

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 6 February 2004

Date Determination notified:

04 March 2004

Before:

Dr H H Storey (Chairman)
Mr M E A Innes

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Appearances

Mrs G. Ahmed, Solicitor of Ghazale Ahmed, Robertson & Ross, Solicitors for the Appellant

Mr A. Scarcliffe, Home Office Presenting Officer for the Respondent

DETERMINATION AND REASONS

1. The Appellant, a national of Federal Republic of Yugoslavia, appeals with permission against the determination of an Adjudicator, Mrs I.A.M. Murray, against the decision refusing asylum and giving directions for removal.
2. The basis of the Appellant's claim was that he was of mixed Gorani/Sanxhahli ethnicity. His home area was Prizren in Kosovo. He and his family had experienced difficulties at the hands of both Serbs and Albanians. His father and brother were both killed by the KLA in June 1999 because there were seen as Serb collaborators. Later the same month the KLA set fire to Gorani houses, including the Appellant's. They attacked the Appellant, hospitalising him. He then travelled to

Novi Pazar in Serbia, staying with his uncle who was a Sanxhahli until February 2002. When he was unable to produce an ID card, police detained him until his uncle explained who he was and they then released him without charge. His uncle told him he should leave immediately. He went to Montenegro and in March 2001 got a lorry to the UK. He believed that as a Gorani he could not safely return to any part of Yugoslavia, Kosovo or Serbia.

3. The Adjudicator accepted the Appellant's account, noting that it was supported in part by the medical evidence. However, he dismissed the appeal because he considered he would be safe in his home area and would receive effective protection there.
4. Disregarding a misplaced complaint that the Adjudicator rejected credibility (he did not), the grounds contended that the Adjudicator failed to consider that persecution is indicative of future risk and overlooked that there had been no material change of circumstances since the Appellant left. They also maintained that in the light of the Amnesty International Report for April 2003 the Adjudicator should have found that the Gorani continued to be subjected to violent attacks. They further contended that he should not have rejected ethnicity or race as a Refugee Convention reason. Similar points were raised in relation to Article 3.
5. We have decided to dismiss this appeal. As too often happens the Adjudicator did not carefully distinguish between the issue of serious harm and adequacy of protection against such harm. However, as the grounds themselves recognised, it is sufficiently clear that he did not consider either that the Appellant continued to have a well-founded fear of serious harm or that he would be unable to receive effective protection against such harm.
6. We do not consider that the Adjudicator failed to take adequate account of the fact that the Appellant had experienced past persecution. Whilst it is true that on the occasion when he was attacked by KLA members UNMIK and KFOR were already in Kosovo, they had yet to establish themselves. As the Adjudicator correctly observed, since June 1999 there have been improvement in the protection situation in a number of respects.
7. The question remains, was the Adjudicator entitled to conclude that the improvement had made life safer for Gorani? The grounds, as already noted, considered that the objective evidence, the Amnesty International Report for 2003 in particular, showed that the Goranis still suffered violent attacks. However the Adjudicator took the Amnesty International Report into account. He placed it side by side

with other materials, the CIPU sources in particular. He noted that the CIPU Report for 2003 stated that the security situation for Gorani was stable during 2002 with no reported serious security incidents and no murders of Gorani since the year 2000 and improvements in freedom of movement and the ability to use their own language, particularly in the Prizren region which is where the Appellant comes from. He noted that according to the CIPU Report approximately half the KPS officers in Dragash are Gorani. The Adjudicator also took account of the UNHCR report of January 2003.

8. Having considered all the materials placed before us, we see no error in the Adjudicator assessment that they did not demonstrate a real risk of serious harm (a well-founded fear) for Goranis in the Appellant's home area. Whilst the Amnesty International Report of 2003 and the January 2003 UNHCR Report indicate that violent attacks do continue against Gorani in some areas of Kosovo and that Gorani continue to experience discriminations, they fall well short of demonstrating that there is a consistent pattern of gross, flagrant or mass violations of the human rights of Gorani. Furthermore, there is some indication that within Kosovo the Appellant's home area of Prizren is among the areas where Gorani are safest. The UNHCR Report states that "A few Gorani live in Prizren town, and enjoy good relations with other communities there". Furthermore, even though in relation to the Dragash municipality this same Report refers to there still being "an uncomfortable relationship between the Albanians and Gorani", it is equally clear that: "Within Dragash, inter-ethnic relations with Albanians are slowly relaxing. At this time, Gorani do not face security threats."
9. Given that the Adjudicator reached entirely sustainable conclusions in relation to the safety of Gorani in the Appellant's home area, we do not need to give separate consideration to the issue of sufficiency of protection. However, for similar reasons, we are satisfied his conclusions on this issue were sustainable.
10. For completeness we would mention that we have seen fit to frame our assessment in terms of the Appellant's situation as a Gorani. To be more precise, the Appellant is of mixed Gorani/Sanxhahli ethnicity. However, given that no evidence has been produced to indicate that persons of mixed Gorani/Sanxhahli ethnicity are at any greater risk than Gorani per se, we saw no need to make any differentiation in the main body of the determination.
11. For the above reasons, this appeal is dismissed.

H.H. STOREY

VICE PRESIDENT