



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

THE IMMIGRATION ACTS

Heard at: Birmingham

Determination Sent

On: 7 July 2014

Before

Upper Tribunal Judge Pitt

Between

**SS
(Anonymity Direction Made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr O’Ryan, instructed by TRP Solicitors

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania and he was born on 1 January 1967.
2. This is an appeal against the decision dated 5 November 2013 of First-tier Tribunal Judge Chohan which dismissed the appellant’s asylum and human rights appeal.
3. The appellant maintains that he is subject to a blood feud as his father killed a man in the late 1990s.

4. Permission to appeal was granted on 30 December 2013 but the grant was limited to only one of the grounds of appeal, the others being found in terms to have no merit. The ground on which permission was granted related to the evidence of the appellant's brother. The ground maintained that the First-tier Tribunal failed to consider that evidence at all when reaching the finding that the appellant's account was not credible.
5. On receipt of the grant of permission, the appellant's solicitors wrote to the Tribunal on 31 January 2014. The letter indicated that it was the intention of the solicitors to "seek to rely on all of the grounds pleaded" at the forthcoming hearing as the "Upper Tribunal has jurisdiction to consider such grounds notwithstanding the limited grant of permission on the papers."
6. Mr O'Ryan did so renew the grounds of appeal before me. He argued that the overriding objective set out in Rule 2 and case management powers in Rule 5 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provided for the Upper Tribunal to consider and grant permission on the grounds that had been rejected in the grant of permission to appeal dated 30 December 2013. He set out the merits of those grounds. He relied on the case of Ferrer (limited appeal grounds; *A/vi*) [2012] UKUT 00304(IAC) as authority for the Upper Tribunal having jurisdiction in this regard.
7. Mr Mills maintained that although Ferrer was authority for grounds being renewed and varied before the Upper Tribunal, it was also authority for that being so where proper procedures were followed and not raised at the last minute or hopeless grounds being renewed; see [29] of Ferrer.
8. It did not appear to me that this was the case here. As above, the appellant's solicitors put the Tribunal on notice that they intended to renew the grounds and seek a variation of the grant of permission to appeal at the oral hearing. There is nothing to indicate that any response from the Tribunal followed the letter of 31 January 2013 to the effect that permission to argue the case in that was refused prior to the hearing. Where the Tribunal had been put on notice it appeared to me that this could not be said to be an opportunistic application and that I should hear argument on whether the previously rejected grounds of appeal had merit such that permission should be granted.
9. I proceeded to hear argument on those grounds from Mr O'Ryan. The appellant's original first ground of appeal relating to a New York Times article describing the appellant's family feud, appeared to me

to be particularly meritorious. The original arguments relating to this point are at paragraphs 5 to 9 of the grounds of appeal to the Upper Tribunal.

10. Judge Chohan found at [17] and [18] that the New York Times article carried little weight as it only referred to a family with same name as the appellant and to individuals with the same name as the appellant's father and grandfather.
11. With respect, Judge Chohan was not correct to find those to be the only features linking the New York Times article to the appellant. The ages of the father and grandfather matched those he gave in his screening interview. The nature of the incident is the same, the killing of another Albanian man. The date of the killing is the same as that given by the appellant and his brother in their evidence. The location, northern Albania, is also the same.
12. It is worth pointing out that at [17], Judge Chohan does not dispute the evidence before him that the article was found by the appellant's solicitors when conducting a "Google" search on the appellant's name and details of his claim rather than being put forward by the appellant himself.
13. Mr Mills conceded for the respondent that this ground had merit, the New York Times article and its provenance being potentially strong pieces of evidence in support of the appellant's case. He accepted that the merit in this ground when considered against the holistic exercise that must be conducted on credibility was such that it could not be said that the First-tier Tribunal Judge's failure to address the evidence of the appellant's brother at all and flaws in the treatment of the evidence of a third witness, Ms Kalari were immaterial and that the findings of the First-tier Tribunal on the expert report also fell to be re-made.
14. Mr Mills also accepted that the errors in Judge Chohan's decision were similar in nature to those in the decision of First-tier Tribunal Judge Kanagaratnam promulgated on 6 June 2013. Those errors had been specifically brought to the attention of the First-tier Tribunal in the first remittal of this matter by Upper Tribunal Judge Rintoul in his decision promulgated on 17 July 2013 but not dealt with adequately by First-tier Tribunal Chohan. Where that was so, Mr Mills accepted that it was difficult to see how the appeal could not be remitted again to the First-tier Tribunal for essentially same errors to be properly addressed.
15. I saw merit in the arguments made for remittal by the

representatives albeit with obvious reluctance given that the matter will now go before the First-tier Tribunal for the third time. It remains the case that I find that the decision of the First-tier Tribunal contains errors on points of law such that it must be set aside to be remade entirely afresh and re-made by the First-tier Tribunal following paragraph 7.2 of Part 3 of the Senior President's Practice Statement dated 25 September 2012.

DECISION

16. The decision of the First-tier Tribunal discloses an error on a point of law.
17. It is remitted to the First-tier Tribunal to be re-made.

Signed: 
Upper Tribunal Judge Pitt

Date: 7 July 2014

Anonymity

I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, members of his family or any witnesses in this matter. I do so in order to avoid serious harm to any of those parties arising from publication of their identities.