



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

Appeal Number: AA/06031/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 2 February 2015**

**Decision & Reasons
Promulgated
On 10 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**ES (ALBANIA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, Counsel instructed by Sentinel Solicitors

For the Respondent: Mr N Bramble, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing his appeal against the decision by the Secretary of State to refuse to recognise him as refugee or as otherwise requiring international or human rights protection. The First-tier Tribunal made an anonymity direction, and I consider that it is appropriate that the appellant be accorded anonymity for these proceedings in the Upper Tribunal.
2. The appellant is a national of Albania, whose date of birth is 7 November 1998. He says he left Albania on 6 October 2013 in a van travelling to

Macedonia, and that he arrived in the UK on 10 October 2013. He attended a screening interview for children on 30 October 2013. By this stage, he was being supported by Croydon Social Services. His last address in his country of origin was [], Diber. He had attended primary school in the village for eight years. He last attended school on 7 January 2013. His reason for coming to the UK was to claim asylum. He was in a family feud with the B family in Albania, and he was frightened that he would be killed by the B family if he was returned to Albania.

3. A witness statement was taken from the appellant and signed by him on 21 November 2013. In September 2012 his older brother went with his uncle to Greece in order to work as a seasonal worker. His father had only one brother, and he had left their village many years ago to live in the capital of Albania, Tirana. It was this uncle who was currently in Greece with his older brother. His uncle had a son called G. He had remained in Tirana with his mother, whilst his father had gone to Greece. On 7 January 2013 the appellant was told by his mother that G, who at the time was aged 17, had shot and wounded a man called E B. His parents told him that G had had an argument with E B the day before because E's pit-bull terrier had attacked and bitten him. The following day, G had confronted E and fired at him three times. E was badly wounded by two bullets. The appellant knew that G had intended to kill E.
4. After this incident G went into hiding, and the B family wanted revenge and so they declared a blood feud. It took a few days before the B family found out who they were, as they had never had contact with them before. The B family were a very big family and were wealthy. He thought they owned a big furniture shop.
5. On 5 June 2013 G was arrested for attempted murder and possession of a firearm. He had not yet been sentenced. This did not satisfy the B family as E had developed medical problems and could not even walk. He was a 25 year old man who had been left disabled, and the B family wanted revenge for that. Furthermore, G had intended to kill E and therefore they had stated they would only be satisfied when they got blood from them.
6. He did not know how his father had been informed that the B family had declared a blood feud against his father and him. He understood that the reason why they had declared a blood feud against his father and him was that they were the only close members of the family that almost killed E.
7. Although he was very young, his father was very afraid for his safety. Since 7 January 2013 he had not been allowed to go to school, and his father had kept him at home because he was too scared to let him out. His father had asked for reconciliation from the B family, but they did not accept. His father was scared, and so he left at the end of January 2013 and he did not know where his father was.
8. At the beginning of October 2013, people that knew about their problems said that strangers had come to the village and asked about his family, and wanted their address. These people were from Tirana. His family were certain that these people were from the B family, and so his mother contacted his maternal cousin. This cousin helped him leave Albania.

9. On 8 August 2014 the Secretary of State gave her reasons for refusing to recognise the appellant as a refugee, or as otherwise requiring international or human rights protection. His degree of mental development and maturity had been taken into account. The same burden of proof applied to him as it would to an adult, although greater dispensation had been given to him throughout his asylum claim as a result of the understanding that he was a minor and that the problem of proof was compounded in the case of children. The benefit of the doubt had been applied more liberally than when dealing with an adult. In addition more weight had been given to objective indications of risk than to his state of mind and understanding of his situation. It was considered that at his age he would still have some understanding of the situation.
10. He was vague in his answers about the blood feud. He had been asked to state what a blood feud was, and his answers were not consistent with the background information. In particular, he said in interview that it did not matter nowadays if you were a child or a grown up. But according to the International Centre for Minority Studies and Intercultural Relations Report of 2004, the Kanun code did not allow the murdering of women or children. So his claim to be at risk of being a target of his father's blood feud was inconsistent with the background information.
11. He claimed in interview that his father reported the feud to the police. He was asked what the police had said to his father, and he had said he did not know. He was asked if the father had made a complaint to anyone else, or another member of the police force, and he had stated that he did not know. Due consideration had been given to his age at the time of this event, but it was consistent that he would not have been told why the police were unable to assist, as the alternative was that he would have to leave Albania.
12. The refusal letter went on to set out the head note guidance given in the country guidance of **EH (Blood Feuds) Albania CG [2012] UKUT 00348 (IAC)**. There had been no violent incidents that had taken place between his family and the B family after the initial attack committed by his cousin. He provided no evidence that any member of the B family would be able to locate him anywhere in the country. He stated that his father contacted the police about the blood feud, and they would not help them. But the family had not made a complaint about the lack of assistance to a senior police officer, or made a further report to police outside their local area. So in line with sub-paragraphs (i), (ii), (iii) and (iv) of paragraph 6 of **EH** it was not accepted that he had outlined a history that would indicate a serious risk to his life upon return. It was also noted in paragraph 1 of **EH** the number of legitimate blood feuds in Albania was few and declining, and there was also state protection as outlined in paragraph 3 of **EH**; and he had presented no documentary evidence to support his claim of a blood feud as outlined in paragraph 9 of **EH**.

The Hearing before, and the Decision of, the First-tier Tribunal

13. The appellant's appeal came before Judge J D L Edwards sitting in the First-tier Tribunal at Richmond Magistrates' Court on 19 November 2014.

Both parties were legally represented. The judge received oral evidence from the appellant, who relied on a second witness statement that had been taken from him on 17 September 2014, as well as the contents of his substantive asylum interview and his original witness statement to which I have made reference earlier in this decision.

14. In his subsequent decision, the judge gave his reasons for rejecting the core of the appellant's claim in paragraph 28:

I will deal first with the credibility of the account given by the appellant. For a number of reasons I do not find this to be one that is credible. These are as follows:-

- (a) Much of what the appellant had to tell me was not from his firsthand knowledge, it was reliant upon others, particular his mother, had told him. This is hardly a satisfactory basis for an appeal.
- (b) I find it wholly unacceptable that the appellant's father should have feared for the appellant's safety in January 2013, and should not have done anything about it then and simply decamped leaving him in isolation with only his mother to look after him.
- (c) I do not accept that the whereabouts of the appellant's father are still unknown.
- (d) The account of the strangers coming to the village has been adopted by the appellant in the progress of the appeal from it happening in October 2013 to it happening continuously from January 2013. This is not impressive. I question why the B [family] would need to make such detailed enquiries about the appellant's address. That of the family would be well known.
- (e) I do not find it impressive that nothing is known about what happened to G after his arrest. The press reports are peculiar in that one is not dated and all make no mention of the outcome of the case. In the overall context of this case in the light of the guidance in **EH**, I am not prepared to attach any weight to these items.
- (f) The appellant is not the prime target of the B [family]. That would be G himself. His whereabouts are presumably known, and that is in prison. It requires no gift of imagination to see how he could be murdered while in custody.
- (g) The appellant told me he was unaware that he was coming to the UK. I find it incredible that his mother and uncle should send him off on an international journey, across Europe, without informing him of where he would end up.

Application for Permission to Appeal

15. Mr Collins of Counsel, who appeared below, settled the appellant's application for permission to appeal to the Upper Tribunal. His overarching submission was that the judge's findings in paragraph 28 were unsustainable, as the reasoning was inadequate. The judge had failed to consider adequately he was dealing with a child who was of course even younger at the date of material events in Albania.

The Grant of Permission to Appeal

16. On 22 December 2014 First-tier Tribunal Judge Pooler granted the appellant permission to appeal for the following reasons:

Although the appellant may find it difficult to cross the high threshold appropriate to a finding of irrationality, the judge arguably failed to give adequate reasons for his findings and failed to take material evidence into account. Since permission is to be granted, all grounds may be argued.

The Hearing in the Upper Tribunal

17. At the outset of the hearing before me, Mr Bramble conceded that the judge had materially erred in law. As his stance was not determinative of the issue before me, I explored with Mr Bramble the reason why he gave this concession, and I also explored with Mr Collins his particular objections to each sub-paragraph of paragraph 28. Having heard from both representatives, I was satisfied that a material error of law was made out such that the decision of the First-tier Tribunal should be set aside in its entirety, and the appellant's appeal remitted to the First-tier Tribunal for a de novo hearing. My reasons for so finding are set out below.

Reasons for Finding an Error of Law

18. The judge's line of reasoning in paragraph 28 does not display an adequate recognition of the fact that the appellant was only aged 14 at the date when the incident triggering the blood feud was said to have occurred; and that the appellant had remained a child throughout his asylum claim. The judge had not reminded himself that the benefit of the doubt had to be applied more liberally than when dealing with an adult, and that more weight had to be given to objective indications of risk than to the appellant's understanding of his situation.
19. While it was open to the judge to proceed on the basis that the appellant would have been sufficiently mature to have some understanding of his situation, the judge needed to distinguish in his reasoning between matters which the appellant could reasonably be expected to know, despite his immaturity, and matters in respect of which the appellant's immaturity might well explain his ignorance, such as the current whereabouts of his father.
20. The implication of sub-paragraph (a) is that the appellant's account is inherently weak because it is mainly based on what he has been told by a responsible adult (his mother), rather than on his own direct observation. While it was open to the judge to draw a distinction between the probative value of direct evidence as against hearsay evidence, the judge needed at the same time to remind himself that the benefit of the doubt should be given more readily to a child.
21. At sub-paragraph (b) the judge failed to take into account the relevant country guidance and background evidence on blood feuds. As an adult, the appellant's father was much more vulnerable to being the target of a blood feud than was the appellant himself. Indeed, the line taken by the respondent in the refusal letter was that the appellant was not vulnerable at all, as he was still a child. So the appellant's account that his father

fled, whereas he was left behind in the village with his mother, does not lack credibility for the reason given by the judge.

22. With regard to sub-paragraph (f), it was open to the judge to find that G would be the primary target of the B family; and that his whereabouts would be known, which was in prison. I deduce from the reports downloaded from the internet that G had been arrested by the police in Tirana at the beginning of June 2013 after the Serious Crimes Court in Tirana had issued a warrant for G's arrest on 2 April 2013 for attempted murder and possession of illegal weapons. The SAT news extract of 5 June 2013 states that investigative materials have been passed to the district prosecutor's office for further investigation, and that very soon G is expected to be brought to justice "to receive his sentence." The ambiguity inherent in the press report is whether G has *already* been tried and convicted in his absence; or whether his trial has yet to take place.
23. While G would be the primary target in the alleged blood feud, it was pure speculation on the part of the judge to say that the B family would be able and willing to exact revenge on G while he was on remand awaiting trial or serving a term of imprisonment. Either way G would be in *de facto* protective custody, and there is no support in the background evidence for the proposition that potential victims of blood feuds are at risk of being attacked in prison, any more than they are at risk if they keep themselves in self-confinement outside prison.
24. Although some of the adverse credibility points taken by the judge are sustainable ones, on a holistic assessment I find that the judge has not given adequate reasons for rejecting the appellant's asylum claim. I find that both parties were deprived of a fair hearing in the First-tier Tribunal, as the judge did not adequately engage with the detailed country guidance given in **EH**, and specifically he did not address (a) the reasons given in the refusal letter for rejecting the claim having regard to **EH**, and (b) the points in rebuttal relied on by the appellant's representatives.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, such that the decision should be set aside in its entirety and remade.

Directions

This appeal is remitted to the First-tier Tribunal for a *de novo* hearing at Taylor House on an agreed hearing date of 15 July 2015, before any judge apart from Judge J D L Edwards. None of the findings of fact of the previous First-tier Tribunal will be preserved.

The time estimate for the hearing is three hours, and an Albanian interpreter will be required.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date **2 February 2015**

Deputy Upper Tribunal Judge Monson