



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/03241/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 12 February 2016**

**Decision & Reasons
Promulgated
On 29 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**PK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms B Asanovic, Counsel instructed by Caveat Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 14 August 1997 who arrived in the UK on 30 July 2014 and applied for asylum on 1 August 2014.
2. The appellant's claim, in summary, is that he has a well founded fear of persecution because of his family's involvement in a blood feud which began in 2009. He claims his uncle killed two members of another family (hereinafter referred to as "the opposing family") and was subsequently killed and that his father is in self-confinement. Before he turned 16 he went into self confinement before leaving Albania. He maintains that the opposing family have significant influence and he would be at risk wherever he lived in Albania.
3. The respondent refused the appellant's application on the basis that there would be sufficient protection for him in Albania and that he could relocate internally. It is not clear if the appellant's account of the blood feud was accepted in the respondent's refusal letter. The letter states, somewhat ambiguously, that the appellant was generally consistent in his core account but there were inconsistencies in his account.
4. The appellant appealed and his appeal was heard by First-tier Tribunal ("FtT") Judge Hembrough who, in a decision promulgated on 15 October 2015, dismissed the appeal.
5. The appeal was heard on 6 July 2015. During the course of the hearing, the FtT decided the matter should be adjourned. This followed the respondent seeking to challenge the appellant's credibility even though the reasons for refusal letter did not make explicit that credibility was at issue. At paragraph [19] the FtT explained why it was adjourning the hearing as follows:

"In the interests of fairness I decided that the appropriate course was to adjourn the hearing to give the Appellant the opportunity to take further advice as to his position and consider whether it was possible to bring forward some supporting evidence for his claim. Whilst noting that there is no requirement for corroboration in asylum claims I observed that given his claim that three people have been killed in the course of the blood feud, that his uncle's killer was in custody and that reports in relation to his killing had appeared on the TV news it may be possible for him to obtain some supporting documentary evidence which might be of assistance to him."

6. The hearing resumed on 28 September 2015. At the outset of the hearing the appellant applied for an adjournment in order to obtain supporting evidence from the appellant's parents in Albania. At paragraph [21] the FtT stated that the appellant's representative told the tribunal that the appellant and his parents had mistakenly thought that only evidence taken in front of a notary would be sufficient and because of his father's confinement this was not possible. The application was refused on the basis that the appellant had had nearly three months to obtain further information and was legally represented by an accredited solicitor. The FtT also stated that a statement from the appellant's father was unlikely to add significant weight to the claim in the absence of documentary evidence from an official source.

7. The FtT did not accept there was a blood feud involving the appellant's family. It described the appellant's account as lacking in significant detail and found that he had not taken reasonable steps to substantiate it.
8. At paragraph [44] the FtT stated that although corroboration is not required in asylum claims, the appellant had left Albania at the time of his choosing and had regular contact with his family there. The FtT went on to find that there was no supporting evidence to substantiate there being a blood feud. Moreover, the FtT found, in the alternative, that the appellant would in any event be able to access protection from the Albanian police and could relocate within Albania.

Grounds of appeal and submissions

9. There are four grounds of appeal:

- Firstly, that the FtT unfairly and improperly relied on the absence of documentation that was not readily available or directly relevant.
- Secondly, that the hearing on 6 July 2015 should not have been adjourned.
- Thirdly, that the FtT failed to properly apply Country Guidance regarding the sufficiency of protection and internal relocation.
- Fourthly, that it was unfair to refuse to adjourn the hearing on 28 September 2015 to enable a statement to be obtained from the appellant's father.

10. In addition to the grounds, Ms Asanovic, who also represented the appellant before the FtT, submitted a witness statement concerning the FtT proceedings. In this statement she stated, inter alia, that Judge Hembrough set out the nature of specific documents that one would expect to see in the circumstances, such as death certificates. She recounts having objected to the adjournment on the basis, inter alia, that the appellant had no reason to believe any further documents could be obtained that could demonstrate the existence of a blood feud and that the judge could place little weight on the objections relevant to credibility when no such objections were raised in the reasons for refusal letter.

11. Before me, Ms Asanovic argued that the FtT erred by basing its credibility finding on the absence of documents that the appellant could not in fact have obtained. Ms Asanovic went through each of the documents the FtT appears to have expected to see and gave reasons why such evidence would not be available to the appellant or his family.

12. Ms Asanovic also argued that the FtT erred when considering the claim in the alternative. If the appellant's account is accepted and taken at its highest then, following EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC), he would be at risk even after internally relocating given the opposing family's government and police connections.

13. Mr Whitwell's response was that the FtT had properly dealt with the evidence. The appellant had no first hand knowledge of the blood feud and was relying on what others, particularly his father, had told him. The burden was on him and in the absence of corroboration it would be very difficult for him to discharge that burden.
14. He also argued that the appellant's claim that evidence was not obtainable is undermined by his request, at the hearing on 28 September 2015, for an adjournment, which indicates further evidence was obtainable.
15. Mr Whitwell drew my attention to *TK (Burundi)* [2009] EWCA Civ 40 and argued that the FtT's approach to corroboration of evidence was consistent with that adopted by the Court of Appeal in that case.

Consideration

It is clear from the decision that the FtT, in rejecting the appellant's account of there being a blood feud involving his family, has placed significant weight on the absence of corroborating documentary evidence that it expected to see. This included, as set out in paragraphs [46] and [47] of the decision:

- Evidence from the police concerning the murders and any arrests;
- Evidence from the Albanian Committee of Nationwide Reconciliation;
- Evidence from village elders who were said to have attempted mediation
- Evidence of the deaths;
- Evidence of ownership of the land in dispute or of the land dispute; and
- Evidence of the opposing family's influence.

16. Ms Asanavic gave an explanation, in respect of each of the specific items of expected corroborative evidence identified by the FtT, as to why the appellant and his family were unable, and could not reasonable be expected, to obtain them. She argued, inter alia, that the death certificates necessary to demonstrate the various deaths in the feud would not be available to the appellant or his family. In respect of the land dispute, she argued that it is unlikely there would be documentary evidence of the dispute and in any event documents merely showing possession of the land would add little to the claim. She stressed how unrealistic it is to expect that the appellant would be able to uncover documents confirming the influence of the opposing family or that he would be able to access police records.
17. Ms Asanavic's submissions are consistent with the appellant's explanation as to why he was unable to obtain supportive documents as set out in his supplemental witness statement dated 24 September 2015. In this statement the appellant commented on his mother being told by the local government that it could not issue any documents without contacting the embassy where he had claimed asylum. He says his parents did not want to disclose where he had claimed asylum in order to avoid alerting the opposing family. He also stated that his father had not prepared a witness statement because he could not leave the home to visit a notary due to his

self confinement. He also claimed his father was told he would need to attend in person to obtain information about the land in dispute and could not do so due to his self confinement. He further said he could not find relevant information on the internet.

18. It is not an error of law, when assessing an appellant's credibility, to take into account the absence of supporting corroborative evidence if (a) the availability of such evidence could reasonably be expected and (b) no credible account for the absence of such corroborative evidence has been given by the appellant.
19. This was explained by the Upper Tribunal in ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119:

"The fact that corroboration is not required does not mean that an Adjudicator is required to leave out of account the absence of documentary evidence which might reasonably be expected. An appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support. The Adjudicator was entitled to comment that it would not have been difficult for the Appellant to provide a death certificate concerning his brother or some evidence to support his contention that he had received hospital treatment. These were issues of fact for the Adjudicator to assess. When the Adjudicator says in paragraph 35 that there is no evidence to support his assertions, it is clear, and both representatives accept, that the Adjudicator is referring to evidence which supports or corroborates the oral evidence of the Appellant."

20. A similar point is made in TK (Burundi) [2009] EWCA Civ 40 in which the Court of Appeal stated

"Where evidence to support an account given by a party is or should be readily available, a Judge is, in my view, plainly entitled to take into account the failure to provide that evidence and any explanations for that failure"

21. The FtT has explained why it considered that evidence to corroborate the claim could reasonably be expected given that the appellant left Albania at a time of his choosing and that since leaving he has been in regular contact with his family. At paragraph [48] the FtT considered the appellant's explanation of why his family were unable to assist him in obtaining supporting evidence. It noted that even if the appellant's father's self confinement prevented him from helping there were other family members including the appellant's maternal uncle who could have assisted with enquires. The FtT also commented that the appellant had solicitors who could have made enquiries.
22. I do not accept that the FtT erred by improperly relying on the absence of supportive documents. Having considered – and rejected – the appellant's explanation as to why he was unable to obtain documents where, in its view, such documents could reasonably be expected, and having also found that the appellant's account lacked significant detail (see paragraph [43] of the decision), that he lacked first hand knowledge of the blood feud (see

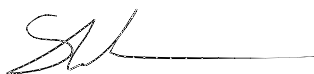
paragraph [25] of the decision) and that he was not from a region of Albania where, according to the relevant Country Guidance, active blood feuds are commonplace, it was open to the FtT, for the reasons it gave, to not accept the existence of a blood feud.

23. The second ground argues that the hearing on 6 July 2015 should not have been adjourned. I do not accept that this argument has any merit. The FtT was, in the circumstances of this case and as explained above, entitled to take into account the absence of supportive evidence and in these circumstances it was entirely proper for it to give the appellant further time, by way of adjourning the hearing, to obtain such evidence.
24. The third ground of appeal relates to the FtT's finding in the alternative that, even taken at its highest, the appellant's claim should not succeed because he would be able to benefit from the protection of the Albanian police and/or relocate internally. I agree with Ms Asanavic that this finding is not consistent with the extant Country Guidance EH (Blood feuds) Albania CG [2012] UKUT 00348 (IAC), given the appellant's evidence about the reach and influence of the opposing family. However, the error is not material given my finding in respect of the first ground of appeal.
25. The fourth ground of appeal has no merit. The appellant had been given sufficient time to obtain further evidence and the FtT was entitled to refuse a further adjournment. As stated by the FtT at paragraph [22], the appellant was legally represented and if the appellant and his family misunderstood what was necessary in respect of his father providing a statement that was a matter with which his solicitors could have assisted.
26. For the aforementioned reasons, I find that the FtT has not made a material error of law and that its decision shall stand.

Decision

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.
- c. An anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 24 February 2016