

61 2 62581681

Marion Lê Consultancy

ABN: 58 479 107 434

Advocate, Education and Ethnic Affairs Consultant

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 9256617
 B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ, NSW, Qld).
 PO Box 3095
 Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
 Fax: +61 (2) 6258 1681
 Mobile: 0419 419 680
 E-mail: maronie@ozemail.com.au

The COMMITTEE SECRETARY
 SENATE LEGAL & CONSTITUTIONAL COMMITTEE
 Department of the Senate
 Parliament House
 CANBERRA ACT 2600

Fax 6277 5794



SUPPLEMENTARY SUBMISSION INTO THE ADMINISTRATION &
 OPERATION OF THE MIGRATION ACT 1958

**RE: DIMIA RESPONSE TO QUESTION TAKEN ON NOTICE 11 OCTOBER,
 2005 FROM SENATOR LUDWIG – in specific relation to Valbona and Ergi
 Kola:**

Senator Ludwig asked:

In respect of Ms Vivian Solon, Ms Cornelia Rau, Mrs Valbona Kola, Mr Ergi Kola and the members of the Bakhtiari family:

- (i) It is understood that, in the process of organising or planning for their removal from Australia, applications for travel documents or documents of identity were lodged that were not signed by each of the above or which stated that they were unable to sign. Is this correct? If so, why did they not sign the documents themselves?
- (ii) It is understood that (a) each were able to sign earlier documents, forms or applications and that (b) copies of these signed documents, forms or applications are in the department's possession. Is this correct?

Answer

1.

Applications for Australian Certificates of Identity were submitted on behalf of Ms Venona Vata (aka Mrs Valbona Kola) and Mr Paulin Pali (aka Mr Ergi Kola) in their true identities. These were not signed by Ms Vata and Mr Pali as they have not been cooperating with arrangements for their removal.

(ii)

The Department has a copy of the bio data page of the Certificates of Identity that were issued to Ms Venona Vata and Mr Paulin Pali in their false Serbian identities of Mrs Valbona Kola and Mr Ergi Kola.

Marion Lê Consultancy

61 2 62581681

SUBMISSION ON BEHALF OF MR & MRS KOLA:

1. Mr & Mrs Kola have always cooperated with the DIMIA as the accompanying correspondence goes some way to illustrating.
2. The first set of DFAT documents (referred to in the DIMIA answer 1 (ii) above) were applied for in person by Mr & Mrs Kola in the presence of the Hon Julian Stefani, MLA SA. Mr & Mrs Kola maintain that these are their true identities.
3. The second set of documents (referred to in Answer 1 (i)) were applied for without their knowledge and without any communication from the DIMIA or DFAT with them in relation to their being asked/ required to make the applications in the names of VATA and PALI. Mr & Mrs Kola deny that they are these people and question how Ms Liz Kerrish of the DIMIA SA Compliance Office could sign a declaration stating she had known them under those names, using photographs much older than legally permissible. Mr & Mrs Kola's identities are still subject to on-going communications between them and the DIMIA Central Office – as recently as this week the Minister wrote to Mrs Kola using that name (Kola) in relation to her husband Ergi Kola. It was the release of copies of those DFAT documents in the false names that led to Mrs Kola going public in the media recently and to questions being asked in Parliament by Hon Tony Bourke and Senators Bartlett and Kirk. Going public in this manner is hardly the action of a person hiding behind a false identity.

The legality of this second application, without the knowledge of Mr & Mrs Kola, with out-of-date photographs, with the notation "unable to sign" and with a DIMIA officer stating that she knew/had known the photographed couple to be VATA and PALI for 1 year and 5 months (ie since June, 2003), is clearly dubious at the very least.

CHRONOLOGY IN RELATION TO THE TWO APPLICATIONS TO DFAT FOR TRAVEL DOCUMENTS/DOCUMENTS OF IDENTITY FOR MR & MRS KOLA:

In June 2004, Ergi and Valbona Kola applied for, and were granted, DFAT Certificates of Identity at the Adelaide DFAT office, in the presence of the Hon Julian Stefani, Liberal MLA, South Australia.

Mr Stefani signed the application witnessing their identities on recent photographs stating that he had known the couple for 2 years and 3 months. Hon Julian Stefani still holds these original DFAT documents.

61 2 62581681

Mr & Mrs Kola were subsequently told that these documents were not valid for travel / entry to any other country and they found it impossible to therefore make valid applications to enter any other country.

On 16 November 2004, I put the following questions to the Migration Review Tribunal for the Tribunal to decide in relation to Mr & Mrs Kola – the same questions having been put earlier to the Minister, and the RRT in relation to another case, in a slightly different format without a response:

1. *“What is the legal status of these applicants in relation to the country of their former nationality, namely Yugoslavia (Serbia) given that they do not have valid passports from their country of former nationality and no right to re-enter or reside permanently there or in any other country?”*
2. *“How lawful is it for the Australian Government to issue Australian Travel documents to people to whom their own country have denied passports and re-entry? Especially when these people have been registered as refugees and have had intervention requests made to the Australian Government by the UNHCR Office in Canberra?”*
3. *“How lawful is it for the Australian Government to refuse access to information of a personal nature held on a person's file particularly when that information is adverse to the person and is used by the Department to refuse a visa / make a decision adverse to the person?”*

I concluded my letter to the Tribunal (MRT) with the following comment:

“An RRT decision of the Melbourne Registry – VO1 /13097 – of 8 October, 2001, is relevant to this case in so far as the Tribunal determined the legal status of the family when the DIMIA had failed to do so. The Tribunal had regard to information if obtained from the country of former nationality of the wife applicant in deciding the case for protection of the entire family.

There are earlier cases of the Sydney Registry in relation to Cambodian applicants of Vietnamese background which could be relevant.”

The Tribunal did not decide on these questions but it is our submission that these questions are pivotal in any assessment of the DIMIA attitude, and culture (of removal on any terms to anywhere possible), in relation to stateless people.

INFORMATION PROVIDED TO DFAT BY DIMIA OFFICERS:

My concerns regarding the information passed to the DFAT Passport Office in Adelaide in relation to the issuing of Australian Documents of Identity / Travel Documents in the names of VENONA VATA and PAULIN PALI were largely addressed in my submission of 4 October, 2005 provided to the DIMIA and the Minister.

Following dispatch of that submission by fax to Mr Rundle in Adelaide DIMIA, I received an email response to some questions I had asked of Mr Bob Correll, Deputy Secretary of the DIMIA. I am appreciative of Mr Correll's prompt response.

61 2 62581681

I extract my question and Mr Correll's answer below:

Question: On what date, by whom, and why, were the Australian Travel documents issued in the names of Vernona Vata and Paulin Pali with the photographs of Valbona Kola and Ergi Kola attached, withdrawn and cancelled?

ANSWER -In June 2004 bridging visas were granted to the Kolas on the basis that they were making arrangements to depart Australia. Travel documents were obtained to facilitate their departure and these were issued in the name of Kola, their claimed identity. Upon receipt of further information, the weight of evidence indicated that Kola was not their true identity and that they are Vata and Pali- the names they used to enter Australia. New Certificates of Identity were therefore requested to be issued in the names of Vata and Pali. As departure is not imminent, these documents were returned to DFAT on 10 June 2005 for cancellation (emphasis mine).

I repeat that I am indebted to Mr Correll for this prompt reply which sheds light on the sequences of what happened in relation to the issuing of those travel documents.

I am repeating a sequence from my submission of 4 October to better convey the gist of my concerns:

"On 23 November, 2004, Mr & Mrs Kola were successful in their appeals to the MRT and the matter was remitted back to the DIMIA by the Member who also set the conditions he thought appropriate for the terms of the Bridging Visas. The Member set a period of six months for the lives of the Bridging Visas.

Three days later, 26 November, 2004, the Minister appealed that decision to the Federal Court and Mr & Mrs Kola remained in detention whilst the Appeal by the Minister proceeded through the Court. [This Appeal is an issue in itself which I have documented elsewhere.]

In the meantime, three other things happened:

1. After the MRT decision was handed down in favour of the Kolas, information was generated by internal DIMIA email that **the Kolas had been unsuccessful and they had appealed to the FCA - this wrong information was passed to the Minister (2/12/2004).**
2. One day after the MRT decision in favour of the Kolas was remitted back to the DIMIA, on **24 November, 2004**, Mr David Edwards of DIMIA Adelaide Office, wrote to Mr Karl A Jarvis, DFAT Adelaide, requesting Australian Travel documents for Albanian citizens, Venona Vata and Paulin Pali using "old" file photographs of Mr & Mrs Kola rather than the ones more recently provided to the DIMIA and to the DFAT for the earlier issue of Australian Travel documents in their own names and by their own hand (4 June, 2004). The documents were for one way travel from Australia and were to be collected at 3pm **that day**. **Of major concern is the fact that apparently Ms Liz Kerrish filled out the application for the Vata / Pali Australian Documents with a sworn**

61 2 62581681

statement that she had known the pictured couple as Vata / Pali for one year and 5 months and declaring that they were both "unable to sign".

3. On 25 November, 2004 I received a 25 page fax from Mr David Edwards, DIMIA Adelaide, advising of a Notice of Intention to Refuse a Visa under s501 of the Migration Act.

In relation to these three events, I note that Ms Kerrish was clearly not in a position to make such an identification of Mr & Mrs Kola as Vata and Pali when to date (4 October, 2005) the accusations have still not been resolved to the satisfaction of the DIMIA.

If the legality of Ms Kerrish's declarations is questionable so is the provision by DIMIA to DFAT of photographs of Mr & Mrs Kola which were over four years old when the DFAT form clearly stipulates that photographs should **be not more than six months old.**

The questions which arise from the foregoing events are multiple but principally:

1. If the DIMIA had such strong evidence of identity fraud committed by Mr & Mrs Kola at the time of their interview by Mr Maynard and Ms Frankiw in November, 2004, why didn't they summons / charge the couple as threatened?
2. What happened to the plan to remove the couple using the documents issued in the names of Vata and Pali? From DFAT, we learn that the said documents were withdrawn and destroyed.
3. Who ordered the withdrawal of the Australian Travel / ID documents in the names of Pali and Vata; when and why?

On 3 December, 2004 I interviewed Ergi Kola's parents by telephone in Shkoder with Hon Julian Stefani on the speaker phone listening in Adelaide. I sent the information from this call and supporting documentation from the Red Cross to Mr Dave Edwards, Deputy State Director, Adelaide on 9 December, 2004 **but have never received any answer** (seven pages attached). [End of repeated extract from earlier submission]

THE ANSWERS PROVIDED BY MR BOB CORRELL:

We now know the DIMIA answer to question 3 above:

"... As departure is not imminent, these documents were returned to DFAT on 10 June 2005 for cancellation."

Other questions arise naturally from this answer and from a perusal of the files:

1. "Why was "departure not imminent" as of 10 June?"
2. What had changed?

61 2 62581681

3. Who decided to "return" the documents to DFAT?
4. Why were they cancelled?
5. Why was the Minister (not sure whether Vanstone or Downer) still being briefed two weeks later (24 June, 2005) in anticipation of possible media interest that "(3) ... the Albanian authorities have verified the couple as Albanian citizens and have agreed to re-admit them to Albania".
6. If this briefing to the Minister was correct, why was DFAT not asked to re-issue the documents that week?

POSSIBLE ANSWERS:

3 June 2005: I wrote to the Minister of Foreign Affairs, the Honourable Alexander Downer MP advising him of my suspicions in relation to the possible issuance of a second set of travel documents to Mr & Mrs Kola under different names and without their or my knowledge (letter accompanies).

10 June, 2005: The documents were returned to DFAT and cancelled.

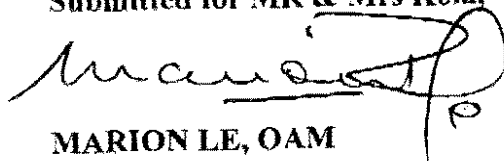
17 June, 2005: Mr Bob Nash, Assistant Secretary, Passports Branch, DFAT wrote to me advising that the second set of documents in the names of Vata and Pali had been "returned and cancelled" (I note some discrepancy of dates between DIMIA and DFAT records of when these documents were first requested/applied for by DIMIA – DFAT state 5 November, 2005; DIMIA lodged a formal application on 24 November, 2005) – letter accompanies.

CONCLUSION:

The documents had been in existence for about seven months, with a "life" of nine months, when they were returned to DFAT and cancelled – it certainly seems likely that DFAT responded appropriately to my stated concerns and the evidence I had presented to the Foreign Minister one week before (3 June, 2005).

I hope this clarifies matters for the Senate Committee and for Senator Ludwig in particular.

Submitted for MR & Mrs Kola,



MARION LE, OAM
13/10/2005

61 2 62581681

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM, Registered Migration Agent 9256617

B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law, I.T.C. (NZ, NSW, Qld).

PO Box 3093

Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419

Fax: +61 (2) 6258 1681

Mobile: 0419 419 680

E-mail: marionle@ozemail.com.au

ATTN: DAVE EDWARDS

DEPUTY STATE DIRECTOR

DIMIA South Australia

GPO BOX 2399

ADELAIDE, SA 5001

Phone: 08 8 237 6602

By Fax: 08 8237 6606**URGENT**

6pp

Re: Valbona Kola and Ergi Kola

Dear David,

In response to your letter dated 25/11/04 asking for a written response within fourteen days, I now provide the following information:

1. On last Friday (3/12/04) I interviewed Ergi Kola's mother and father in Skhodër, Albania by phone with an Albanian speaking interpreter (female) provided at their end.
2. The conversation was also witnessed (via telephone) by the Hon Julian Stefani OAM, MLC (see attached statement).
3. They were able to confirm the following points when I questioned them:
 - Their names were as given on the birth certificates provided by their son Ergi to the DIMIA viz ANTON and LIZA KOLA
 - Their son is married to VALBONA KOLA whose parents are no longer, to their knowledge, in Albania but have moved to another European country
 - Mr and Mrs Anton Kola advised that though registered with the UNHCR in Albania their situation there is increasingly desperate as they have no right of permanency; they are old and ill; they are worried about their son Ergi and they are still grieving the death of his older brother at the time of the Kosovo - Presevo- Serbia war
 - Until I advised them that Ergi and Valbona had been detained in relation to their immigration matters in Australia they were unaware of the true situation and both were extremely distressed at hearing the news.
 - When advised that there was some question as to the true identities of both their son and his wife, Mr and Mrs Kola expressed puzzlement saying that they had already sent the documents to prove their son's birth and nationality as well as their own parentage.

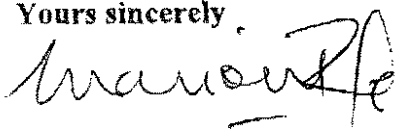
61 2 62581681

2

- I asked Mr & Mrs Kola if they knew anyone by the name of Paulin or Pavlin Pali – Mrs Kola misunderstood my question and responded immediately that Paulo (Paolo) or Paul was her son's Baptismal / Church name.
 - I repeated my question re Paulin or Pavlin Pali and they seemed puzzled obviously trying to recall someone of that name but in the end said they did not know such a person.
 - They asked what they could do to prove their son's identity. To be honest, I was somewhat at a loss but I suggested that they approach the nearest office of the International Committee of the Red Cross and ask for assistance there and also to get some proof of their approach to the ICRC and their identity. I asked that they fax any proof of their attendance to me preferably that day (they are nine hours behind us so it was still earlier in the day when we spoke. I also asked if they had any photos of Ergi as a child or younger man preferably with some sort of identifiable background. They explained that they had left most photographs behind when they fled during the war but could send at least one by fax and perhaps others, plus the originals of any documents, by post.
4. Overnight (Australian time) the following documents arrived in my office via the fax – I think directly from the offices of the Albanian Red Cross Skhoder Branch:
- Red Cross verification of the fact that they are to begin providing assistance to Mr Anton Kola and Mrs Liza Kola, signed by Andi Cekaj in both Albanian and English translation
 - A photograph of Ergi Kola as a younger man.

These documents accompany for your consideration. You can see the fax header on the top of the fax and the date 5 DIC [sic] 2004 13:20 DA.

Yours sincerely,



MARION LE, OAM

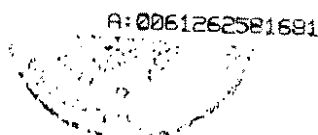
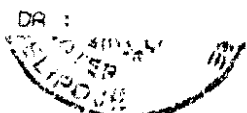
9/12/2004

Marion Le Consultancy

2

61 2 62581681

5-DIC-2004 13:23



P.1

ALBANIAN RED CROSS

SHKODER BRANCH

Phone/Fax: 022443055

I N F O R M A T I O N

To whom it may concern ,

From : Red Cross , Shkoder Branch .

Based on the interested person request , we hereby certify that Mr. ANTON KOLA and Mrs. LIZA KOLA have been included in the list of the persons who will profit the economical aids by the Red Cross in Rrethina Commune, Shkoder branch , As a consequence of the insufficiency of the planned amount , the above mentioned family will be taken in consideration in the future nutritive activity .

SECRETARY OF SHKODER BRANCH

ANDI ÇEKAJ

(Seal & signature)

Bank Account

Branch of K.K. Shkoder

5567816

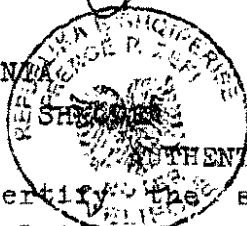
National Commercial Bank .

Address: Lagja "Perash", Rruga "Alqi Kondi", P.1152

LEGAL TRANSLATOR :

MIMOZA KASAPI .

REPUBLIC OF ALBANIA
NOTARY OFFICE IN SHKODER



REP.No. 1243

AUTHENTICATION OF SIGNATURE

I hereby certify the signature of the translator Mimoza Kasapi in the translation from Albanian to English language identical to the original.



Notary Public
Brenge Zeff .

61 2 62581681



**KRYQI KUQ SHQIPTAR
DEGA SHKODËR**

INFORMACION

Drejtuar : Te gjithë atyre që mund t'u sherbeje

Nga: Kryqi i Kuq. Dega Shkoder

Ne baze te kerkeses te te interesuarit, vertetojme se Z.Anton KOLA dhe Znj.Liza KOLA, kane qene te perfshire ne listat e personave qe do te prfitonin ndihma ekonomike nga Kryqi i Kuq ne Komunen Rrethina, rrethi Shkoder. Per arsye te pamjaftushmerise se sasise qe ishte planifikuar, Familja ne fjale u vendos qe te merret ne konsiderate ne aktivitetin ushqimor te ardhshem.

SEKRETARI I DEGES SHKODER

Andi ÇEKAJ



Adresa

Lagja „Perash“
Rruga „Alqi Kondi“
Pall.1152

Llogaria Bankare
Dega e K.K Shkoder
556/7816

Banka Kombetare Tregtare

Telefon/Fax
022443055



0206182581681



02:13:20 14-OCT-2004

61 2 62581681

5-DIC-2004 13:24 DA :

A:0061262581681

P.1



6 DEC-04 MON 15:37

61 2 62581681

HON JULIAN STEFANI MLC

FAX NO. 61 82310695

P.



LEGISLATIVE COUNCIL
PARLIAMENT HOUSE
ADELAIDE, S.A. 5000

Tel: (08) 8237 9100
Fax: (08) 8231 0695

6 December 2004

TO WHOM IT MAY CONCERN

This is to verify that, on Friday evening, 3 December, 2004 at approximately 9.45 pm Adelaide time, through a mobile telephone contact with the office of Ms Marion Lë who is a Migration Agent acting for Mr and Mrs Ergi and Valbona Kola, I was able to hear the translated discussion which took place between the parents of Ergi Anton Kola and Ms Marion Lë.

The parents of Mr Ergi Kola indicated that they were in Shkoder and that they were terribly distressed to hear that their son had been detained by the Australian authorities.

Through their interpreter, the parents of Mr Ergi Kola confirmed that Ergi is in fact their son and that they would be going to the nearest branch of the International Red Cross to certify their identities.

I am prepared to provide a statutory statement confirming the information which was given by the parents of Mr Ergi Kola to Ms Marion Lë through their English interpreter.

HON COMM JULIAN F STEFANI OAM, MLC

61 2 62581681

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 9256617
B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ NSW, Qld).
PO Box 3095
Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
Fax: +61 (2) 6258 1681
Mobile: 0419 419 680
E-mail: marlonie@ozemail.com.au

TAXED

ATTN: DAVE EDWARDS
DEPUTY STATE DIRECTOR

DIMIA South Australia
GPO BOX 2399
ADELAIDE, SA 5001
Phone: 08 8 237 6602
By Fax: 08 8237 6606

URGENT**Re: Valbona Kola and Ergi Kola**

Dear Dave,

I regret that there were errors in two documents sent to you yesterday – typos which have now been corrected.

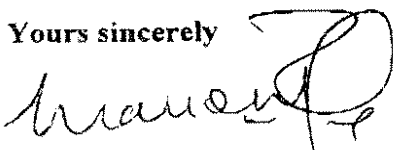
In my letter, para 3 first point should read ANTON and LIZA KOLA

A corrected version of my letter accompanies. Please replace the earlier version with this corrected one.

Also there were two typos in Hon Julian Stefani's letter which he had already corrected and sent to us – his first letter was sent in error to you. A corrected copy of his letter also accompanies. Please replace the earlier version with this corrected one.

I regret any inconvenience caused to you.

Yours sincerely



MARION LE, OAM
9/12/2004

61 2 62581681



Australian Government
Department of Foreign Affairs and Trade

17 June 2005

Ms Marion Le OAM
Marion Le Consultancy
PO BOX 3095
BELCONNEN MC ACT 2617

RECEIVED

Dear Ms Le

Thank you for your letter dated 3 June 2005 concerning Valbona Kola and Ergi Anton Kola. I have been asked to reply on behalf of Mr Downer.

The Department of Foreign Affairs and Trade (DFAT) responds to requests from the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to issue Certificates of Identity (COI) to allow non-Australian citizens to leave Australia. On request from DIMIA, COIs were issued to Ergi Kola and Valbona Kola on 21 June 2004. Following a subsequent request from DIMIA on 5 November 2004, new documents were issued to the same couple in the names of Venona Vata and Paulin Pali, pending finalisation of a specific travel date. These documents have since been returned and cancelled.

With regard to your comments concerning the Australian Embassy in Athens, while DFAT officers at posts do make discreet inquiries in host countries when asked to do so by the Country Information and Protection Service of DIMIA, or by Members of the Refugee Review Tribunal and Migration Review Tribunal, they did not do so in this case. DIMIA has confirmed that inquiries concerning the Kolas, including with regard to their identities, were undertaken by DIMIA officers.

Thank you for bringing your views to the attention of the Government.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bob Nash'.

Bob Nash
Assistant Secretary
Passports Branch

COPY

R G Casey Building John McEwen Cres Barton 0221
Telephone:02 6261 1111 Facsimile:02 6261 3111

RECEIVED TIME 14.OCT. 10:46

PRINT TIME 14.OCT. 10:54

61 2 62581681

1

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 56617
B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ, NSW, Qld).
PO Box 3095
Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
Fax: +61 (2) 6258 1681
Mobile: 0419 419 680
E-mail: marionle@ozemail.com.au

COPY

Hon. Philip Ruddock, MP
Minister for Immigration & Multicultural Affairs
Parliament House, Canberra, 2600
BY FAX: 02 6273 4144

Dear Minister

RE: VALBONA KOLA & ERGI ANTON KOLA

CLF2000/8323

**REPEAT REQUEST FOR MINISTERIAL
INTERVENTION UNDER SECTION 417 OF THE
MIGRATION ACT**

I note your direction to your officers of your Department in relation to repeat applications for your intervention under s 417, viz:

"If a written request for me to exercise my public interest powers is received after the case has previously been brought to my attention as the result of a previous request (in a schedule or as a submission) a case officer is to assess the request and:

- for cases then falling within the ambit of these Guidelines, bring the case to my attention as a submission so that I may consider exercising my power

INTRODUCTION & BACKGROUND:

On September 17 2002 you declined to exercise your power under s417 of the Act in relation to Mr & Mrs Kola.

61 2 62581681

2

Mr & Mrs Kola have Bridging Visas that expire on this coming Saturday, 16 November, 2002 and on Thursday or Friday they will attend the Adelaide offices of your Department to discuss their status in Australia.

At the moment Mr & Mrs Kola are in the position of being stateless.

They were both born in the village of Ternav in the Preshevo Valley region of the former Republic of Yugoslavia (Serbia).

Ternav pre April, 1999 had a majority population of ethnic Albanians.

In early April, 1999, Serbian military units entered the village and began burning the homes of the ethnic Albanian residents. Mr & Mrs Kola were forced to flee and eventually found their way to Albania where as recognised UNHCR refugees they were allowed to stay in a camp.

The camp was certainly not a place where they, Mrs Kola in particular, were protected.

The couple are not citizens of Albania and have no automatic right of re-entry there. Nor can they return to Presevo.

Mrs Kola is psychologically, emotionally and mentally unable to return to either Serbia or Albania. She is therefore both unwilling and unable to avail herself of the protection of either country.

Under the UN Convention on Refugees, Mr & Mrs Kola cannot be refouled to the country of their nationality (Serbia) and it is submitted that Mrs Kola, in particular, has a well founded fear of persecution and torture (in terms of the CAT definitions) if she is forced to return to Albania.

GROUND/ REASONS FOR YOUR PREVIOUS DECISION NOT TO EXERCISE YOUR POWERS:

Applicants who have their requests for your intervention refused are often at a loss to know why.

In the case of Mr & Mrs Kola, I can only refer to the files, obtained under the FOI Act, for any ideas as to why the submission was unsuccessful.

CHARACTER:

I am including copies of the Australian Federal Police Checks for both Mr and Mrs Kola dated 8 October, 2002 showing that neither has any Disclosable Court Outcomes recorded against their names.

61 2 62581681

3

HEALTH:

Both Mr & Mrs Kola completed medical checks recently in Adelaide and these are being held at the Adelaide Office of your Department. I understand that they are cleared medically for migration purposes.

DEBTS TO THE COMMONWEALTH:

Mr Kola has agreed to repay all monies owing to the Commonwealth. Despite their straitened circumstances at the moment (they have no work permits and are dependent on community support) they have recently paid off \$1500.00 of the monies owing because of their unsuccessful Federal Court actions.

OTHER AVENUES OPEN TO THE APPLICANT TO APPLY FOR MIGRATION:

Although Mrs Kola is potentially able to apply for entry to Australia under the Distinguished Talent Category, she cannot do this without leaving the country as she is barred from making another application onshore because she has had a visa refused.

Mrs Kola does not have a valid travel document and because she is stateless and a refugee from Serbia (the former Yugoslavia) she is unwilling and unable to apply for a Serbian passport.

She also cannot return to Presevo in order to make an application to re-enter Australia.

The Kolas could potentially apply for migration under the RSMS but for this they need a two year signed contract.

At the moment, Mrs Kola has been offered a firm contract with the State Opera of South Australia but this is only, so far, for next year (2003) but potentially could go beyond that.

ADDITIONAL INFORMATION TO BRING THIS REPEAT APPLICATION WITHIN THE MINISTERIAL GUIDELINES:

Enclosed please find the accompanying documentation:

- Copy of AFP certificate in the name of Ergi Anton Kola, dated 8 October, 2002
- Copy of AFP certificate in the name of Valbona Kola, dated 8 October, 2002

61 2 62581681

4

- **Copy of letter dated 29 October, 2002 from Valbona Kola to Mrs Marion Le, informing Mrs Le that she is to go for an audition with the South Australian State Opera on 7 November, 2002**
- **Copy of DIMIA Form 1000 completed by Mr Stephen Phillips, General Director, the State Opera of Australia, dated 29/10/02, expressing the position held by himself and therefore the State Opera of South Australia in relation to Mrs Kola's talents**
- **Authority Form 956 signed by Mr Stephen Phillips giving Mrs Marion Le the authority to act on behalf of himself and the S.A. State Opera**

SUBMISSION AS TO THIS REPEAT APPLICATION:

Ministerial Guidelines 4: Unique or exceptional circumstances:

4.2 "Cases may fall within the category of cases where it is in the public interest to intervene if a case officer is satisfied that they involve unique or exceptional circumstances..."

We would submit that Mrs Valbona Kola falls clearly within the parameters outlined by the Minister in his guidelines at 4.2.1; 4.2.3 and 4.2.4.

In addition we would submit that Mrs Kola falls within the parameters of 4.2.9:

"Exceptional economic, scientific, cultural or other benefit to Australia;

The sponsorship of the South Australian State Opera is a significant factor which we are certain falls within the guidelines of 4.2.9.

Mrs Kola has now been offered employment in 2003 with the South Australian State Opera. It is apparent that she will offer "exceptional cultural benefit to Australia" if the Minister exercises his discretion under s417.

It is clearly in the public interest that a person of Mrs Kola's talent be approved for settlement in Australia.

We would submit also that Mrs Kola fulfils the Ministerial guidelines set out in 5.1.3; 5.1.4; and 5.1.5.

In relation to 5.1.5, Mr and Mrs Kola have always sought to co-operate with the Department and they have always complied with conditions on their visas.

61 2 62581681

5

CONCLUSION:

It is clear that Mrs Kola will make a significant and unique contribution to the cultural life of Australia through her musical skills – in particular of her unique and exceptional talent in the area of operatic singing.

At the time when the Minister first considered this application the exceptional talents of Mrs Kola had not been formally recognised by an independent external statutory body. Now this has occurred. The fact that Mrs Kola succeeded in her audition last week with the SA State Opera is something the Minister would want to take into consideration.

It is certainly well within the public interest powers of the Minister to grant Mr and Mrs Kola residency visas.

It may be that the Minister would consider granting the couple temporary visas for the next three years without imposing any conditions on them and with the right of applying for substantive visas at the end of the three year temporary visa period. This would overcome the difficulties currently being experienced by this couple because they are unable to apply on-shore for residency visas.

Clearly, from the number of supporting signatures and submissions the Minister has received in the past in relation to this young and talented couple, it is in the public interest to grant them visas to enable them to remain in Australia.

Submitted for the applicants by:



MARION LE, OAM
10/11/2002

61 2 62581681

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 56617
 B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law; I.T.C. (NZ, NSW, Qld).
 PO Box 3095
 Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419

Fax: +61 (2) 6258 1681

Mobile: 0419 419 680

E-mail: marionle@ozemail.com.au

THE COMPLIANCE MANAGER
 DEPARTMENT OF IMMIGRATION, M/C & INDIGENOUS AFFAIRS
 Adelaide
 By fax: 08 8237 6599

ATTN: [REDACTED]**RE: ERGI ANTON KOLA & VALBONA KOLA**

CLF2000/8323

RRT F/N: V00/11012

I refer to the attendance of my clients, Mr & Mrs Kola, at your office last Friday and their application for an extension of their BVEs.

I also refer to my letter of 10/11/02 (accompanying) as faxed to you on that date in which I advised you that they would be attending

It is clear that Mr & Mrs Kola have complied with every condition placed on them by the DIMIA and that they have never sought to hide from the DIMIA.

They came to your office of their own accord on Friday in the knowledge that their BVEs were about to expire.

I understand that you were concerned by a paragraph in my submission to the Minister of 10/11/02 (extracted here):

The couple are not citizens of Albania and have no automatic right of re-entry there. Nor can they return to Presevo.

Mrs Kola is psychologically, emotionally and mentally unable to return to either Serbia or Albania. She is therefore both unwilling and unable to avail herself of the protection of either country.

Under the UN Convention on Refugees, Mr & Mrs Kola cannot be refouled to the country of their nationality (Serbia) and it is submitted that Mrs Kola, in particular, has a well founded fear of persecution and torture (in terms of the CAT definitions) if she is forced to return to Albania.

It is clear from the steps being taken by Mr and Mrs Kola that they have no intention of evading the DIMIA; that they are attempting to find other lawful

COPY

61 2 62581681

avenues open to them to make application to remain in/re-enter Australia; or to leave Australia and go to any other country that will grant them entry.

I intend to go to the Embassy of the Federal Republic of Yugoslavia to collect forms for the Kolas to make application for passports and to discuss their situation with the staff at the Embassy.

As they are UN recognised refugees, I will also be advising the UN of the situation once I have obtained the relevant documents.

LATER:

I spoke to Mrs Kola this morning and to Kathy from your office at the same time that I was on the other phone to Peter Knobel of the Minister's office.

I understand that Hon Julian Stefani, MLA, was also in touch with you after my calls.

I am informed by Hon Julian Stefani that you have now accepted a bond of \$4,000.00 and daily reporting conditions and granted them a three week BVE each.

I undertake to apply to the FR Yugoslavia in Canberra for passports and will fax copies of documentation as soon as possible.

Yours sincerely


MARION LE, OAM
18/11/2002

61 2 62581681

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 56617
B.A. (Hons); B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ, NSW, Qld).
PO Box 3095
Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
Fax: +61 (2) 6258 1681
Mobile: 0419 419 680
E-mail: marionle@ozemail.com.au

**THE COMPLIANCE MANAGER
DEPARTMENT OF IMMIGRATION, M/C & INDIGENOUS
AFFAIRS**

Adelaide

By fax: 08 8237 6599

ATTN: **RE: ERGI ANTON KOLA & VALBONA KOLA**

CLF2000/8323

As agreed, I yesterday went to the Serbian / FDR Yugoslavia Embassy in O'Malley ACT and obtained application forms for my clients. I have forwarded these forms to my clients by express mail for their completion and return to me as a matter of urgency.

I left copies of various documents relating to my clients with the Embassy and processing will begin immediately they receive the completed forms from my clients. I am told they will then make some assessment in writing of the length of time it will take to get the passports.

In the meantime, I think it should be understood that my clients are extremely stressed by the events of the past week. I would ask that they be extended every courtesy and understanding in this difficult time.

I understand that they were photographed yesterday. I am also informed by the Minister's Office that some approach was made by Ms Crittendon to the Consulate in Adelaide.

Neither my clients nor I were aware that this was happening and I want to underline the fact that my clients are proceeding in accordance with their undertakings given when they applied for their latest BVEs – namely that they would make application for travel documents / passports.

My clients are not in the situation where they need to be deported / removed from this country. They have complied, and are complying, with every direction given to them by your Office.

RECEIVED TIME 14.OCT. 10:46

PRINT TIME 14.OCT. 10:54

COPY

61 2 62581681

I would appreciate an explanation by return as to why my clients were photographed yesterday after a lengthy period of time in your Office. Mrs Kola was particularly traumatised by this as she believed that they were possibly going to be transferred to Baxter Detention Centre.

Mrs Kola's health is very fragile and last evening she was suffering flashbacks to the trauma and horror of the past.

I hope too, that your Office will bear in mind that this couple are UNHCR recognised refugees from the very country to which they are now forced to make application for passports.

In all sincerity, I would ask that your office treat this couple with dignity and compassion whilst they await the Minister's further consideration and also the outcome of their application to the Serbian Embassy.

I would like to think that we can all co-operate to bring about the best resolution for this couple in the shortest possible time.

Please do not hesitate to call me on my mobile at any time if I can be of assistance.

Yours sincerely

MARIONALE, OAM

20/11/2002

cc Hon P Ruddock, Minister
Hon. J Stefani, MLA

61 2 62581681

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 56617
B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law: T.T.C. (NZ, NSW, Qld).
PO Box 3095
Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
Fax: +61 (2) 6258 1681
Mobile: 0419 419 680
E-mail: marionle@ozemail.com.au

**THE COMPLIANCE MANAGER
DEPARTMENT OF IMMIGRATION, M/C & INDIGENOUS
AFFAIRS**

Adelaide

By fax: 08 8237 6599

ATTN: [REDACTED] / [REDACTED]**RE: ERGI ANTON KOLA & VALBONA KOLA**

CLF2000/8323

Please find accompanying this letter, a Certificate from the Embassy of the Federal Republic of Yugoslavia, Canberra in relation to the application for Yugoslav passports by Mr & Mrs Kola.

As soon as I receive any information from the Embassy I will advise you and the Minister's Office immediately.

Please advise if this certificate is not sufficient evidence for your requirements.

I note once again that my clients have no intention of eluding or evading the Department.

Yours sincerely

MARION LÊ, OAM

17/10/2002

61 2 62581681

1

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 56617
B.A. (Hons); B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ, NSW, Qld).
PO Box 3095
Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
Fax: +61 (2) 6258 1681
Mobile: 0419 419 680
E-mail: marionle@ozemail.com.au

Hon. Philip Ruddock, MP
Minister for Immigration & Multicultural Affairs
Parliament House, Canberra, 2600
BY FAX: 02 6273 4144

COPY

RE: VALBONA KOLA & ERGI ANTON KOLA
CLF2000/8323

Dear Minister

Please find accompanying this letter a copy of the Certificate issued by the Embassy of the Federal Republic of Yugoslavia in relation to the application by Mr & Mrs Kola for Yugoslav passports.

I visited the Embassy twice, once to make enquiries as requested by your Department and Office in relation to applications for Yugoslav passports and again, yesterday, to take the required documentation and completed application forms with photographs.

The fact that this couple provided birth certificates from the Presevo Valley is apparently not necessarily going to mean that they are recognised as citizens of Yugoslavia and therefore eligible for passports. The applications have to be forwarded to Yugoslavia for processing and the Officials were not able to give me any firm idea as to how long the process could take.

They have undertaken to inform me as soon as they get any response from Yugoslavia.

In the meantime Mr & Mrs Kola have a further s417 application before you. I would urge you to give this young couple the right to stay permanently in this country. I am sure they will make a significant contribution to this country.

I will begin next week to make approaches to other countries, specifically New Zealand, to see if Mr & Mrs Kola, in the event that they are issued with passports, can find a home somewhere else.

61 2 62581681

2

I know that they feel they cannot return to the Presev Valley (in fact the Officials at the Embassy seemed to find even their application for passports strange given that they were from that region) and they do not have the automatic right of entry to any other country, including Albania (something explored briefly with me by the Embassy yesterday in terms of the fact that though born in Presevo, they are Albanians).

I will also approach the Office of the UNHCR to see whether they are entitled to UN travel documents given that they are UNHCR recognised refugees.

All of this activity of my part is born out of a genuine belief held by me and many others who know this couple, that they deserve a safe and secure future in a free country, preferably Australia.

I urge you, as Minister, to exercise your power under s417 and allow Mr & Mrs Kola to stay here. This will mean she can sign the contract with the SA State Opera and begin to contribute in a very special way to this country.

I am happy to discuss this matter with you at any time.

Thank you for your assistance.

Yours sincerely


MARION LE, OAM
27/1/2002

61 2 62581681

1

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 56617
 B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ, NSW, Qld).
 PO Box 3095
 Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
 Fax: +61 (2) 6258 1681
 Mobile: 0419 419 680
 E-mail: marionle@ozemail.com.au

Hon. Philip Ruddock, MP
Minister for Immigration, Multicultural & Indigenous Affairs
 Parliament House, Canberra, 2600
 BY FAX: 02 6273 4144

COPY

Dear Minister

RE: VALBONA KOLA & ERGI ANTON KOLA

CLF2000/8323

**REPEAT REQUEST FOR MINISTERIAL
INTERVENTION UNDER SECTION 417 OF THE
MIGRATION ACT**

I note your direction to your officers of your Department in relation to repeat applications for your intervention under s 417, viz:

"If a written request for me to exercise my public interest powers is received after the case has previously been brought to my attention as the result of a previous request (in a schedule or as a submission) a case officer is to assess the request and:

- for cases then falling within the ambit of these Guidelines, bring
- the case to my attention as a submission so that I may consider exercising my power

I refer to my earlier submissions in relation to Mr and Mrs Kola.

As discussed in our recent meeting, I accepted advice from the UNHCR and requested copies of the Mr & Mrs Kola's UNHCR registration papers. A copy of this UNHCR document accompanies this letter.

61 2 62581681

2

I note that the UNHCR document clearly states that both husband and wife were born in *Ternave, Presevo*. I note that other ID documents provided by the couple in the past have also stated this to be their place of birth.

I mention this fact because it is my understanding that Mr Rod Paterson, of your Department in Adelaide suggested to Hon Julian Stefani, MLA SA, that there were doubts about the "origins of the couple".

Mr Stefani has told me by telephone today that Mr Paterson said to him, on one occasion recently, words to the effect that:

"Not all that is being told to the Department is true",

and, on a subsequent occasion within the past fortnight, words to the effect that:

"Not all that is being given to the Department as regards their origins is correct."

My clients inform me that they are not deceiving the Department in any way. I am certainly not privy to any information that might lead to a conclusion of the kind expressed by Mr Paterson to Mr Stefani.

I note that one document, purporting to be a letter from an anonymous "informant", has not been released to Mr & Mrs Kola under the FOI request. It may well be that this document is maliciously and erroneously conceived in order to harm this young, talented couple.

There may also be some other information that has come to the attention of the Department since the FOI request was actioned and of which I, and my clients, are unaware.

If there is any information on the files, or that has come to the attention of the Department, that is adverse to my clients, and is being held against them in any assessment of their applications and submissions, then natural justice demands that they be permitted to access that information and answer it.

In relation to this further request for your intervention under s417, it is my considered opinion that the processing of this case was fundamentally flawed. Mrs Kola's case was never individually put to the various decision makers and the couple were not sufficiently advised that they would be assessed against Albania. The issue of "effective protection" was not adequately explored or addressed.

The UNHCR has advised that *effective protection* is not and, as in the case of Mrs Kola particularly, was not, available to refugees in Albania.

As registered UNHCR refugees, Mr & Mrs Kola should not be refouled to Presevo and clearly they are both unwilling and unable to return to Albania.

61 2 62581681

3

I am therefore submitting this further evidence to you for your consideration. As yet I have not had further discussions with the Office of the UNHCR in Canberra but expect to do so next week if necessary.

Also accompanying this letter are two documents from the State Opera of South Australia addressed to Mrs Kola. Mrs Kola will not be accepting any payment from the Company until her situation is resolved.

At the moment the couple are on draconian reporting conditions (once a day) and this is causing them undeniable stress given the time, energy and expense involved. Mrs Kola has had a recent stress induced health scare that fortunately has been assessed as non-malignant and without long term effects.

Clearly, however, the stress of living precariously on community support, reporting daily and having anonymous and ill defined allegations made against them, is taking its toll on their health. In their favour, the couple are paying off their debt to the Commonwealth and have never failed to comply with the Department's orders.

Mrs Kola is regarded highly in Operatic circles and it would be undoubtedly in the public interest if you were to intervene on her behalf and grant her a visa in the Gifted and Talented class.

Once again I commend this young couple to you for your sympathetic consideration and intervention.

Yours sincerely

MARION LE, OAM
27/03/2003

61 2 62581681

1

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 9256617
B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ, NSW, Qld).
PO Box 3095
Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
Fax: +61 (2) 6258 1681
Mobile: 0419 419 680
E-mail: marionle@ozemail.com.au

**THE COMPLIANCE MANAGER
DEPARTMENT OF IMMIGRATION, M/C & INDIGENOUS
AFFAIRS**

Adelaide

By fax: 08 8237 6599

ATTN: 

COPY

RE: ERGI ANTON KOLA & VALBONA KOLA

CLF2000/8323

Dear Ms Holmes

Thank you for your two emails of 15 July, 2003 in relation to Mr & Mrs Kola.

According to International Law, citizens of any country have the right to passports from any country which accepts them as citizens and takes responsibility for their protection as citizens of that country.

They are then entitled to travel where they wish and to apply for visas to enter other countries.

I note that Mr & Mrs Kola have applied through me to the Embassy of Serbia and Montenegro for passports. If the Government of Serbia does not issue Mr & Mrs Kola with passports then that will be a matter to be dealt with at time of official notification.

I believe you have a copy of the document issued by the Embassy that details the applications made by Mr & Mrs Kola for passports.

The Minister is aware that Mr & Mrs Kola were registered as refugees by the UNHCR in Albania and that therefore the UNHCR also has an interest in their future.

You will recognise that applying for a DFAT Travel Document is not an option at this stage for obvious reasons.

61 2 62581681

2

You may be assured that Mr and Mrs Kola are complying with the conditions of the BVE issued to them by your Office.

Thank you for your assistance and I will keep you informed of any further developments regarding the applications for passports.

Yours sincerely



MARION LE, OAM
3/10/2003

61 2 62581681

1

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 9256617
B.A.(Hons): B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ, NSW, Qld).
PO Box 3095
Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
Fax: +61 (2) 6258 1681
Mobile: 0419 419 680
E-mail: marionle@ozemail.com.au

Hon. Philip Ruddock, MP
Minister for Immigration & Multicultural Affairs
Parliament House, Canberra, 2600
BY FAX: 02 6273 4144

Dear Minister

RE: VALBONA and ERGI KOLA
CLF2000/8323

I wish to add some further information for your consideration in relation to Mr & Mrs Kola.

I recently acquired an update request for file documents under the FOI Legislation in relation to Mr & Mrs Kola.

I believe that it is clear from those files that Mr & Mrs Kola are refugees who must not be re-fouled to Serbia (the Preshevo Valley) and they are stateless in that they are not permitted to return as citizens to Serbia because they have been refused the issue of passports and have had their citizenship clearly denied by the representatives of the Serbian Government.

They have no right of legal entry to any other country.

I note the following documents are contained on the Departmental files:

1. **A copy of the Certificate issued in Canberra on 26 November, 2002 on the letterhead of the Embassy of the Federal Republic of Yugoslavia, signed by Radomir Jergic, Charge d'Affaires, certifying that applications had been filed by Mrs Marion Le, OAM, for the issuance of Yugoslav passports to Valbona and Ergi Kola, both born in Trnave-Presevo and stating that the processing of "these requests, having in mind the particular circumstances, will last considerable time..."** I note that the final sentence on the Certificate reads: *"When the final decision is reached Mrs Marion Le, as the authorised person will be advised accordingly."* (ACCOMPANYING)

61 2 62581681

2

2. A one page Facsimile Message dated 10 March, 2003, from Katherine Timoshanko, Compliance Officer, DIMIA Adelaide, addressed to the Embassy of the Federal Republic of Yugoslavia, Consulate [sic] Section with URGENT and "Can get travel doc (ID) from foreign Affairs" handwritten on the page. The body of the message is quite informal in tone – I produce it in full for convenience:

*"Hello,
We currently have Mr Ergi Kola (08/11/72) and Ms Valbona KOLA (02/11/72) in our office. They had been granted a Bridging visa to apply for new passports that has now ceased. We would like to know how long it will be until the passport's [sic] will be issued. Is there anyway we can speed up the process?? Many thanks (signed) Katherine Timoshanko." (f51)*

3. A one page Facsimile Message dated 28 March, 2003, from Katherine Timoshanko, Compliance Officer, DIMIA Adelaide, addressed to the Embassy of the Federal Republic of Yugoslavia, Consulate [sic] Section – again informal in tone and again I reproduce it in full for convenience:

*"Hello,
As per my phone call earlier today, I am writing in regard to the passport applications for Mr Ergi Kola and Mrs Valbona Kola.*

They are currently the holders of Bridging Visa E's for departure by 10/04/03, therefore, I require their passports or valid travel documents to allow they [sic] to depart by this date. If they do not do so they may loose [sic] their bond of \$2000 each (ie total of \$4000 and may be subject to immigration detention.

Please respond as soon as possible. If you are not able to issue their passports or valid travel documents before 8/04/03, I will be forced to seek Certificate's [sic] of Identification from Australian foreign Affairs in order to facilitate their departure. Regards, (signed) Katherine Timoshanko." (f59)

4. A one page formal reply from the Embassy of Serbia and Montenegro, Canberra, dated 28/05/2003, signed by the Ambassador, HE Milivoje Glisic addressed to Katherine Timoshanko, Compliance Officer, Adelaide (again reproduced in full):

*Dear Ms Timoshanko
Ref: Ergi and Valbona KOLA, Application for passports of Serbia and Montenegro.*

To this Embassy had been filed applications for issuance of new passports of Serbia nad Montenegro (former Yugoslavia) to Mrs

61 2 62581681

3

Valbona Kola and Ergi because their passports had been ceased by DIMA.

Appropriate procedures have been instituted by competent authorities in Serbia and Montenegro but the approval for the issuance of passport for them has not been given. Mrs Valbona Kola and Ergi do not have a registered domicile in Presvo, neither are they enrolled in the register book of birth, nor in the book of citizenship.

*Sincerely yours,
Millovoje Glisic
Ambassador*

(ACCOMPANIES)

5. A copy of the Registration page dated 12/04/1999, Registration Number 058817 processed by the UNHCR in Pishina Camp, Tirane for Ergi Anton Kola and Valbona Rrok Kola both born in Ternave, Presheve, living in the Collective Centre and requiring tracing assistance (accompanies – but previously, as with the Certificate above (1), provided)

COMMENTS RELATING TO THE ABOVE DOCUMENTS:

- It is clear that on at least two occasions Ms Timoshanko faxed requests for passports/ID documents to the Embassy of Serbia and Montenegro and that she had at least two, and probably more, telephone conversations with them regarding the issuance of passports/travel documents to the Kolas.
- It is clear that Ms Timoshanko did not advise me, as their legal representative, of what she was doing – nor did she inform Mr & Mrs Kola
- It is clear from the tone and format of her faxes that Ms Timoshanko did not regard the matter of Nationality or even of diplomatic courtesy / diplomacy very highly.
- It is equally clear that Ms Timoshanko, and therefore the DIMIA, has failed to address the serious matter of the refusal by the Government of Serbia & Montenegro to accept Mr & Mrs Kola as citizens with a right to live in Presevo and to be issued with passports by their country of origin and nationality (Serbia).
- This is clearly in line with the information given to me when I first spoke to the Ambassador and to the Charge d'Affaires on two occasions in November 2002 in relation to Mr & Mrs Kola.

61 2 62581681

4

- It is also clearly in line with the information conveyed to me last month in relation to the [REDACTED] family, when, as I previously advised you, on 13 August 2003, I attended the Embassy of Serbia & Montenegro and met with the new Consul, [REDACTED], on behalf of the [REDACTED] family.
- I gave Igor copies of the birth certificates of all four members of the family (copies are already on the Departmental files) and asked if they could be issued with Serbian passports. I also gave [REDACTED] a copy of Mr [REDACTED] ID card.
- The clear response from [REDACTED] was that it was not possible to recognise as citizens people who had ID documents older than six months and certainly not those dating from the 1999 period.
- He said that in line with the policy "*implemented in relation to your previous case*", (i.e. Mr & Mrs KOLA) it would not be possible to issue the family with passports. He also said that it was not the policy to accept people like the [REDACTED] (and by clear association Mr & Mrs Kola) back as involuntary returns given the way in which they had left the country.
- [REDACTED] said he would try to put a statement together in writing in relation to the [REDACTED] family but that this might take some time. (My assistant spoke to [REDACTED] again last week in relation to the promised statement and he said he was still trying to get some permission from Belgrade to issue the statement).
- It was clear to me from this conversation that the [REDACTED] family and the Kolas (and therefore others in similar positions to them) are indeed stateless people who cannot return legally to their country of origin and nationality.
- Although the Department has said that they intend to obtain Australian travel documents for Mr & Mrs Kola the question remains as to where the DIMIA would be seeking to send them. And clearly the Kolas have the right to know, from the Australian Government, their proposed destination.
- They clearly have no right of return to Presevo and without legitimately issued documents they would definitely be arrested if they tried to re-enter Presevo illegally.
- Moreover, as the Ambassador has plainly declared, they have no home to return to, no registration and no historical records even of their births.
- This categorical disowning of the couple is clearly designed to prevent them and other Albanians returning after so long away. The documentation of the Kolas and others like them were destroyed by the Serbian Military as they drove them out of the Valley in 1999. (again I draw parallels with other countries where a new government seeking to

61 2 62581681

5

impose itself on its people carefully ensures that those who fled the country and remain outside for a considerable length of time are prevented from returning.

- Departmental files contain reference to the fact that the Serbians are refusing to issue passports and visas to Albanians seeking to cross the border from Kosovo and Macedonia into Presevo.
- I would argue that since Mr & Mrs Kola undeniably left their country as refugees and are clearly unable to return there because of the denial to them of passports and therefore protection from their country of origin, they are in need of protection from Australia.
- It is true that Mr & Mrs Kola were registered in Albania by the UNHCR but they did not enjoy effective protection there and because of Mrs Kola's personal experiences and well-founded fears of continued persecution in both Preshevo and Albania they were also forced to leave Albania and seek protection in Australia.
- The Kolas, like the [REDACTED], are in a similar position to Vietnamese Cambodians who could not return to either Cambodia or Vietnam and were therefore granted protection in Australia once this had been clarified. I am happy to provide details of these cases to you if you so require.

FURTHER DOCUMENTS PROVIDED:

There has been a suggestion that Mrs Kola was not born in Presevo. She has provided documents which establish her place of birth as Trnave-Presevo and neither the Ambassador nor the Charge-d'Affairs questioned those documents when they saw them.

Further there are people living in Australia who knew Mrs Kola's father (a blind singer and composer of considerable fame and talent) and can vouch for her identity. Mrs Kola also has a CD recording, made when she was quite young, singing with her father.

She explains her inability to answer some questions asked her by the delegate by the fact of the trauma she had been through prior to coming to Australia, her nervousness at interview, the fact that as a woman she did not know the name of the Mayor and also because, as she openly stated, she had been living outside of Presevo for some time whilst she studied music in Albania.

Nonetheless the following documents are provided once again for consideration:

6. Republic of Albania Diploma from the University of Tirane showing that Valbona Rrok Telumi has completed her studies in SONG and is now entitled to be called SINGER, dated July 4, 1995 – in Albanian, with photograph and English translation and authentication of signature

61 2 62581681

6

7. **Identity Card (with photograph) of Valbona Telumi born in Trnave, Preshev and also Driver's Licence of Ergi Kola born in Trnave Presev**
8. **Medical Certificate in Albanian with English Translation and Authentication of Signature from the University Hospital Center "Mother Teresa" Tirane Psychiatric Service, dated January 11, 2002, stating that Valbona Kola had three consultations with the hospital from April 10, 1999 "that coincides with the period of Kosovo War"**
9. **Medical Certificate signed by Dr Stephen Birrell, Director, Flinders Medical Centre, dated 12 July, 2003 (as already provided but provided again here for sake of completeness) giving evidence of Mrs Kola's serious trauma, suicidal ideation and severe hormonal mastopathy.**

I note that the situation in Preshevo, Kosovo and Macedonia is becoming increasingly tense. Three further documents are provided to illustrate the level of violence and political tension in the region at this time:

10. **"Kosovo nightmare" – small news item taken from the DAILY TELEGRAPH, 6/09/03, p22**
11. **"COVIC at UN Security Council: Ethnic Albanian terror a threat to Kosovo stabilisation", dated August 19, 2003 – issued by the Serbian Government (2pp)**
12. **Statement by Dr Nebojsa Covic at the session of the National Assembly of the Republic of Serbia Belgrade, 27 August 2003- issued August 28, 2003**

These three items give considerable impetus to Mr Kolas claims of a well founded fear of persecution by both the Serbians and the Albanians if he was to return to the region after so long away. As committed Catholics who are totally opposed to violence in any form, living in the region would be a nightmare of fear and despair. The fact that Mr Kola did not join either side during the war makes him an easy target for both sides if he returns.

It is submitted that both Mr & Mrs Kola are refugees who have well –founded fears of returning to Preshevo or anyway else in the region for the complexity of reasons outlined above and in previous submissions.

I have asked the UNHCR to give consideration to the situation of both Mr & Mrs Kola but I sincerely ask you to intervenc in their case to resolve their situation in light of the considerable public interest factor and the obvious benefit to Australia of having two such talented young people remain here.

I have now had the immense pleasure of spending two days in Adelaide with Mr & Mrs Kola and visited them in their home.

61 2 62581681

7

They have made a beautiful environment for themselves despite all their difficulties and Mrs Kola's severe trauma. They have friends like the Hon Julian Stefani, his family and many other people of note and talent in the South Australian community to help and support them.

Once again I commend them to you for a durable resolution of their situation. I urge you to allow them to remain permanently in Australia.

Thank you again for your consideration.

Yours sincerely

MARION LE, OAM
9/2003

61 2 62581681

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 9256617
B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ, NSW, Qld).
PO Box 3095
Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
Fax: +61 (2) 6258 1681
Mobile: 0419 419 680
E-mail: marionle@ozemail.com.au

**THE COMPLIANCE MANAGER
DEPARTMENT OF IMMIGRATION, M/C & INDIGENOUS
AFFAIRS**

Adelaide

By fax: 08 8237 6599

URGENT**RE: ERGI ANTON KOLA & VALBONA KOLA**

CLF2000/8323

I represent Mr & Mrs Kola.

I advise that I went with Mrs Kola to the Department of Foreign Affairs in Canberra on Thursday, 13 May 2004 and attempted to make an application for a Travel document as Mrs Kola had been instructed.

We were unable to do so as Mrs Kola had no visa or ticket for travel/ travel itinerary – nor did she have any valid documentation from the DIMIA to authorise the issuing of such a document.

We also went to the UNHCR Office in Canberra and they have made urgent contact to DIMIA Central Office (R Illingworth) re the statelessness of Mr & Mrs Kola .

You are urged to contact Mr Illingworth and/or the UNHCR in Canberra in relation to this matter.

In the meantime I urge you to issue a further bridging visa to Mr & Mrs Kola.

Yours sincerely


MARION LE, OAM

24/05/2004

61 2 62581681

1

Marion Lê Consultancy

Advocate, Education and Ethnic Affairs Consultant

ABN: 58 479 107 434

Indo-China and China Specialist

Marion Lê, OAM. Registered Migration Agent 9256617
B.A.(Hons); B.Theol.; L.Th.; Grad. Dip. International Law; T.T.C. (NZ, NSW, Qld).
PO Box 3095
Belconnen MC ACT 2617

Phone: +61 (2) 6258 1419
Fax: +61 (2) 6258 1681
Mobile: 0419 419 680
E-mail: marionle@ozemail.com.au

**THE COMPLIANCE MANAGER
DEPARTMENT OF IMMIGRATION, M/C & INDIGENOUS
AFFAIRS**

Adelaide

By fax: 08 8237 6599

ATTN: **RE: ERGI ANTON KOLA & VALBONA KOLA**

CLF2000/8323

Dear Ms Holmes

Please be advised that for the past several weeks we have been attempting to find a migration outcome for Mr and Mrs Kola in another country.

At present, we are investigating the possibility of obtaining a visa for entry to New Zealand under the *Talent (Arts, Culture and Sports) Work Policy* category. Inquiries are underway in New Zealand as to finding an appropriate sponsor for Ms Kola.

We are also looking at options in other countries and will advise you as soon as we have a positive development in those avenues.

Yours sincerely,



(FOI)
MARION LE, OAM
26/08/2004