



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

Appeal Numbers:
AA/03354/2014

THE IMMIGRATION ACTS

Heard at: Field House

Decision and Reason

Promulgated

On: 18th March 2015

On: 03rd June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**Mr Asllan Islamaj
(no anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Bramble, Senior Home Office Presenting Officer

For the Respondent: Ms Kadac, Counsel instructed by Blavo & Co Solicitors

DECISION AND REASONS

1. The Appellant is a national of Albania date of birth 23rd March 1996. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Ian Howard) to dismiss his appeal on asylum and human rights claims.
2. The basis of the Appellant's claim was that he was in mortal danger as a result of a blood feud that had developed between his family and

¹ Granted by First-tier Tribunal Judge Simpson on the 21st January 2015

the Begaj family. There had been a land dispute back in 2005, as a result of which one Iljaz Begaj had shot and killed the Appellant's grandfather and uncle. Begaj had been prosecuted and was sentenced to prison for fourteen years. His two sons had fled Albania. In April 2013 they had returned, and shortly thereafter their home had exploded, killing both. The Appellant's father was immediately suspected. He was arrested but released for lack of evidence. The remaining members of the Begaj family indicated that they are going to exact revenge: they threatened that should the Appellant or his father be seen outside they would be shot on sight. The Appellant's family arranged for him to leave the country. The Appellant asserts that the Begaj family are criminals with corrupt connections to those in authority. As evidence of this the Appellant points to Iljaz Begaj's early release from gaol. He claimed that he has lost all contact with his father and remaining brother as they have retreated into hiding in Albania.

3. The Respondent rejected the claim on the basis that it lacked credibility. Limited leave to remain was granted until the Appellant reached the age of seventeen and half; this expired in September 2013.
4. At the date of the hearing before the First-tier Tribunal the Appellant was 18. He gave oral evidence. The Tribunal rejected the account, and so dismissed the appeal, giving the following reasons:
 - i) There was no supporting documentary evidence in respect of the land, the dispute or the prosecution of Iljaz Begaj [at 19]
 - ii) It is not plausible that the Appellant has lost contact with his family [19]
 - iii) The evidence does not support the Appellant's claim that the Begaj family had influence because Iljaz Begaj was imprisoned for 14 years, whereas the Appellant's father and elder brother were released after only 24 hours.
5. The Appellant now seeks that the decision be set aside. It is submitted that the determination contains the following errors of law:
 - i) The credibility findings have been made without any regard to the extant country guidance of EH (Blood Feuds) Albania CG [2012] UKUT 348 (IAC);
 - ii) The negative findings are all couched in terms of inherent implausibility, a finding that an asylum decision-maker should be slow to make: Y v SSHD [2006] EWCA Civ 1223 ;
 - iii) In expecting a young appellant to produce corroborative documentary evidence the Tribunal was imposing too high a standard of proof.

Error of Law

6. I am satisfied that the decision of the First-tier Tribunal contains errors such that it must be set aside.
7. In her detailed response to the grounds the Secretary of State relied on TK (Burundi) [2009] EWCA Civ 20 for the proposition that where there would be evidence readily available to an appellant, the court is entitled to draw an adverse inference from a failure to produce such evidence. TK (Burundi) was an Article 8 case and the evidence in question was that of the appellant's claimed partner in the UK. If he shared a family life with her as claimed, the court was entitled to draw adverse inference from her failure to attend his appeal hearing and give evidence. The 'missing' evidence in the present appeal is of quite a different nature. At paragraph 19 of the decision the First-tier Tribunal appears to draw adverse conclusions from the absence of documentary evidence that the Appellant's family ever owned the land, that Ijaz Begaj was prosecuted in 2005 or that the Appellant's father was released without charge in 2013. I do not consider that this is evidence of the kind under consideration in TK (Burundi). In contrast it is precisely the kind of evidence that asylum seekers, in particular very young asylum seekers, would find it difficult to produce. See paragraph 196 of the UNHCR Handbook²:

“Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule” .

I do not find that, for instance, court documents relating to the prosecution of a third party in 2005 would be material readily available to a seventeen year old, nor necessarily to his family remaining in Albania. It was an error to use this gap in the evidence as the principle reason for rejecting the account.

8. In respect of the remaining credibility findings I agree that these are, in essence, plausibility points: although paragraph 21 refers to “inherent consistencies” it would appear that this must be a reference to the points about the lack of contact with family and the influence of the Begaj family. Ms Kadic submitted that the failure to consider the Appellant's account in light of the country guidance led the Tribunal to assess the evidence through the prism of what might be considered reasonable or normal in the context of the UK. For

² **HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES** Reissued Geneva, December 2011

instance EH lends support to the claim that people involved in blood feuds might withdraw into incommunicado self-confinement: it was wrong in those circumstances for the Tribunal to reject this evidence without reason. Although Mr Bramble may be right in his submission that there were inconsistencies in the Appellant's account, these are not identified in the determination. The reasoning is scant and does, as the grounds contend, boil down to matters of plausibility. As the Court of Appeal has made clear on a number of occasions, the IAC should approach questions of plausibility with caution. That is because, to paraphrase Lord Bingham, no judge worth his salt could possibly assume that men of different nationalities or creeds would act or think as he might have done.

9. As to the question of the "reach" of the Begaj clan I note that a discrete issue arises in that the Judge appears to have misunderstood the evidence. The Appellant had pointed to the early release of Iljaz Begaj as evidence of that family's influence. Although the reasoning is not altogether clear paragraph 20 suggests that the Tribunal did not agree, since on the Appellant's own evidence Begaj had been sentenced to 14 years in prison. The sentence was not the issue; the Appellant was pointing to the fact that Begaj was released after serving only half of his original sentence.
10. The parties were in agreement that if I were to find an error the most appropriate disposal, having regard to the extent of judicial fact finding required, would be that the matter be remitted to the First-tier Tribunal. The Respondent indicated that she would wish to produce the results of her 'family tracing enquiries' at any further hearing, and it is open for her to do so. Any such evidence must be served on the Appellant and his representatives no later than 28 days before the next hearing.

Decisions

11. The decision of the First-tier Tribunal contains an error of law and it is set aside.
12. I make no direction for anonymity because neither party has requested one and on the facts I do not consider such an order to be necessary.
13. The matter is to be re-made in the First-tier Tribunal.

Deputy Upper Tribunal Judge Bruce
17th May 2015