



IAC-FH-AR-V1

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

Appeal Number: AA/10780/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 9 February 2015
Extempore**

**Decision & Reasons Promulgated
On 26 February 2016**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**ENKELEID S.
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Kadic, instructed by A de Ruano

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Oakley promulgated on 24 November 2015, dismissing his appeal against the decision to refuse him asylum. That appeal was against a refusal to vary leave and also considered human rights.
2. The appellant's case is, in summary, that he is likely to be a victim in a blood feud in Albania between his family and the Tonaj family who live nearby. The initial problems began around 1997 and in 1999 the appellant's father's paternal uncle was killed by the Tonaj family.

3. The dispute continued and in 2010 escalated when Zef Tonaj was wounded and his son Ndue was murdered; the Tonaj family then sent word that should any male aged 16 or over be seen outside then they would be killed. Attempts at reconciliation were not possible and eventually the appellant's family decided that it would be better as he was turning 16 to leave Albania and seek sanctuary, which he did.
4. The appellant arrived in the United Kingdom and later claimed asylum. That application was refused but he was nonetheless granted discretionary leave to remain on account of his age. As the length of time of discretionary leave given was short he was not entitled to a right of appeal against that decision. He then made an application for further leave to remain before that leave expired. That was refused and it was against that decision that the appeal came before the First-tier Tribunal.
5. The Secretary of State's case is set out in the refusal letter dated 22 July 2015. In summary, she did not accept the appellant's account of events in Albania and considered that his account was not credible.
6. The matter then came before Judge Oakley who found that:
 - (i) the evidence regarding the appellant's mother being able to collect an identity card issued to him in 2013 was inconsistent with the background evidence which showed that an identity card could only be picked up by an applicant in person at the application office;
 - (ii) the appellant's evidence regarding his father being in self-confinement after 1999 and despite there being in effect no blood feud declared until 2010 was inconsistent with the appellant being in self confinement;
 - (iii) although there was reference to alleged killings there was no evidence of this as a result of online searches;
 - (iv) the applicant had made no attempts to contact his family which he would have expected him to have done were his claims genuine;
 - (v) following the decision in **EH (Blood feuds) Albania** CG [2012] UKUT 00348 he was not satisfied that the relevant tests were made out, noting in particular that the killings were not notorious; that the last killing was in fact in 2011; that the appellant has an elder brother and uncle and father who are still alive and therefore he would not be the immediate target; that it could not be the case that the Tonaj family observed the appellant wherever he went, given that he would not otherwise be able to collect his identity card and that the criteria in force in EH were not met as the appellant's father had been able to take the land dispute which it is said gave rise to a blood feud court; and that Zef Tonaj had been convicted of the father's paternal uncle and that his own uncle had been convicted of using weapons illegally and therefore it was his evidence that the family had been prosecuted for involvement in any dispute.

7. Having found that the appellant was not credible he dismissed the appeal on human rights grounds as well as asylum grounds.
8. The appellant sought permission to appeal on the basis that the adverse credibility findings were not properly reasoned and were unlawful. It is averred that:
 - (i) making credibility findings based solely on plausibility were wrong and that there were no discrepancies in the appellant's evidence.
 - (ii) an unfair inference was drawn adverse to the appellant from the fact that he had not appealed against the first decision; that the Tribunal placed undue weight on what the general practices of the canon covering blood feuds were.
 - (iii) the Tribunal erred in making plausibility findings unsustainable due to the lack of evidence;
 - (iv) the Tribunal placed weight on immaterial matters and applied an unduly high standard of proof; and,
 - (v) the Tribunal had failed to take into account any land dispute on the basis of the appellant's young age at the time of the material events.
9. Permission was granted by First-tier Tribunal Judge Cruthers on 16 November 2015 whoa stated:

“Overall there is sufficient in the grounds to make a grant of permission appropriate but the appellant should not take this grant of permission as any indication that the appeal will ultimately be successful. In the last analysis it may be decided that there are no errors of law in the decision under consideration. Even if errors of law are established, they may be errors that would have made no difference to the result.”
10. I heard submissions both Ms Kadic on behalf of the appellant and by Mr Wilding on behalf of the Secretary of State.
11. The first point that raised by Ms Kadic is that the judge did not take into account the appellant's age which is material given that he was 12 in 2010, one of the material times.
12. Mr Wilding submitted that this was not a matter which was in fact a factor taken adversely and that in any event it is clear from the judge's determination at several places, in particular paragraph 31, that the judge was fully aware of the the appellant's age at various times and had made this clear. In response Miss Kadic submitted that whilst the judge had mentioned his age it did not follow that he had given proper account to this if he had not said so.
13. I considered that, allied to the averred failure to take into account age at the relevant time, is the fact that the judge records that the appellant did

not challenge the original decision. Mr Wilding submits that that is at best neutral and that on a proper reading of the judge's comments at paragraph [30], no real inference was taken.

14. It is not a requirement for a judge to set out all the self-directions which apply in assessing evidence. It is established law that the age of an appellant if a minor both at the time of the hearing and the time of material events is a factor which should be taken into account. It is evident from the decision that the judge was aware of the the appellant's date of birth, was aware that he was 16 in 2013 (see paragraph 31), and I am not satisfied that there is any indication from the decision that the judge was unaware of the need properly to take account of the age and that he did not do so. Further, I do not consider that it can properly be said that in fact any adverse inference was taken as to the failure to appeal.
15. Turning to the other findings, Mr Wilding submitted that the judge's findings at paragraphs 32 and 33 are of particular relevance and would not be explained by the appellant's age. The judge found that, contrary to the objective evidence the appellant's evidence was that his mother had picked up an identity card when he would, on his own account, have been in confinement.
16. I consider that there is in fact no real challenge to that finding by Ms Kadic. It was clearly open to the judge to make that finding given the nature of the objective evidence put before him and I consider that as Mr Wilding submits, any explanation as to age is not in reality capable of affecting this point.
17. Further, I consider that the finding that the appellant was, contrary to his case that he was being watched by the Tonaj family, and that he was in self-confinement, is significantly and substantially undermined by the finding that he was able to go out and obtain an identity card in person. The judge was clearly entitled to draw such a conclusion, and whilst it is not determinative, if he was not in self-confinement as this finding shows, the rest of his case is undermined.
18. Whilst it is clear that there was some qualification of being in confinement from the appellant's statement in his interview, in particular at questions 83 to 85, it is clear that the judge did take that into account from what he said at paragraph 34. The challenge to that is, I consider, a disagreement without any proper explanation of why the judge's analysis was one which was not open to him.
19. I accept that there is an apparent discrepancy at paragraph 24 of the decision in that as Ms Kadic pointed out, the appellant's uncle had left Albania and that his brother was on the appellant's account disabled and self-confined, as was the father. But this is simply one factor which has to be taken into account in assessing the case under the criteria set out in **EH**.

20. Ms Kadic submitted that the judge's approach to lack of evidence of the killings is speculative. Whilst it is to a degree speculative in that it rests on an assumption firstly, that the killings of the nature described are reported, and, secondly, that these would be available on line, that observation must be considered in the context of what the judge said at [38] to [39]. It was open to him to find that the appellant simply had provided no evidence from his family. It was also open to him to have expected documents and information to have come from the family as there would in theory have been no reason why the family could not have kept in contact with him. It is not said that the female members of the family were in self-confinement and in the circumstances, I consider that noting that matters were not reported was a factor the judge was entitled to take into account.
21. Whilst reliance is placed, challenging that, on what was said by the expert in **EH**, that is Dr Schwandner-Sievers, I do not consider that that evidence is of great assistance. The evidence the expert refers to is as to whether false stories could have been placed in the media. It is of little or no assistance in assessing whether particular stories would or would not be properly reported.
22. Further, with respect to the alleged failure to comply with what was said in Dr Schwandner-Sievers's evidence as cited in the skeleton argument, the ground that is put forward is that undue weight was placed on the general practices of the Kanun require. As Mr Wilding submitted, that is in reality a perversity challenge. I find no basis on which it could be said that the judge has placed undue weight or weight which no other judge could possibly have put on the evidence before him. Weight is primarily a matter for a judge and unless it can be shown that the weight placed was perverse, then it does not amount to an error of law.
23. For these reasons I consider that when the decision is considered as a whole the judge's findings were properly reasoned, adequate and sustainable. I am not satisfied that the decision of the judge involved the making of an error of law capable of affecting the outcome of the decision and I therefore uphold that decision.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.
2. I make no anonymity direction. None was made below and none has been requested.

Signed

Date: 23 February 2016

Upper Tribunal Judge Rintoul