

Heard at Field House
On 14 July 2003
Written 14 July 2003

N (RR-Ceasefire) Macedonia CG [2003] UKIAT 00077

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

21/08/2003

Before

Mr S L Batiste (Chairman)
Mr M G Taylor CBE

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Respondent

DETERMINATION AND REASONS

1. The Respondent is a citizen of Macedonia. The Appellant appeals, with leave, against the determination of an Adjudicator, Mr R J Manuell, allowing the Respondent's appeal against the decision of the Appellant on 12 October 2001 to issue removal directions and refuse asylum
2. Mr G Elks, a Home Office Presenting Officer, represented the Appellant. Ms R Bagral represented the Respondent.
3. There was a preliminary point raised by the Respondent's solicitors, arising from the fact that the grounds of appeal were neither signed nor dated by the Appellant as required by the procedure rules. However this was clearly an accidental omission and the Tribunal, in accordance with paragraph 59 of the Immigration and Asylum Appeals (Procedure) Rules 2003, permitted Mr Elks to correct the error
4. As to the substantive appeal, there is no dispute over the specific facts as claimed by the Respondent. He is an ethnic Albanian who lived with his parents and worked on the family farm. On 21 July 2001, he was arrested for the first and only time in his life, by the Macedonian police. He was told the police station that his arrest was due to the fact that his brother was a member of the National Liberation Army (NLA). He was detained for three weeks in solitary confinement and was beaten. He was then released, subject to a weekly reporting condition and to his being forbidden to contact his brother

or the NLA. He joined up with a cousin who had experienced similar problems and together they left Macedonia for the UK.

5. As we have said, these findings of fact were accepted as credible by the Adjudicator and have not been disputed before us. The issue is whether the Adjudicator was correct in the light of the objective evidence to conclude that the Appellant would still be at risk on return today in the changed circumstances in Macedonia. The Adjudicator heard this appeal the end of November 2002 and it was promulgated in December 2002. Later versions of the objective evidence had been produced to us but they are not in any material respect different from what was before the Adjudicator.
6. Mr Elks first argued that the Adjudicator, in making his risk assessment, was in error in paragraph 26 of the determination in making two inferences that were not supported by the evidence. The first is that those suspected of NLA connections such as the Respondent are likely to remain of interest to the Macedonian authorities. The second is that because the Respondent is unaware of his brother's current whereabouts, this means his brother has not taken advantage of the amnesty for NLA members and remains a suspect in the eyes of the authorities. Ms Bagral has submitted that both these inferences were properly supported by the evidence and could not be characterised as either plainly wrong or unsustainable as prescribed by the Court of Appeal in *Oleed*.
7. We agree with Mr Elks' submission. The evidence clearly shows that the Respondent was arrested because of his brother's membership of the NLA, and not because of any activities of his own. He was released before the framework agreement was signed, which suggests that the authorities were satisfied he had no involvement with the NLA himself, as indeed was true. He left Macedonia on 10 August 2001, three days before the framework agreement was signed. Even though he failed to comply with the reporting conditions of his release by reason of his coming to the UK, he would readily be able to demonstrate to the Macedonian authorities that he had been in the UK since his release and was not in any way involved thereafter with any fragments of the NLA. He would easily be able to clear himself even in the unlikely event that there was any lingering suspicion. On the second point, the evidence shows that the Respondent last saw his brother a month before he was arrested and has heard nothing of him since, nor does he know where his parents are. There is no real connection between this lack of communication with the Respondent and the Adjudicator's inference that it means the brother has not taken advantage of the amnesty and remains a suspect in the eyes of the authorities. The brother may have died in the fighting. He may have sought asylum in another country. If he remained in Macedonia he may have claimed the benefit of the amnesty. There is no reason in the evidence why he should not have disarmed and sought amnesty when the NLA disbanded. If the Respondent does not know where his parents are there is no ready line of communication through them to his brother. There is no indication in the determination that the Adjudicator considered these various factors when reaching the two inferences upon which the outcome of his determination is essentially based, and which are on the evidence highly speculative and unsustainable.
8. Ms Bagral referred us to various parts of the objective evidence to show us that the Respondent would as a suspect be at risk of persecution and a breach of Article 3, and alternatively that he would be at risk of persecution and a breach of Article 3 simply as an ethnic Albanian. We do not agree that the relatively out of date and very limited

information to which she referred us and which was before the Adjudicator, carries these consequences. The reality is that the insurgent violence began in February 2001 at the instigation of the NLA. On 5 July 2001, the government and the insurgents negotiated a ceasefire, and on 13 August 2001 the ruling ethnic Macedonians and the leaders of the ethnic Albanians signed the framework agreement laying down the ground work for the preservation of a peaceful, unitary, multi-ethnic state with improved civil rights for minority groups. On 26 September 2001 under the terms of the demilitarisation agreement the NLA combatants completed a voluntary handover of their weapons to NATO troops and announced their disbandment. They were given immunity from prosecution if they laid down their arms in accordance with the agreement. The framework agreement was ratified finally on in November 2001 and the Constitution was amended as required by the peace agreement. Since the ceasefire an international peacekeeping force has been present in Macedonia to assist the process.

9. The Amnesty International Report of August 2002 confirms that there had been some human rights violations by police. Around mid-2002 there were reports of isolated examples of ill-treatment by police of a few ethnic Albanians. In August 2002 some ethnic Albanians, who may have been NLA activists in the past, kidnapped five Macedonians and there was a siege by the police but this was essentially criminal action by the kidnappers. By the end of 2002, according to Amnesty International violent incidents had decreased and mixed Albanian and Macedonian police units were successfully redeployed under the guidance of OSCE monitors. There were unspecified reports of some armed Albanian splinter groups, who may previously have been connected with the NLA, clashing with the authorities during 2002. However the objective evidence as a whole does not support Ms Bagral's submission that the Respondent would be at any real risk of persecution or a breach of Article 3 by reason of his connection with his brother and his brother's past activities, or that he would be at any real risk as a consequence of his Albanian ethnicity.
10. By the time the Adjudicator heard this appeal in December 2002 the changed situation was already clear, and his conclusions both as to the two inferences described above and as to the objective evidence are unsustainable and must be set aside, as must his decision to allow the appeal. The Respondent has not established that he is at any real risk of persecution or a breach of Article 3 on return.
11. For the reasons given above this appeal by the Appellant is allowed.

**Spencer Batiste
Vice-President**