



IAC-AH-SAR-V1

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

Appeal Number: AA/00500/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15th January 2016**

**Decision & Reasons Promulgated
On 25th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**ET
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pretzell of Counsel instructed by Caveat Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Baldwin of the First-tier Tribunal (the FtT) promulgated on 7th October 2015.
2. The Appellant is a male Albanian citizen born in May 1997 who applied for asylum on 23rd June 2014. The Appellant claimed to be the target of a blood feud. He had been in a relationship with a girl who was the daughter of a retired police officer. Her family did not approve of the relationship and ET was beaten up by the girl's brothers, and ET's uncle

killed one of the brothers. The uncle fled Albania, as did ET, and ET's father remained in isolation in Albania.

3. The application was refused on 19th December 2014 and the claimant's appeal was heard by the FtT on 25th September 2015. The FtT found that the Appellant had not proved that a blood feud existed and found that he was not entitled to asylum or humanitarian protection because he would not be at risk if returned to Albania. For the same reason the FtT found that there would be no breach of Articles 2 and 3 of the 1950 European Convention on Human Rights (the 1950 Convention).
4. The FtT found that to remove the Appellant from the United Kingdom would not breach Article 8 of the 1950 Convention.
5. The Appellant applied for permission to appeal to the Upper Tribunal relying upon four grounds, those being:
 - (1) unfairness,
 - (2) failure to place weight on a relevant consideration,
 - (3) placing weight on irrelevant considerations against the weight of background evidence, and
 - (4) reaching a Wednesbury unreasonable conclusion.
6. Permission to appeal was granted by Judge White of the FtT on 4th November 2015.
7. Following the grant of permission the Respondent lodged a response dated 19th November 2015, pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the FtT had not erred in law and had accurately considered objective country information, and the applicable case law, that being EH Albania CG [2012] UKUT 00348 (IAC). It was not accepted that the FtT had acted unfairly in noting the absence of objective evidence to corroborate the Appellant's case. It was submitted that the FtT had made findings which were open to it on the evidence and had given adequate reasons for those findings.
8. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

The Appellant's Submissions

9. Mr Pretzell relied upon the grounds contained within the application for permission to appeal. It was submitted that the FtT had acted unfairly by raising a completely new issue, not relied upon by the Respondent in the reasons for refusal letter, relating to the absence of documentary evidence to show that blood feuds occur in the Tirana area, or that Kanun law operates in the Appellant's home area of Tirana. It was submitted it was not possible for the Appellant to provide documentary evidence on this issue, as he had not been put on notice that this was relied on in refusing

his application. In any event, Mr Pretzell referred to the Respondent's Country Information and Guidance on Blood feuds which was before the FtT, and pointed out that paragraph 2.4.1 conflicted with the FtT finding in paragraph 23 that a blood feud in Tirana "would be a most exceptionally unusual event and self-imposed isolation virtually unknown".

10. Mr Pretzell submitted that the FtT failed to properly consider the contents of this report, and this had infected the findings made, and the FtT had applied an incorrect standard of proof by finding in paragraph 24 that the claim needed "to be considered particularly carefully, though the standard of proof of course remains low".
11. Mr Pretzell argued that the FtT acted unfairly in expecting the Appellant to provide evidence in support of his claim, to confirm that he had taken time off school as a result of the beating up, or medical records of his injuries, a record of complaint to the police by the Appellant's mother, an official record that the Appellant's uncle hit someone with an iron bar and killed them, a newspaper/news report of the murder committed by the Appellant's uncle, and evidence to demonstrate that the uncle had left Albania.
12. It was argued that the above had not been raised by the Respondent, and an objection was made before the FtT when the Respondent's representative raised in cross-examination the suggestion that some documents could have been obtained in support of the claim, the objection being based upon the fact that this was a new issue raised in cross-examination, giving the Appellant no opportunity to address such matters.
13. In relation to the other grounds contained within the application, it was contended that the FtT had not taken into account that the Appellant was a child when he arrived in the UK. The FtT had placed no weight on the most recent background evidence, bearing in mind one of the parties to the blood feud was a retired police officer, and that there was corruption in the Albanian police and judiciary.
14. The FtT made a finding the Appellant had had over a year to obtain evidence from Albania in support of his claim and had discussed this with his representative. It was contended that the Appellant was asked in evidence whether it was his idea to produce a declaration from his mother, and he said that it was his solicitor who had told him to obtain this. There was no evidence before the FtT that there was a discussion about any other supporting evidence, and to place weight on such a matter, was, it was submitted, Wednesbury unreasonable.

The Respondent's Submissions

15. Mr Bramble had no oral submissions to add to the rule 24 response.

My Conclusions and Reasons

16. I announced at the hearing that I found a material error of law in the FtT decision which was set aside with no findings preserved.
17. I find that there was unfairness in the FtT raising an issue that had not been relied upon by the Respondent, without giving the Appellant the opportunity to address this. The FtT found that blood feuds in the Appellant's home area of Tirana would be "a most exceptionally unusual event and self-imposed isolation virtually unknown". Because of this finding the FtT found that the claim needed to be considered particularly carefully, although the FtT did go on to state that the standard of proof remained low. The FtT also found that there was no evidence that Kanun law dominates in the Appellant's home area. Again this was not an issue raised by the Respondent in the refusal letter, and the Appellant had no adequate opportunity to address this. I find there is some merit in Mr Pretzell's submission that these conclusions may in any event not be correct, taking into account paragraph 2.4.1 of the Respondent's own Country Information and Guidance on Blood feuds, which indicates there were 200 families in Tirana in self-imposed isolation because of blood feuds, although I note that these statistics are of some age and relate to 2009. That issue can be considered when the appeal is heard again.
18. In my view the error of law is in raising an issue that had not been raised by the Respondent, which meant that the Appellant had not been put on notice, and was not given an adequate opportunity to address that issue. The finding by the FtT that blood feuds in the Tirana area would be exceptionally unusual, affected other findings made by the FtT in this appeal.
19. The FtT erred in law in raising the issue of absence of documentation, when this had not been raised by the Respondent in the reasons for refusal letter, without giving the Appellant an adequate opportunity to address this issue. The FtT drew adverse inference from the absence of supporting evidence, such as lack of confirmation from the Appellant's school that he had taken time off school as a result of being beaten up. I can find no reference in the Appellant's account to him having made a claim that the extent of his injuries was such that he took time off school. When interviewed (question 72) he said that this was not reported to the school authorities. When asked about injuries (questions 75 and 76) he said he received bruises. Adverse inference is drawn from the lack of medical records of the Appellant's injuries, although he did not claim to have received any medical attention for bruises.
20. Adverse inference is drawn from a lack of news reports of the murder committed by the Appellant's uncle, although the country guidance case law indicates that news reports in Albania may not be reliable. Adverse inference is drawn from a lack of corroboration to prove the Appellant's claim that his uncle fled from Albania. The FtT does not state what evidence would be expected to confirm this claim, and it is difficult to see what further independent evidence the Appellant could provide to prove that his uncle had left Albania.

21. For the reasons given above, the decision of the FtT is set aside with no findings preserved. I decided that it was appropriate to remit the appeal back to the FtT to be heard again. In making this decision I considered paragraph 7 of the Senior President's Practice Statement, and decided that it was appropriate to remit the appeal back to the FtT because of the nature and extent of judicial fact-finding that would be necessary in order for this decision to be re-made.
22. The appeal will be heard at the Hatton Cross Hearing Centre and the parties will be advised of the time and date in due course. The appeal is to be heard by an FtT Judge other than Judge Baldwin. The time estimate for the hearing is three hours and an indication has been given that no interpreter is required. If that is not the case the Appellant's solicitors must notify the Tribunal immediately.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings of fact preserved.

Anonymity

The FtT made an anonymity direction and I continue that anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 19th January 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date 19th January 2016

Deputy Upper Tribunal Judge M A Hall