



IAC-AH-SC-V1

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

Appeal Number: AA/07916/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27th January 2016**

**Decision & Reasons Promulgated
On 10th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**M S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Amunwa of Counsel instructed by Fadiga & Co Solicitors

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Samimi of the First-tier Tribunal (the FTT) promulgated on 3rd November 2015.
2. The Appellant is a male Albanian citizen, born in July 1988, and is 17 years of age.
3. The Appellant arrived in the United Kingdom on 14 October 2014 and claimed asylum based upon his fear of a blood feud involving his family.

4. The Respondent refused the application on 16 April 2015, not accepting that the Appellant would be at risk if returned to Albania, but discretionary leave to remain was granted on the basis that the Appellant was an unaccompanied minor. He was therefore granted leave until 14th January 2016.
5. The Appellant appealed pursuant to section 82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and his appeal was heard by the FTT on 6th October 2015. The FTT dismissed the appeal on all grounds.
6. The Appellant applied for permission to appeal to the Upper Tribunal, relying upon five grounds which are summarised below;

Ground 1

Making perverse or irrational findings on a material matter by finding that the Appellant stayed with his uncle for two months. It was contended that the Appellant had never claimed this to be the case, and in making this finding the FTT wrongly reached adverse conclusions on the Appellant's credibility.

Ground 2

Perverse or irrational findings and/or giving weight to immaterial matters by finding that the Respondent's failure to trace the Appellant's family in Albania led to no prejudice.

Ground 3

Failure to consider the Respondent's breach of section 55 of the Borders, Citizenship and Immigration Act 2009 in relation to the Appellant's interview which did not comply with UNHCR guidance on interviewing minors.

Ground 4

Making a material misdirection in law, by failing to follow the Joint Presidential Guidance Note No 2 of 2010 relating to children, vulnerable adults and sensitive Appellants. It was contended that the FTT had not followed this guidance when considering the Appellant's credibility.

Ground 5

Giving weight to immaterial matters. It was contended the FTT erred by making reference to AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) when this was not relevant, and the FTT had failed to explain the relevance of quoting three paragraphs from that decision.

7. Permission to appeal was granted on all grounds. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The

Tribunal Procedure (Upper Tribunal) Rules 2008. In summary the Respondent did not accept that the FTT had materially erred. It was noted that the FTT was aware that the Appellant was a minor and had been consistent about his reasons for fleeing, but had failed to make out a case that the blood feud continued or that he could not internally relocate. It was specifically noted that the Appellant is from Tirana which is an area where blood feuds and Kanun Law does not operate.

8. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT decision should be set aside.

The Appellant's Submissions

9. Mr Amunwa relied and expanded upon the grounds contained within the application for permission to appeal. I was asked to note that the FTT had made a mistake of fact by finding that the Appellant had lived with his uncle for a period of two months, in Tirana, before fleeing Albania. This mistake was relevant because it led to the FTT making adverse credibility findings, and was relevant as to whether there was an active blood feud or not, and whether there was an option of reasonable internal relocation.
10. I was asked to note that the FTT had made reference to the Appellant being an adult, which was incorrect. The FTT had not recorded whether the Appellant was a vulnerable witness and in that respect reliance was placed upon paragraphs 26 and 27 of JL China [2013] UKUT 00145 (IAC).
11. Mr Amunwa submitted that the FTT had made no finding as to whether the Appellant had lost contact with his family, and was wrong to state that the Appellant had not suffered prejudice by the Respondent's failure to attempt to trace his family.

The Respondent's Submissions

12. Mr Kandola relied upon the rule 24 response. He submitted that paragraph 83 of the Respondent's refusal decision indicated that tracing of the Appellant's family had been carried out.
13. In relation to section 55 of the 2009 Act it was submitted that the Appellant's interests had been protected by the grant of discretionary leave.
14. Mr Kandola submitted that the FTT's mistake of fact in recording that the Appellant had lived with his uncle was not material and neither was the error in making reference to the Appellant as an adult.
15. Mr Kandola submitted that the FTT had accepted that the Appellant's grandfather had killed a member of the other family, but did not accept there was an ongoing blood feud that put the Appellant at risk.

The Appellant's Response

16. Mr Amunwa submitted that it was not clear from paragraph 20 of the decision that the FTT accepted that the Appellant's grandfather had been killed. It was clear that the Appellant had stated when interviewed that he had not had any contact with his family in Albania since he came to the United Kingdom.
17. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

Ground 1

18. The FTT was factually incorrect to find in paragraph 21 that the Appellant hid in his uncle's home in Tirana prior to leaving Albania. The Appellant had never claimed to have lived with his uncle in Tirana for two months prior to leaving Albania. This however is not a material error. The Appellant's evidence was that he remained living at his family home in their village which is just outside the city of Tirana, until his uncle arranged his departure from Albania on 1st October 2014.
19. The Appellant explained that his home was between eight and ten minutes walk away from the aggressor family. This was confirmed by him at question 68 of his interview, and in his witness statement. The Appellant's evidence was that a blood feud was declared in July 2014 when he reached 16 years of age, but the aggressor family made no attempt to contact him at his family home, between the blood feud being declared, and his departure from Albania on 1st October 2014.
20. Therefore the finding by the FTT that the other family did not attempt to contact him at his uncle's house in Tirana, is not a material error, as the Appellant's own case is that the family did not try and contact him at his family home, which was closer to their home, than was his uncle's home in Tirana.

Ground 2

21. The FTT, in my view, erred in paragraph 23 in recording that the Respondent failed to trace the Appellant's family in a "reasonable and timely manner." Paragraph 83 of the Respondent's refusal decision confirms that attempts were made to trace the Appellant's family in Albania, and a response was received on 16th April 2015, confirming that the Appellant lived with his father, mother, grandfather, grandmother, and brother and that the family currently still lived in Albania. Although the FTT erred in finding that there had been no attempt to trace the Appellant's family, this is not a material error. The FTT did not err in finding that the Appellant had not been prejudiced, and that if there was a breach of the Respondent's tracing obligation, this would only be relevant if prejudice had been caused to the Appellant.
22. The Appellant made no mention in either of his witness statements of losing contact with his family, but when interviewed (questions 105/106),

confirmed that he had not had contact with his family since leaving Albania. If the Appellant had alleged that he had been prejudiced by the Respondent's failure, it was open to him to explain how, as he had the benefit of legal representation, and assistance from Social Services. This was not raised as a ground of appeal before the FTT, neither was it mentioned in the Appellant's skeleton argument.

Ground 3

23. I do not find that the grounds or submissions disclose a material error on this issue. It is apparent that complaint was made about the conduct of the Appellant's interview and the Appellant's representatives wrote to the Respondent, and a copy of their letter is contained in the Appellant's bundle at 8A - 8B. Some relatively minor clarifications were made to the answers, and it was contended that the interviewing officer had not been properly trained to interview children, and that a number of questions were "not asked in a child friendly manner." It is not clear how this was portrayed as being relevant before the FTT. The Appellant submitted two witness statements, one of which comments upon the Respondent's reasons for refusal, but made no further comments in relation to the interview. The Appellant, with the benefit of legal representation, had the opportunity to correct or clarify anything that had occurred in the interview which may have adversely affected his claim. There is no evidence that the FTT disregarded any representations or submissions on this point, and I conclude that this ground discloses no error of law by the FTT.

Ground 4

24. The FTT does not specifically refer to the Presidential guidance note regarding children and vulnerable witnesses. The FTT referred to the Appellant as a child in paragraph 10(a) and (h), but was wrong in paragraph 22 to state that "he is now an adult." I do not however find that this is relevant to the FTT assessment of credibility. It appears that the FTT accepted in paragraph 20 that the Appellant's grandfather had killed the member of another family, but what is not accepted is the claim that the Appellant had been targeted. This conclusion is based, in the main, upon the Appellant's own evidence that even after he claims that he was made a target of the blood feud in July 2014, he remained living at the family home in close proximity to the other family they made no attempts to threaten or harm him, or contact him in any way. The Appellant remained living at his family home until he left Albania on 1 October 2014. This ground discloses no error.

Ground 5

25. The FTT referred to the correct case law in relation to blood feuds, that being EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC), and it does not appear to have been necessary to make any reference AM and BM. Although it may not have been necessary to refer to this decision, I do not

find that the grounds or submissions disclose any material error of law in making such a reference, which had no material relevance to the decision made by the FTT.

26. I therefore conclude that although there are mistakes in the decision, there are no material errors of law. The grounds seeking permission, evidence disagreement with the findings made by the FTT, but do not disclose material errors of law.

Notice of Decision

The making of the decision of the FTT did not involve the making of a material error on a point of law. I do not set aside the decision. The appeal is dismissed.

Anonymity

An anonymity direction was made by the FTT. I continue that direction pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

29th January 2016

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

29th January 2016