ar Appeal No. HX57054-01
AR (Article 8 – Mahmood – Private Life) Kosovo CG [2002] UKIAT 07378

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 17 February 2003

Date Determination notified:

24/03/2003.….

Before:

Professor D B Casson (Chairman)
Mrs W Jordan

ARSIM RAMA

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation
For the appellant : Miss M. Phelan, counsel, instructed by Immigration Assist
For the respondent : Mr L. Parker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Federal Republic of Yugoslavia, who is from Kosovo and is of Albanian ethnicity, against the determination of an Adjudicator (Mr R.P. Brittain) dismissing, following a remitted hearing, his appeal on asylum and human rights grounds against the decision by the respondent on 5 January 2001 to refuse to grant leave to enter the United Kingdom.

2. The appellant arrived in the United Kingdom at Waterloo International Terminal, having travelled by train from Brussels, on 25 March 1998. He was accompanied by his wife and child, who claim as his dependants. At an asylum interview on 6 July 2000, he said he had left his home in Kosovo to go to Bulgaria on 21 March 1998 and said he had not stayed in Bulgaria because they were always friendly with Serbs there and he did not stand a chance over there. He said that the event which had caused him to leave Kosovo was that the Serbian police had accused him of collaborating with the KLA and had sold weapons to them, but that,

although he had never done such a thing: ‘You can’t imagine how many beatings I received because of this’ (E10).

3. The appellant's appeal was first heard by an Adjudicator (Mr Paul Chambers) on 8 March 2002. The Adjudicator heard evidence from the appellant and a witness. The Adjudicator allowed the appeal on asylum grounds and under Article 3 of the European Convention on Human Rights. The Secretary of State was granted leave to appeal to the Tribunal, which, in July 2002, directed that the appeal be heard afresh before a different Adjudicator.

4. The appellant's immigration history was, in fact, quite different from the account he had given at his asylum interview. The correct position is stated by Miss Phelan at paragraph 1 of her Skeleton argument before us in these words:

> ‘Arsim Rama left Kosovo for Germany in 1993, and his then fiancé (sic) Gezime joined in 1995. The couple were married in Germany in 1996, and their eldest son, Drin, born there in 1997. (A second son, Edi, was born in February 2002 in the UK). The appellant's claim for asylum in Germany was refused and in March 1998 arrangements were made for their removal. Faced with the prospect of removal to FRY, at a time increasing persecution of ethnic Albanians in Kosovo, the appellants came instead to the United Kingdom, claming asylum upon arrival in March 1998. The appellants’ asylum claim was not considered until September 2000, when it was refused.’

5. Although Miss Phelan was unclear about the point, it appears that the appellant revealed the fact that he had spent five years in Germany and had been refused asylum there, for the first time in the witness statement prepared for the hearing before Mr Brittain. At that hearing he withdrew his asylum appeal, and the hearing proceeded on the basis of the human rights claim only. Leave to appeal to the Tribunal was granted because ‘the Adjudicator has failed to consider the Article 8 claim fully.’

6. Miss Phelan submitted that the appellant enjoyed a private and/or family life in the United Kingdom and that removal would not be proportionate. She put before us an extensive bundle of references and reports from various persons, including a letter from the Member of Parliament for Barking. Miss Phelan submitted that the appellant has developed extensive ties in the community in the five years he has lived in the United Kingdom, by virtue of his work as a volunteer translator and interpreter at the Barking and Dagenham Commission for Racial Equality, and his participation in a theatre production. He has also undertaken credits towards a NVQ course in hairdressing. He and his family have made good friends in the United Kingdom as evidenced by statements and letters. His wife has equally strong ties in the community. She has also volunteered as a translator and interpreter at the Barking Commission. She has sought to contribute to education and to society by successfully completing an NVQ Level 2 in Early Years Care and Education. She is now a qualified nursery school assistant, and can

contribute a great deal to society. Their son, Drin, now almost seven years old, has lived in the United Kingdom for most of his life. He attends a primary school; according to the head teacher, he has made a lot of friends and has an excellent academic record, as evidenced by a school report. The family speak English at home and he speaks very little Albanian. Their child, Edi, now almost three years old, was born in the United Kingdom; he speaks English but no Albanian. Miss Phelan submitted that the appellants have a well developed private life in the United Kingdom. We accept that submission.

7. Miss Phelan pointed out that proportionality had not previously been considered. Matters to be considered in favour of the appellant and his family were: they were not illegal entrants or overstayers; at the time of their arrival they would not have expected to be returned to Kosovo; the length of time the family have been there and the extent of their ties with the community; their work for and value to the community; their skills in interpreting and their willingness to offer their interpreting skills pro bono; their involvement in organising children's activities, Mrs Rama in particular has qualified as a nursery assistant and there is a shortage of such staff, in particular Albanian speakers; the appellant wishes to work and is an experienced painter/decorator/carpenter – all trades in which there are shortages in the London area; the children are settled here and have their friends and lives here – Drin is doing well at school; the family have no home and no relatives to shelter them in Kosovo (their home there has been destroyed); their extended family are in USA; an extended family network is of high importance in Kosovan society and lack of such support leads to severe disadvantage; unemployment is high in Vushtrri; the social infrastructure has not recovered from the war.

8. Miss Phelan submitted that the guidance by the Master of the Rolls in Mahmood [2001] ImmAR 229 provided limited usefulness in assessing proportionality in cases of interference with private life. We reject that submission. We accept the submission by Mr Parker that the guidance given at paragraph 55 of the judgment in that case should be followed despite the fact that the Court of Appeal was there dealing with an illegal entrant. Mahmood makes it clear that Article 8 of the European Convention does not impose on a state any general obligation to respect the choice of residence of a married couple. Article 8 is likely to be violated by the expulsion of a member of a family that has been long established in a state if the circumstances are such that it is not reasonable to expect the other members of the family to follow the members expelled. Whether interference with family rights is justified in the interest of controlling immigration will depend on the facts of the particular case and the circumstances prevailing in the state whose action is impugned.

9. In this case the appellant has withdrawn his asylum appeal. There is nothing in the evidence to suggest that there is any insurmountable obstacle to prevent him and his family returning to Kosovo. Any return would be of the family as a whole. They have been in the United Kingdom since 1998 and have clearly decided that they wish to continue to reside here. The documentary evidence indicates that they have made considerable efforts to integrate and establish themselves in the community. They appear to have impressed a considerable

number of people, including the Member of Parliament for Barking. The family happily appears to be in good health. The children are both of an age where they can be expected to adjust easily to a new environment; and there is no credible evidence that the parents will be unable to do so. We do not find circumstances which persuade us that this is a case in which there is good reason to require the United Kingdom to respect the choice of residence of the appellant and his family. It is common ground that removal would be in pursuit of a legitimate object. In our judgment removal would also be proportionate.

10. The appeal is dismissed.

D.B. CASSON
ACTING VICE PRESIDENT