



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/02207/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 30 October 2014

On 17 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MASTER JETMIR BRIJA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer

For the Respondent: Mrs A Mughal, Montague Solicitors LLP

DECISION AND REASONS

1. The respondent is a citizen of Albania and his date of birth is 15 March 1996. I shall refer to him as the appellant as he was before the First-tier Tribunal.
2. The appellant arrived in the UK on 16 November 2011 and made an application for asylum on 18 November 2011. His application for asylum was refused by the Secretary of State in a decision of 24 April 2012. His application was based on a blood feud which had resulted in the death of his mother and disappearance of brother and father. His application was

refused by the Secretary of State as a result of discrepancies in dates and other credibility issues which were raised in the decision letter of 24 April 2012. The appellant was granted discretionary leave as an unaccompanied minor. He appealed against the decision to refuse to grant him asylum. His appeal was dismissed by the First-tier Tribunal on 26 October 2012 and he was refused leave to appeal against this decision.

3. The appellant made an application to vary his leave under paragraph 327 HC 395 and this application was refused on 19 March 2014. The appellant appealed against the decision of the Secretary of State and his appeal was allowed by Judge of the First-tier Tribunal Gillespie following a hearing on 8 May 2014 in a determination of 14 May 2014.
4. Permission to appeal was granted to the Secretary of State on 12 September 2014 by Upper Tribunal Judge Chalkley. Thus the matter came before me.
5. The hearing before me was confined to the consideration of whether or not the Judge had made an error of law (in accordance with the directions issued to the parties). The First-tier Tribunal made the following findings:

“16. I must take as the starting point of my analysis, according to the principles in Devaseelan v The Secretary of State for the Home Department [2002] UKIAT 00702, the determination dated 26th October 2012 of First-tier Tribunal Judge Dean. This determination must be accorded respect as an existing finding of facts on the same issues as are before me, and one, moreover, in respect of which permission to appeal was refused. It is my misfortune, for reasons which I address below, to have arrived at a view of the credibility of the appellant which differs from the findings in that determination. I am nevertheless keenly sensible of the circumstance that I cannot simply substitute my own discretion for that of the original Judge and that I have no appellate function in respect of that decision. I could only properly depart from the findings on the basis of new evidence not considered or for some other exceptional or compelling reason. There is some, albeit scant, new evidence before me. There is a letter, said to be from the offices of the local commune, Malzi, affirming the existence of the feud and the death of the mother. It was not in existence at the time of the original appeal but has been produced recently for the purposes of supporting this appeal. The document is not verifiable but is of the nature of document which one might expect a person in the appellant’s position to be able to produce. It has not independent evidential value but is to be taken with other evidence. There is, however, in addition to this document, some appreciable cause for disquiet concerning that previous decision which I am obliged to address.

17. The original determination contains various findings as to perceived discrepancies and implausibilities in the appellant’s account. These are held to ‘undermine the veracity of his account of the facts’. The approach of the Judge to these points was criticised in the attempted appeal as showing a failure to attach due weight to the circumstance of the appellant’s age, not only at the time of appeal and interview, but also at the time of the events alleged. The approach of the Judge was nevertheless held to have been without error of law. Thus far there can be no cause to depart from the

finding. The Judge also considered a certificate produced from the chairman of the Albanian Committee of National Reconciliation. He considered guidance and in particular the report of an expert, submitted for the appellant, relevant to such certificates. He declined to attach weight to the certificate, holding that certificates of this body and its chair carry no weight because of recorded instances of suspected corruption relating to the issue of some such documents. This too, is an unexceptional finding and was upheld in the application for permission to appeal.

18. What was not considered in the application for permission to appeal, however, was a further express finding by the original Judge. It was held as follows in declining to attach favourable weight to the document:

‘Moreover, I find the fact that the appellant has submitted a document to which no weight can be attached, and which is almost certain to have been obtained in return for payment rather than being a true account of the existence of a blood feud, undermines the credibility of his claim that a blood feud exists and that he is the target.’

Similarly,

‘The appellant also submitted a document in support of his claim from an organisation and individual who lack credibility and accept payment in return for false attestations. I find that this further undermines the credibility of his claim.’

This constitutes a finding that the appellant has corruptly procured a false document or has knowingly produced a false and corruptly procured document. From this finding of deception, flows a further finding that the appellant’s reliance on these documents detracts from his credibility. There is no reason given to support a finding that the document relied on by the appellant was corruptly procured, was false or that the appellant knew of any such falsity. I invited the comments of Mr Hurley on this point. He suggested that the words might be a throw-away remark by the Judge but felt unable to make any useful further submission.

19. In all the circumstances, I am most concerned that this is a potential defect in the reasoning and finding on credibility, not previously considered. The adverse credibility finding, which I ought otherwise to take as the starting point of my own assessment, might well be thought to be based upon, or influenced by, a factual finding of corrupt procurement of a document which is not supported in evidence. It is not open to me to make any finding impugning the decision. Nevertheless, in justice to the appellant I feel constrained to hold that the circumstances I have identified constitutes an exceptional reason which necessitates that I must make my own assessment of credibility, based on the evidence, including the new evidence before me, independently of the findings in the original determination.”

The Grounds of Appeal and Oral Submissions

6. The grounds of appeal assert that Judge Gillespie did not properly apply the guidance in **Devaseelan** relating to the earlier decision of Judge of the First-tier Tribunal Dean, with specific reference made to paragraph 16 of

Judge Gillespie's determination. I heard oral submissions from both parties. Mrs Mughal submitted that there was before Judge Gillespie new evidence that could have changed the findings of Judge Dean.

7. In my view the Judge made a material error of law. Whilst it was open to him to reconsider credibility on the basis of the evidence that was before him it is not clear in my view why the Judge departed from the findings of Judge Dean. He refers to the existence of a letter that was not before Judge Dean but there is no analysis of this evidence and it is unclear why it was not before Judge Dean and how it had come into the possession of the appellant.
8. In any event, having read Judge Gillespie's decision, it seems that the reason why he departed from the credibility findings of Judge Dean was not simply as a result of this evidence, but because of perceived errors in Judge Dean's determination. I refer specifically to paragraphs 18 and 19 of Judge Gillespie's determination. The Judge did not properly apply the guidance in **Devaseelan**. As a result of this he materially erred in law and I set aside the decision to allow the appeal pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
9. I heard submissions relating to the venue of a rehearing and Mrs Mughal submitted that the matter should be remitted to the First-tier Tribunal whilst Mr Wilding submitted that in his view the fact-finding was limited and the matter should remain in the Upper Tribunal but he was ambivalent.
10. In my view there would be an extensive fact-finding exercise that would need to be conducted by the Tribunal and having considered the practice statement of 25 September 2012 I remitted the matter to the First-tier Tribunal to be heard on 8 April 2015. It is expected that both parties will obtain a copy of Judge Dean's determination, the appeal number AA/04746/2012 to ensure that it is before the First tier Tribunal.

Signed Joanna McWilliam

Date 10 November 2014

Deputy Upper Tribunal Judge McWilliam