

IN THE IMMIGRATION APPEAL TRIBUNAL

**Decision no. KB (mixed ethnicity- Roma/Albanian) Kosovo CG [2003] UKIAT
00013**

Heard: 09.04.03

Typed: 16.04.03

Sent out: 17.06.03

IMMIGRATION AND ASYLUM ACTS 1971-99

Before:

John Freeman (chairman)
Mr AA Lloyd JP and
Mr CAN Edinboro

Between:

appellant

and:

Secretary of State for the Home Department,
respondent

DECISION ON APPEAL

Miss S Watkinson (counsel instructed by Heer Manak) for the appellant
Mr I Graham for the respondent

This is an appeal from a decision of an adjudicator (Mr HO Forrester), sitting at Birmingham on 5 November 2002, dismissing an asylum and human rights appeal by someone who claimed to be a half-Gypsy, half-Albanian citizen of Kosovo. Leave was given on the basis of the adjudicator's approach to the "protection test".

2. The appeal before us turned on whether the adjudicator had been entitled on the facts (including the background evidence, which he was criticized for not paying greater attention to, but which was fully canvassed before us) not to see any real risk on return for this appellant. One important feature of the case is whether he would pass as a *gaujo* (non-Gypsy) other than in his own home area, where he might be known. The adjudicator saw him, and expressed the view that "... he is not on first impression a dark skinned Roma". The appellant was not present at the hearing (by video-link to Manchester) before us, so we had no opportunity of forming our own judgment on the point.

3. Miss Watkinson argued first that the adjudicator ought not to have taken such a view at all. She cited **Dizdari [2002] UKIAT 05537**, where the Tribunal (Mackey VP and a lay member) said at § 21 “The conclusions of the Adjudicator based on the Appellant’s personal appearance ... are highly speculative and irrational.” Apparently there the adjudicator had noted that the appearance of that appellant, also of mixed race, was not dark or swarthy “which one might associate with Roma people”, so that others would not be immediately alerted to his origins.
4. For our part, we do not see what was wrong with that adjudicator’s judgment, or the present one’s, on the evidence of their own eyes. It might well be wrong to disbelieve that someone was a half-Gypsy on the basis of their appearance, which might entirely come from the *gaujo* parent. However, what the adjudicators were doing in each case was to form a judgment as to whether the person before them would *look* like a Gypsy to outsiders.
5. Adjudicators see a great many cases involving eastern European Gypsies, and are well entitled to take judicial notice of the fact that they do look distinctly darker than the general population of those countries, some showing definite signs of their long-ago Indian origins. If they are in effect to be required to go into court blindfold (whatever the precedent of the well-known statue), then they are being asked to give up one of the main advantages of an oral hearing, which is being able to form a direct independent impression of the person before them. We do not think the law requires that, and we shall approach any internal flight question on the basis of the adjudicator’s view that this appellant would not look like a Gypsy where he was not known to be partly so.
6. The adjudicator accepted (see § 10) the appellant’s history of past persecution and ill-treatment in his own village. He was born in 1984 to an Albanian mother, who died soon after, and a Gypsy father, with whom he lived in their own house until the general breakdown of law and order in 1999 led to its being burnt down. He said that happened “10 or 20 times”, which the adjudicator made no comment on.
7. After the last occasion, the appellant and his father were living in a tented camp with other Gypsies on the move around the area. He tried to flee to Macedonia, but did not dare pursue his attempts to cross the border. After his father died, some time in 2000-01, the appellant tried again to cross into Macedonia, in November 2001, but was not let through, so returned to the camp. Soon after it was raided by a group of Albanians, and the appellant was beaten up. He says he was advised by a friend that complaining to the police would only make things worse, so he left, this time for this country and for good.
8. There is nothing to indicate to us that the appellant’s personal appearance had anything to do with that incident, or any previous ones. He was living, first with his Gypsy father, and then in a Gypsy camp, which was attacked by hooligans, and he suffered the consequences. Those may indicate that there was no effective protection for the Gypsy population of the area (Fushë Kosov) at the time in question, and there is no specific evidence as to the state of things there at present.
9. The adjudicator was clearly wrong to find that what had happened to the appellant there was not serious enough to amount to Convention persecution or ill-treatment, and his treatment of the “protection test” was rather inadequate, too much of it being taken up with regurgitation of what had been said by the Court of Appeal in **Horvath [2000] Imm AR 205**. However, since he accepted the history,

it is possible for us to come to our own view on whether that would either lead to some real risk for this appellant on return to some other part of Kosovo, or make it unduly harsh to expect him to do so.

10. Miss Watkinson's first point is that the appellant would have to reveal his racial origins to get an identity card. Asked for evidence of that, she referred us to § 6.7 of the decision; but that is no more than a summary of the appellant's own case. While it is well known that identity documents of the former Federal Republic of Yugoslavia, like those of the former Soviet Union, did carry the holder's "nationality", meaning racial origin, we are not prepared to accept without some published or other independent evidence to that effect that the United Nations-sponsored authorities in Kosovo would countenance any such arrangements.
11. Next Miss Watkinson argued that the appellant would have to reveal his origins, if only his last address in a Gypsy camp to get help from any organization in Kosovo. Again there is no evidence of such organizations administering any racial questionnaire; and there does not seem any reason why the appellant should not give his last permanent address, the paternal home in Fushë Kosov, an area inhabited by Albanians and Gypsies alike.
12. The conclusion must be that the appellant could pass as an ordinary Albanian on return to Kosovo, anywhere away from Fushë Kosov. Miss Watkinson questioned in reply whether he should be required to do so, in the light of § 6.48 of the CIPU report, which we had already discussed with Mr Graham in the course of his submissions. This suggests that

Ethnic identification as Roma, Ashkaelia or Egyptian is not necessarily determined by easily discernible 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. In general, however, ethnic Roma clearly identify themselves as Roma and tend to use Romany as their mother tongue, although a large percentage of the Roma population can speak Serbian (and to a lesser extent Albanian) languages.

13. To this we inquired whether the appellant had expressed his "ethnic self-identification" in any way in this country, other than by making his asylum claim on the basis he did. Miss Watkinson could point to no evidence of that, and we cannot see that a young single Albanian-speaking and -looking man with no family ties could be identified by others as a half-Gypsy, or would be entitled to insist on so identifying himself to them, regardless of any risk involved.
14. That conclusion is of some importance, because we did not entirely accept the relatively rosy picture Mr Graham painted of the situation of Gypsies in Kosovo generally. The UNHCR in their paper of January 2003 at title II, 'Minorities', refer to "serious protection problems" still faced by Gypsies, in particular the Roma. While their situation is said to be comparable to that of the Serbs, we do not see any warrant for Miss Watkinson's suggestion that this leads to any special risk for persons of mixed Roma/Albanian origins, such as this appellant, in the context of what is said at title I 'Kosovo Albanians' about "persons of mixed ethnicity". That does no more than explain that some people otherwise part of the majority population may yet be at risk.

15. What still does give some cause for concern, however, is the evidence about Gypsies still living together in their communities. The CIPU report of October 2002 refers (§ 6.51) to "... notable improvements in the security and freedom of movement situation for [*Gypsies: the three groups, Roma, Ashkaelia and Egyptians, are referred to, and from here on by the acronym RAE*] throughout Kosovo during the past year." There were local differences, but no murders during 2002, though the potential for violence remained and the security situation, it was said, could still be precarious. The main area of concern is set out at § 6.53:

RAE continue to experience adverse living conditions due to historical patterns of discrimination, ostracism and marginalisation. [18] Large numbers of Roma are still living in collective centres or IDP camps in poor conditions. The fact that they choose to stay in these centres suggests that they remain concerned about the security situation in their areas of origin or do not have adequate possibilities for accommodation there. One of the main obstacles to return is the lack of adequate reconstruction assistance for repairing their damaged property. [18b] [67a] [67b]

16. If we saw any real risk of this appellant having to live in such a camp, we should have to decide whether the conditions would either make it an unduly harsh form of internal flight, or "inhuman or degrading treatment" to expect him to go there. However, we see no reason, as already explained, why he should be identified as a half-Gypsy on return, or need to identify himself as such.

Appeal dismissed



John Freeman (chairman)