosovo the appellant would effectively be denied appropriate medical treatment. She described an almost total lack of community services. She also emphasised that the appellant had learning difficulties which would require a distinct type of social and educational support facilities.

16. Ms Dubicka urged us to assess the likely facilities this appellant would have available to him by reference to his home area, Gadime.

However, in our view there is no valid basis for so confining the issue of available medical facilities. Her submissions on behalf of this appellant were to the effect that he had not lived in Kosovo since he was ten and now had no family to return to. However, if indeed he had no family left in Kosovo, then it was perfectly reasonable to expect him upon return to go to whichever area of Kosovo would offer him the best available treatment facilities: according to Research Fellow James Korovilas whose report was adduced by the appellant, most medical facilities are concentrated in Pristina.

17. Ms Dubicka may well be right that there remains a shortage of medical professionals in Kosovo as a whole. She relies in particular on Mr Korovilas's assessment of September 2002 that "publicly funded treatment for psychological disorders such as PTSD is in extremely short supply and can only be obtained privately at considerable expense. [In the psychiatric hospital in Pristina] [t]he main types of treatment used for patients suffering from psychiatric disorders of PTSD are sedations and incarcerations". However, the only relevant question concerning medical and community facilities in this case is whether it is reasonably likely this appellant would be able to access such facilities. We are satisfied he would. Not only are there specific centres set up to cater for victims of trauma, but the objective country materials do not demonstrate that persons who are victims of war trauma are turned away. Nor do they demonstrate that the assistance given to victims of trauma does not extend, when needed, to include social support.

18. There has been some suggestion in the medical evidence and submissions made in this case that we should consider that the mere fact of return to Kosovo would re-traumatise the appellant. In this regard it is salient in our view to repeat what was said by the Tribunal in P (Yugoslavia) [2003] UKIAT 00017:

> '39. This brings us directly to the issue of the risk of suicide.
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> 40. We would note two particular features of the medical evidence relating to this issue.
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> 41. One is that it falls short of stating the appellant represents a real suicide risk regardless of his location. Indeed, it maintains that the appellant's current environment in the UK is assisting him in maintaining the level of psychological equilibrium he does have.

42. Another is that in alluding to problems the appellant would face upon return, the report is somewhat equivocal. It contains passages which appear to state that the mere fact of return to the appellant's country (the Federal Republic of Yugoslavia) would psychologically destabilise the appellant. But its underlying logic would appear to be that return there is only seen to give rise to a real risk of suicide because: (i) within that country there is the place where the appellant suffered the events which caused him to become traumatised: (ii) having to return to such a place would compel him to re-experience that trauma in a way he could not cope with (in Annette Goulden's experience that trauma in a way he could not cope with (in Annette Goulden's words "[f]acing the traumatic past without the support of a stable home environment, social network and therapeutic setting may be intolerable and precipitate a severe avoidance reaction such as suicide"); and (iii) he would not have the necessary medical and social support in order to be sure he can cope.

43. As regards (i) and (ii), we would not question that return to Kosovo will cause the appellant to recall traumatic events in a different way than he does at present: he will be back in the country where his traumatic experiences occurred. But we do not see that the mere fact of return to the *country* of Federal Republic of Yugoslavia or to the *region* of Kosovo entails that the appellant will be compelled to revisit the *scene* of his trauma in the village of Matcan, north-east of Pristina. For one thing the appellant, whatever he subjectively believes now, will see for himself upon arrival in Kosovo that the Serbs no longer pose a threat to ethnic Albanians in Kosovo and that there had been a considerable improvement in the political and security situation in Kosovo. None of the medical evidence suggests that he would be incapable of perceiving such realities. For another it will be entirely a matter for him whether he chooses to visit his old house in the village of Matcan: indeed, it is implicit in what is

> said in the medical reports that he will not want to revisit the scene of his trauma for some considerable time, if ever.
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> 44. Viewed in this light it is clear that the principal medical reports wrongfully equated return to a country with return to a scene of trauma. Thus, to the extent that the medical reports postulated a re-exposure to the scene of the trauma, they go well beyond the limits of a realistic appraisal. So long as the appellant seeks medical help when he returns, and again the medical evidence does not suggest he would not seek medical help, his return will not be to the scene of his trauma but into the hands of medical and related services whose focus will be on treating his trauma, not reactivating it. Those administering the medical help will be persons very familiar with victims of trauma arising out of the Kosovan conflict.'

19. For similar reasons we do not consider it established that the mere fact of return to Kosovo for this appellant will re-traumatise or further traumatise him.

20. Our conclusion is that there is no good reason to think that the appellant would not be able to access appropriate medical and community facilities in Kosovo. This conclusion also serves to explain why we see little force in Miss Dubicka's submission that there was a real danger in the appellant's case that he would be misdiagnosed and institutionalised. In our view that submission is unduly speculative.

21. As regards the need the appellant appears to have for help with learning disabilities, we have not been able to find any specific reference in the objective country materials to the availability of such help in Kosovo. But even if the appellant would get no or minimal help with such disabilities, that would not in our view imperil his physical and moral integrity such as to make his removal contrary to Article 3 or Article 8.

22. For the above reasons this appeal is dismissed.