

ar

Appeal No. HX33863-01
OV (Persecution-PSG-Jews) Moldova CG [2002] UKIAT 06886

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 20 December 2002

Date Determination notified:

..27 February 2003..

Before:

Mr G Warr (Chairman)
Mr C Thursby
Mrs E Morton

OLEG VASHKALUP

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The appellant, a citizen of Moldova, appeals the determination of an Adjudicator, (Mr P.R. de Haney) who dismissed the appellant's appeal against the decision of the Secretary of State to refuse his application for asylum.
2. The appellant was represented before us by Mr R. O'Ryan, of counsel, while Miss C. Paddick appeared for the Secretary of State.
3. The appellant is an ethnic Russian living in Moldova. He is Jewish. Since Moldova became independent he had suffered at the hands of the National Front. On 31 August 1995 he had been attacked by National Front members and had been hospitalised for five days approximately. In 1996 he had moved to Tishenyov. He had traded as a market trader there. He had complained to the police about harassment and the police had arrested the perpetrators and detained them although they had been released because of a lack of evidence. There had been threatening telephone calls and his front door had been burned and his car had been vandalised. Again he had reported these matters to the police but they were unable to catch the persons responsible.

4. He had travelled to Russia and remained there from the autumn of 1996 until the spring of 1997. He complained of having been detained on several occasions and in April 1997 he had gone to Germany.
5. He had been put in a refugee camp there but left after a week and had travelled to Frankfurt. In June 1997 he had been arrested because he had not passport and he had been released in September 1997. He tried to go to Romania but was arrested at the German border. He was told to go to the embassy of Moldova but instead went back to Moldova itself in November 1997. He remained there until March 1998 when he went illegally to Germany until February 1999. In February 1999 he went to Denmark and stayed there until August 1999. From Denmark he travelled to Norway where he claimed asylum. His application was refused and he was returned to Moldova on 20 December 2000.
6. On 4 January 2001 the appellant said he was attacked by a group of Moldovan citizens and stabbed, following which he was hospitalised. On 24 April 2001 he left Moldova and arrived in this country on 4 May 2001.
7. The Adjudicator found that the earlier incidents did not form a part of the appellant's asylum claim and the chairman who granted leave agreed. The Adjudicator accepted the account of the appellant having been injured by nationalistic citizens and having been injured. The Adjudicator noted that the appellant had not described the circumstances of the attack nor claimed that it was based on either his Russian ethnicity or his Jewish faith. The Adjudicator also took into account that the attack had been reported to the police and that the appellant appeared not to have followed up any police investigation.
8. The Adjudicator accepted the appellant's credibility although he also found that he was prepared to exaggerate his account. The Adjudicator did not accept that the appellant had been arrested for practising his religion. He found that he had been subjected to assaults and had been the victim of a protection racket but that on each of the occasions the police had been involved and would appear to have taken reasonable steps in an effort to protect the appellant. The incidents involved random acts by individuals. He had not been fleeing persecution.
9. Leave was granted only on the point whether effective protection was available to the appellant. The chairman who granted leave stated that the Tribunal would expect objective material to be filed on the question.
10. Mr O'Ryan acknowledged that he had lodged no material whatsoever. Leave had been granted on 8 January 2002 and accordingly the parties had had nearly a year to prepare for the hearing. Mr O'Ryan emphasised he had only been lately instructed. He was not applying for an adjournment. He had had limited time to research the matter and there was no evidence he was in a position to submit to the Tribunal. Miss Paddick pointed out that the Home Office had submitted the annual report on International Religious Freedom

2001 on 28 March 2002 and had put in the October 2002 Country Assessment on 25 November 2002. Neither of these documents had reached Mr O’Ryan. Reference was made to paragraphs 6.38 and 6.39 of the October 2000 Assessment on Judaism and on extracts from the section dealing with freedom of religion.

11. Miss Paddick submitted that the police had taken action in respect of the appellant's complains and there was no evidence before the Tribunal that there was an absence of a sufficiency of protection for the appellant. It was further not established that the appellant was fleeing from persecution. The events that had happened were sporadic and not targeted at him. The appeal should be dismissed. Mr O’Ryan did not desire to reply to these submissions.
12. We reserved our determination. The Home Office Country Assessment states that the constitution in Moldova provides for the freedom of persons to practice religion and that the government generally respected this right in practice. Apparently the Moldovan Orthodox Church received some special treatment from the government. The Jewish community had had mixed results in recovering property confiscated during the Nazi and Soviet regimes.
13. There are apparently two public schools and a kindergarten open only to Jewish students which receive the same funding as the state schools. Jewish students are not restricted to the schools (see paragraph 6.26 of the Assessment).
14. The paragraphs dealing with Judaism are as follows :

‘6.38 The Jewish community has approximately 31,000 members, with about 20,000 living in Chisinau, 3,100 in Balti and surrounding areas, 2,200 in Tiraspol, 2,000 in Benderi, and 4,000 in small towns. These figures, provided by the groups themselves, may only be rough approximations, as they do not appear to have been adjusted to take into recent emigration trends. Since the 19970s, Jews have been migrating out of Moldova. At first they emigrated almost exclusively to Israel, but as restrictions eased, they have also emigrated to the U.S., Canada, New Zealand, and Australia. Since the fall of the former Soviet Union, Moldova Jews have emigrated to other European countries, notably Germany. There are 9 synagogues in Chisinau, Balti, Tiraspol, Rybnitsa, and Benedri; about 5,000 persons celebrate Rosh Hashanah.

6.39 Dozens of graves in Chisinau’s main Jewish cemetery were desecrated in April 20002, and many of the gravestones were destroyed. The Jewish Community received reports that a group of teenagers confessed to the crime, but the government has not filed criminal charges. The Jewish Community requested that the city place full-

time armed guards at the cemetery, but the presence of the guards was reported to be sporadic. Some desecration of Jewish cemeteries in Transnistria has occurred. Transnistrian authorities sent workers to remove the graffiti. Three youths were charged with vandalism in one such incident, but no verdict had been reached as of 30 June 2002.'

15. We agree with Miss Paddick's submission that the appellant has not established that there is not a sufficiency of protection for him. The police took action on his complaints insofar as they were able to on all of the occasions when he was attacked. The Adjudicator found that the police had taken reasonable steps to protect the appellant and that the assaults on him had been random acts by individuals.
16. There still appear to be a substantial number of Jewish people in Moldova despite emigration in recent years. Although there are incidents where cemeteries have been desecrated, we are not satisfied that these incidents demonstrate a lack of protection for the community. We note that the graffiti on the cemeteries was removed by the authorities and that three youths were charged in relation to one of the incidents. We also note that the government generally respects the right freely to practice religion. There is no satisfactory evidence before us of the Jewish community being persecuted. As we have observed, the appellant has had nearly a year to lodge material and the opportunity has not been taken. We are satisfied that the Home Office Country Assessment gives a fair and balanced overview of the position. We see no reason to disturb the findings of the Adjudicator on the asylum and human rights issues. The Adjudicator found there was sufficiency of protection for the appellant and we agree with his findings. Consequently, this appeal is dismissed.
17. Appeal dismissed.

G. WARR
VICE PRESIDENT