

Heard at Field House

FM (IFA-Mixed Marriage-
Albanian-Ashkaelian) Kosovo
CG [2004] UKIAT 00081

On 14 April 2004

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

23 April 2004

Before:

**Mr N H Goldstein – Vice President
Dr A U Chaudhry
Mrs J Holt**

Between

The Secretary of State for the Home Department

APPELLANT

and

RESPONDENT

Representation

For the appellant: Ms A Holmes, Home Office Presenting Officer
For the respondent: Mr S Canter, Counsel instructed by Punatar &
Co, Solicitors

DETERMINATION AND REASONS

1. The appellant, the Secretary of State for the Home Department, has been granted permission to appeal to the Tribunal, against the determination of an Adjudicator (Mrs Margaret M Shanahan) who allowed the respondent's appeal on asylum and human rights grounds.
2. The Vice President Mr A Jordan in granting permission, understandably had difficulty in following the reasoning within

paragraph 1 of the ground of appeal which Ms Holmes accepted could have been expressed in better terms, but related to the fact that although the Adjudicator had regard to the objective evidence dealing with ethnic minority groups and mixed marriages in Kosovo, she had failed to appreciate that the appellant's wife was not wholly Ashkaelian and indeed was of mixed ethnicity in that her parents were each of mixed Albanian and Ashkaelian ancestry.

3. Ms Holmes recognised that although due to the confusing manner in which ground 1 was expressed, the Vice President had not granted permission in relation to it, she urged us to bear these matters in mind in terms of our consideration of the remainder of the grounds, upon which permission was granted.
4. The grounds contend that on the matter of sufficiency of protection the Adjudicator failed to follow, as she should, the guidelines set out in **Horvath** [2000] IAR552 and cite as an example the failure of the Adjudicator to address whether the authorities in Kosovo were both unwilling and unable to offer the respondent a sufficiency of protection. Alternatively, in finding that the respondent and his family would be subject to persecution in their home area, the Adjudicator failed to consider whether they would be subjected to the same treatment elsewhere in Kosovo.
5. The grounds further contend that the Adjudicator failed to consider whether the respondent and his family would be identifiable as people with Ashkaelian connections elsewhere in Kosovo and that on the matter of internal relocation, the Adjudicator erred by failing to have regard to the principles as set out in **Robinson** [1997] IAR568.
6. We have decided to allow the appeal.
7. The respondent is an ethnic Albanian. He married his wife in September 1998 against the wishes of both families. Ms Holmes is not entirely correct in maintaining that the Adjudicator had failed to appreciate the mixed ethnicity of the respondent's wife as indeed this is noted at paragraph 9(a) of her determination.
8. The respondent described to the Adjudicator the discrimination and difficulties he faced because of his Albanian ethnicity whilst the Serbs were in power and the problems that he and his wife faced because of their mixed marriage.

9. Mr Canter indeed opened his submissions by reminding us that there had been no challenge within the grounds of appeal to the positive credibility findings of the Adjudicator.
10. The respondent's account as accepted by the Adjudicator, was that in June 2002 he was arrested and detained for ten days because he was seen giving a lift to two Ashkaelia men and a Serb man and because his wife's parents were believed to be collaborators and he was seen in the same light. The respondent was accused of collaborating. During this period he was subjected to ill treatment and torture. Following the respondent's release on 10 June 2002 he was required to report to the TMK offices each day and attempted to report his treatment to KFOR. He was told that he had to report these matters to TMK. It was the respondent's account that on 25 June 2002 he had attempted to report such matters but was further detained by them until 1 October 2002 and whilst detained was again ill-treated and tortured.
11. The Adjudicator records that upon release the respondent found his family to be in a poor state. His wife had delivered their second child. She had been refused treatment at the hospital because she was Ashkaelia and had to rely on a local Ashkaelia nurse to deliver the child. This resulted in the child having a dislocated hip which needed treatment for which the respondent had to pay privately because of the local hospital's refusal to afford treatment.
12. The respondent claimed that in fear that he would be detained again and because of the treatment of his family and his concerns for their welfare and safety, he arranged to travel to Albania and then paid an agent who brought them to the United Kingdom.
13. Under the sub-heading "Objective Material" the Adjudicator, between paragraphs 18 to 25 of her determination, made reference to aspects of the objective evidence and at paragraph 18 acknowledged:

"that the security situation in Kosovo has improved significantly since UNMIK and KFOR have been responsible for the supervision of the Kosovan state. The figures for violent crime have dropped significantly over the past two years and as the conflict recedes the overall crime pattern is considered to be more akin to the kind of pattern seen in other countries. Although ethnically motivated attacks

have considerably reduced most attacks on Serbs and other minorities had been ethnically motivated.”

14. The Adjudicator considered that the human rights issues in Kosovo related to the position of ethnic minorities who had been targeted by ethnic Albanian extremists. She recognised that the security situation of ethnic minorities had “improved considerably in the past two years and the international community is trying to encourage the gradual return and re-integration of ethnic minority refugees who fled Kosovo”.
15. At paragraph 20 of her determination the Adjudicator recognised that

“most minority communities experienced a significant decrease in ethnically motivated violence in their local areas but that many continued to face isolation and severe restrictions on their freedom of movement.”
16. At paragraph 21, the Adjudicator recorded that there had been a number of initiatives to seek to improve the position of ethnic minorities. They were represented in the Government, both at Assembly and Municipal level and there were policies to promote proportional representation in the Judiciary, the police and the civil service.
17. The Adjudicator noted that the process on the return of refugees from ethnic minorities had commenced and was supported by Albanian leaders and the UN. Progress was slow and there had been setbacks.
18. It is noteworthy that at paragraph 23 of her determination the Adjudicator recorded that there had been notable improvements in the security and freedom of movement situation for the Roma, Ashkaelia and Egyptian communities in the past year. The situation had varied according to perceptions of the majority population, locality and language issues. There had been no murders in the community in 2002, although the potential for violence remained and there had been several instances of assault, arson and bomb attacks on Roma property.
19. At paragraph 24 of her determination the Adjudicator noted (although at no stage within her consideration of the objective material does she source the material upon which she relied) that:

“People in mixed marriages with people from ethnic minorities may face the same difficulties as those groups. Unlike other minority groups mixed families are unable to resort to the relative safety of mono-ethnic enclaves and may be excluded from more communities.”

20. The Adjudicator’s findings and conclusions can be found within a single paragraph 27. The Adjudicator accepted the respondent’s account of the incident in June 2002 to which we have above referred.
21. Interestingly, in recognising that “the situation has changed significantly”, the Adjudicator remained satisfied “from the objective evidence” that the respondent was at risk “because of a number of factors”. The Adjudicator listed these factors as:
 - i) the respondent’s marriage to a woman of mixed ethnicity.
 - ii) the respondent’s rejection by his own community as a result because he was seen as a collaborator in view of his wife’s parents’ history.
 - iii) the respondent had been seen to give a lift to two Ashkaelians and one Serbian “and this compounded the perception that he is a collaborator”.
 - iv) the respondent was unable to live with either the Ashkaelian or Albanian community “in his own area” because of the history.
22. We find it regrettable that the Adjudicator, having concluded that the respondent had established a well-founded fear of persecution in his home area, failed to give adequate consideration to the possibility as to whether there was a different part of the country to which it would not be unduly harsh to expect the respondent to relocate. Such a consideration was implicit in the very concept of an internal flight alternative and of relocation. Regrettably all that the Adjudicator had to say about the matter was as follows:

“I have considered relocation but am satisfied that because of his mixed marriage it would be extremely difficult for him to integrate into either community elsewhere.”
23. As Ms Holmes rightly submitted these findings could but only be regarded as “very superficial”. No reasons had been provided. No consideration had been given to the question that if the

respondent and his wife chose to relocate in another part of the country there was no apparent reason as to why the respondent's wife's mixed ethnicity should become known outside of the couple's local area.

24. As we have earlier mentioned, the Adjudicator not only failed to identify the sourcing of the objective material upon which she relied but failed to correlate her assessment of the background material to her conclusion that the respondent would be at risk on return, and could not safely relocated with his wife elsewhere in Kosovo and avail himself of the protection of the Kosovan authorities should such protection be required.
25. It was notable that Mr Canter accepted that the difficulties experienced by the respondent and his wife were wholly limited to their home town, although he maintained it was the respondent's account that upon being detained by the TMK a photograph was shown to him depicting the lift that the respondent had offered two Ashkaelia men and a Serbian in June 2002 and that the TMK would hold records of his subsequent detention.
26. It was significant that as Mr Canter's submissions developed it became apparent that what we describe as the June 2002 incident was not the plank upon which he sought to rely in inviting us to dismiss the Secretary of State's appeal. Indeed at our request he clarified to us that the crux of this appeal was whether there was a real risk that the respondent's "mixed marriage" to a wife of half-Ashkaelian ethnicity would become known were he to relocate to an area of Kosovo outside their home district and related to this the associated questions of whether such relocation would be unduly harsh.
27. He maintained that the TMK, on the basis of the objective material before us, was the Albanian abbreviation for "KPC", that being the Kosovo Protection Corps and by implication they were the presiding authority within the respondent's hometown to whom KFOR had referred the respondent. The TMK in turn held a record of the respondent containing a photograph as above described and it followed that there was not a sufficiency of protection available to the respondent.
28. It was noteworthy, that as Mr Canter clarified, such difficulty related to an inability to provide the respondent and his wife with a sufficiency of protection in their home village, but he maintained that it would not be unduly harsh for this respondent, married to a half-Ashkaelia wife, should they be "forced to

relocate elsewhere in Kosovo because of difficulties in relation to education, health, risk of random attack, poor living conditions and other related matters.

29. We were not persuaded by Mr Canter's submissions in this regard and it is noteworthy, that notwithstanding that Mr Canter was defending a determination by an Adjudicator who had allowed the respondent's appeal, he submitted to us in the alternative, that if we were not persuaded by his submissions we should find that the Adjudicator's determination:

"does not fully address the issues in relation to the entirety of the account. The facts that are found in the consideration and findings section of the determination, do not give you enough basis upon which to make a finding that this appellant would not be at risk. Indeed the expert report of Mr James Korivalas, specifically commissioned for the appeal, has not been considered by the Adjudicator at all. Therefore this a case to be remitted."

30. We would agree with Mr Canter to the extent that the Adjudicator's failure to consider and assess the ramifications of the report of an expert prepared specifically for this respondent is a further example as to the unsatisfactory nature and lack of adequate reasoning within the Adjudicator's determination.
31. We would agree however with Ms Holmes, who in strongly opposing the notion of remittal, notwithstanding the obvious defects within the Adjudicator's determination, rightly submitted that they were defects which the Tribunal could and should cure such as to reverse the Adjudicator's decision and allow the Secretary of State's appeal.
32. The CIPU Country Report of October 2003 at K.6.38 and 39 refer to the action of the authorities to improve the position of ethnic minorities. Indeed these are matters to which the Adjudicator made partial reference within her determination.
33. At paragraph K.6.66 the Ashkaelia are described as Albanian speaking who have historically associated themselves with Albanians, living close to that community although Albanians treat them as separate from the Albanian community. It is recorded at paragraph K.6.67 that at a local community levels Albanians do not generally perceive the differences between Roma Ashlaelian Egyptians who are more often regarded as one group. However the report continues that improvements in the

security and freedom of movement for Roma, Ashkaelia and Egyptians continued to improve throughout Kosovo during 2002 and the improvement in the security situation for these groups was reflected in the crime statistics. There had been progress with the spontaneous and facilitated return of RAE to some locations with about 1,200 returning during 2002.

34. The report refers in turn to a report of the UN Security Council of 17 July 2002 in which the Secretary General observed "Over the past few months a climate has been created that, for the first time since the arrival of UNMIK, appeared conducive to promoting inter-ethnic return". This reflected an increasing interest and commitment from UNMIK and the international community to actively address the situation of minorities and return as a matter of priority. There had been recognition at a political level of the need to encourage the return process. It is recorded at paragraph K.6.49 that an estimated 2,668 minority returns took place in 2002 of which 46% were Roma/Ashkaeli/Egyptians. Although progress was slow and there had been some setbacks, it is recorded at paragraph K.6.51 that in the opinion of Amnesty International in their May 2003 report there had been "marked improvements in the security conditions for minorities since July 1999 and in particular, a measurable decline in violent attacks on their lives and property".

35. Ms Holmes rightly drew our attention to paragraph K.6.64 in support of her submission there was no reason as to why the half Ashkaelian ancestry of the respondent's wife should become known outside of their home area. Reference is made to:

"Ethnic identification as Roma, Ashkaelia or Egyptian ... not necessarily determined by easily discernable or distinct characteristics or cultural traits, but rather by a process of self-identification. It is not uncommon in Kosovo for individuals to change their ethnic self-identification depending on the pressures of local circumstances, especially when it is necessary in order to distance themselves from other groups to avoid negative associations."

36. Mr Canter had submitted that although the Adjudicator had failed to take account of Mr Koravalas' report he asked us to bear in mind the observation that:

"Should your client choose to relocate to another part of Kosovo he would be required to register at the local municipal office ... There is a chance that registering with

a municipality would expose the fact that your client is married to an Ashkaelian.”

37. With respect to Mr Canter and indeed the expert, we remind ourselves that the respondent is not of Ashkaelian ethnicity. His wife is of half-Ashkaelian ethnicity. She is also half Albanian. The respondent is Albanian and will therefore be in the same position as other Albanians upon return to Kosovo.
38. Ms Holmes rightly pointed out, that it was entirely a matter for the respondent and his wife as to where they chose to live within Kosovo. The couple would be returned to Pristina. Whether they stayed in that area would be entirely a matter for them. The experiences of the respondent as accepted by the Adjudicator were linked to allegations of collaboration within the respondent's home area. Such concerns would not impact upon the respondent elsewhere within Kosovo. There was no reason as to why outside the respondent's home area his wife's half Ashkaelian ethnicity would be discovered. It was, as Ms Holmes rightly pointed out, largely in the respondent's wife's control and as the objective material made clear, in all other respects, ethnic identification as an Ashkaelian was not easily discernible and relied largely on a process of self-identification.
39. The respondent is Albanian. His wife is half Albanian. They bear an Albanian name. Their language is Albanian. There is no reason at all therefore why the respondent and his wife should be at risk outside of their home are.
40. It is apparent to us from our own consideration of the objective material, that the TMK are not mentioned as part of the security forces in Kosovo. They have no security role whatsoever. Indeed the objective material as contained in the CIPU report reveals

“Policing in Kosovo is undertaken by a combination of KFOR troops, UNMIK civilian police and local Kosovo police service officers. There are approximately 27,000 KFOR personnel in the province. The UNMIK police of whom there were 4,274 in service in October 2002 have assumed full responsibility for criminal investigations throughout the province though they still rely upon KFOR support. As of January 2003 5,200 KPS officers were in service with continuing efforts being made to increase the level of representation from ethnic minority communities currently standing at 15%, of which 6% were from ethnic minority groups other than the Serbs. Further, the figures for violent crime dropped significantly over the past years

and as the days of conflict recede the overall crime pattern that has emerged in Kosovo are considered by UNMIK police to be becoming more akin to the kind of crime pattern seen in other countries. There has been a continued reduction in ethnically motivated crime."

41. At paragraph K.5.29 it is recorded that with the improved security position; KFOR has continued the process of "unfixing" its static checkpoints. By the beginning of 2003 KFOR had only 30 fixed checkpoints remaining throughout Kosovo.
42. In the circumstances of the respondent, Ms Holmes therefore rightly submitted, that notwithstanding that the appellant's account of his past experiences had been accepted by the Adjudicator, he could have sought the assistance of, for example, the UNMIK police. The Adjudicator therefore erred in concluding that a sufficiency of protection was not available to the respondent and his wife either in his own home area or indeed elsewhere.
43. The Adjudicator recognised in her assessment of the objective material, that instances of violence against minorities had significantly decreased since the period following the conflict with a notable improvement in the security situation which Ms Holmes rightly observed "continued year on year". Indeed the CIPU report notes that this improvement certainly continued in 2002 and although there remained a low background level of inter-ethnic violence, most crimes were now considered to be economically motivated.
44. Although not raised in submissions by either representative, we have borne in mind that the only risk to the respondent is that he might be recognised by a person who knew him from his village who would be motivated to cause difficulties for him. We do not consider that that risk is sufficient to constitute a real risk of persecution or of serious ill treatment. We conclude that there is an internal flight option available to this respondent and his wife, not least to Pristina.
45. That leaves the question of undue harshness. Notwithstanding the difficulties to which Mr Canter referred us, they are difficulties shared by many people in Kosovo and it does not mean *per se* that persons such as the respondent and his wife could not return to Kosovo now, in the changed circumstances, not least following the ejection of the Serbian authorities.
46. In concluding our assessment, we cannot ignore the reference to registration to which Mr Koravalas referred in his report and upon

which Mr Canter relied. As we have already pointed out, the respondent is Albanian. He is not of mixed ethnicity. In **Rexhepi** the Tribunal concluded that the objective evidence showed that in dealing with officialdom it would not be necessary for persons of mixed ethnicity to reveal such a fact.

47. On the facts of this appeal there is no reason for the respondent's "mixed marriage" to a half Ashkaelian wife to become apparent after relocation. Although it is clear the respondent, much as others have done, may well face difficulties on return such as those described by Mr Canter, we do not think on the reasoning provided, that it is sustainable to conclude that it would be unduly harsh for the respondent and his wife to relocate elsewhere within Kosovo.
48. As the grounds of appeal rightly submit, the Adjudicator simply failed to adequately consider if at all whether there was sufficiency of protection in place in accordance with the guidelines set out in **Horvath**. We do not find that the respondent would be marked out as a person of a mixed marriage because of his wife's mixed ethnicity.
49. As we have above referred. there is now a multi-ethnic police force established in an attempt to foster better relations between the divided communities. It is in our view not merely willingness but an ability to provide the required sufficiency of protection. To the extent that there are remaining tensions we do not find it would cause such fear, anguish or inferiority as would amount to a breach of the respondent's human rights on his return.
50. We disagree with the Adjudicator's conclusion on the objective material that the respondent would be particularly vulnerable to persecution on account of his mixed marriage and past experiences. We do not believe that any difficulties he may encounter would amount to persecution or would involve a breach of his human rights.
51. The Secretary of State's appeal is therefore allowed and the decision of the Adjudicator is reversed.