



**Upper Tribunal
(Immigration and Asylum Chamber)**
Number: AA008282015

Appeal

THE IMMIGRATION ACTS

**Heard at Manchester
On 11 July 2017**

**Decision and
promulgated
On 31 July 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**DD
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Fisher instructed by Tuckers Solicitors
For the Respondent: Mrs Petterson – Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Davies ('the Judge') promulgated on 21 December 2016 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of Albania who travel to the United Kingdom with her three children where she claimed asylum. Having set out the respective parties' cases and the evidence received, the Judge sets out findings of fact between [72] and [104] of the decision under challenge. Those findings may be summarised in the following terms:
 - i. It was found significant there had not been a determination of the asylum claim made by the appellant's husband either in Italy where the respondent was seeking to remove him or in the United Kingdom where he has not claimed asylum. It was unclear, if the appellant's husband has not made an asylum claim in Italy, why that is the case on the basis of his evidence that he left Albania in 2012 to seek international protection [72].
 - ii. The appellant's asylum claim substantively arises from an incident on 14 October 2008 in which her husband shot, injured and it is claimed permanently disabled the patriarch of the [R] family during an incident at his father's business premises [73].
 - iii. The Judge noted the translation of the decision of the District Court of Kukes dated 6 May 2009 and noted no additional evidence had been produced to establish the credentials of the decision or the existence of the judges who sentenced the appellant's husband. No evidence had been produced in relation to documentation concerning those proceedings. It was held reasonably likely the appellant's husband would be in possession of such documentation. Bearing in mind the evidence of corruption in Albania in many organs of the state, lack of documentation connected to the decision of the District Court led the Judge to place little weight upon it [75].
 - iv. The Judge was not satisfied it was reasonably likely the appellant's husband was convicted of criminal offences and sent to prison. It is said there is conflict of evidence between the claimed length of that prison sentence. The appellant's husband says he was sentenced to 6 years' imprisonment yet there is evidence that the sentence was four years and the appellant, in reply to question 55 of her substantive interview, says her husband was sentenced to two years' imprisonment. Such conflict had not been explained to the Judge [76].
 - v. The Judge commented upon other documentation provided in the appellant's bundle. Taking into account the fact false documents are easy to obtain in Albania and the evidence as a whole, little weight was attached to a document at page 139 and the letter from the appellant's children's

- school at page 140 which was said to conflict with the appellants and testimony. Little weight was attached to any of the specific documents referred to [77].
- vi. The Judge place no reliance upon letters from the police dated 20th May and 4 March 2014 finding it not credible the police would be aware the appellant's husband had left Albania to come to the United Kingdom to claim asylum. The Judge found it not reasonably likely that any of the documents from this source are genuine [78].
 - vii. Having considered the appellants evidence in her substantive asylum interview, the appellant's lack of knowledge both in relation to the incident which she claimed caused a blood feud and her husband's conviction and sentence indicate she has not given a truthful account of the circumstances in which she left Albania [79].
 - viii. The appellants claim the [R] family wish to kill her children was not supported by credible evidence. The Judge notes the appellant seems to have formed the view that this is the case as a result of an incident involving her children and grandchildren of the [R] family at school but no weight was attached to the letter from the school allegedly confirming this incident [79]. It is said there is conflict in the appellant's own statements regarding this incident. The conflict exists because the appellant has not told the truth. The Judge did not accept the children were ever attacked as a result of a blood feud. [79].
 - ix. It was without credit that the appellant would not tell her husband of the incident that occurred at school. It was not credible if the appellant's son and daughter had been cut with a knife as the appellant claims that a husband would not be aware of this or make enquiries as to how the injuries had occurred [80].
 - x. Even if the appellant and the family had been the victim of a blood feud it is clear they have been able to live initially in their home village and in a number of locations in Albania, including Tirana, where the [R] family had not caused them harm. It was not accepted as credible that the appellant's husband was targeted by the [R] family on two or three occasions as he claims. That is said to be confirmed by the fact he delayed leaving Albania and appears from the evidence never to have actually sought international protection even though that is why he said he left Albania [81].
 - xi. The lack of police assistance for the appellant and her husband is not credible. The appellant claims her husband was offered police protection on leaving prison and returning home and it was not found credible that the police would therefore not be willing to assist on other occasions. Lack of credibility in the assertion the police

would not provide protection was also considered in light of the fact they have provided letters for the appellant's assistance in this appeal [82].

- xii. The suggestion the [R] family will be able to locate the appellant and her family in Albania was rejected. The appellant's own evidence is that the [R] family are a large family of labourers with no influence whatsoever. It is not reasonably likely that the family, all of whom live in Has is able to locate the appellant and her family, for instance in Tirana. [83].
- xiii. The Judge did not accept there was a blood feud between the appellant's family and the [R] family or that the appellant or her family are at risk on that basis, having taken all the evidence into account [84].
- xiv. The appellant does not have a well-founded fear of persecution she is not a member of a particular social group [86].
- xv. None of the appellant's evidence supports the expert's contention that the [R] family would have the ability to locate the appellant's family in the long term [87].
- xvi. Whilst the appellant's presentation in terms of mental health was not disputed, causation was not accepted to be as claimed. The Judge suggests it is reasonably likely to have arisen due to other issues identified in the decision under challenge [90].
- xvii. The appellant's claim under Article 3 was rejected as a Judge claims not to have received any evidence showing the current medication the appellant receives in the United Kingdom or an equivalent type of medication is not available in Albania. No evidence has been provided to suggest that no assistance for those with mental health problems is available in Albania. The evidence did not enable the appellant to succeed on the basis of either article 3 or 8 on medical grounds [92].
- xviii. The appellant will be returned to Albania with her three children. No evidence has been put forward to show why the appellant's husband cannot return to Albania with them, with whom he is now reconciled [94].
- xix. The best interests of the children will be served by returning to Albania with their mother and father where they will have access to education and family support [96].
- xx. The appellant did not satisfy the Judge that her removal will be an unwarranted interference in any protected right. Family life can continue with the appellant's husband in Albania. Any interference is proportionate [103 - 104].

3. The applicant sought permission to appeal which was granted by another judge of the First-tier Tribunal. The operative parts of the grant being in the following terms:

4. The grounds, which to a considerable extent overlap, assert, in essence, that the judge failed to address adequately and failed to give adequate reasons for rejecting the evidence before him, particularly the expert report and other documentary evidence, as well as failing to give the appellant the opportunity to address adverse issues. The grounds disclose arguable errors of law capable of affecting the outcome. Accordingly, I extend time and the application is granted.

4. The appeal is opposed by the Secretary of State.

Error of law

5. Miss Fisher commenced her submissions by referring to Ground 4 of the application for permission to appeal, challenging the findings in relation to the appellant's husband and his asylum appeal and, secondly, in relation to the appellant herself.
6. The Judge found it significant there had been no determination of an asylum claim made by the appellant's husband either in Italy or the United Kingdom. It is accepted that the applicant's husband claimed asylum in Italy but then came to the United Kingdom, as a result of which any application he made was refused and certified under the Dublin Convention on the basis Italy is responsible for determining the appellant's husband's asylum claim. A challenge to the certification has been issued by the appellant's husband by way of judicial review which it is claimed has been compromised by the respondent agreeing to consider the appellant's husband's case in the United Kingdom by December 2017.
7. There is, of course, no reason why the appellant's husband's asylum claim could not have been determined although it may have required the applicants husband to have remained in Italy rather than to have travelled on to the United Kingdom.
8. The Judge may have failed to understand the operation of the Dublin Convention but the issue is whether such misunderstanding is material to the decision to dismiss the appeal for the reasons set out in the decision under challenge, which has not been established when considering this issue in isolation.
9. It was also submitted the Judge erred at paragraphs [76 - 79] in which the Judge was not satisfied it is reasonably likely that the appellant's husband was convicted of a criminal offence and sent to prison.
10. The Judge refers at [76] to what was said to be a conflict of evidence between the claimed length of a prison sentence, with the appellant's husband claiming he was sentenced to 6 years' imprisonment, other evidence suggesting the sentence was four years' imprisonment, whilst the appellant stated her husband was sentenced to two years' imprisonment.
11. At [77-8] the Judge comments upon additional documents provided in the bundle and concludes that no weight may be attached to that evidence. At [79] the Judge finds:

79. I take into account the evidence given by the Appellant to the Respondent in her substantive interview. I find the Appellant's lack of

knowledge both in relation to the incident which she claims caused the blood feud and her husband's conviction and sentencing indicate that she has not given me a truthful account of the circumstances in which she left Albania. She claims that the [R] family want to kill her children. There is no credible evidence that this is the case. The Appellant appears to have formed the view that this is the case as a result of an incident involving her children and grandchildren and the [R] family at her school when she claims her son and daughter were cut with a knife. I attach no weight to the letter from the school confirming this incident for the reasons I have explained. There is conflict in the Appellant's own statements regarding this. That conflict has not been explained to me. In the Appellant's first statement she says that her children were attacked after school had finished for the day, whilst in her second statement she says they were attacked on their way to school. This conflict exists because the Appellant has not told the truth in that regard and I do not accept that her children were ever attacked as a result of a blood feud. If there was an incident involving her children the cause of that incident was not because of a blood feud with the [R] family.

12. It was submitted on the appellant's behalf that the duration of any prison sentence was not the issue as other witness statements indicated that it was not disputed that the appellant's husband had gone to prison. It is also submitted that if there was a discrepancy this should have been put to the appellant and her husband so they could have responded to the same.
13. This submission fails to establish any arguable legal error in the decision of the Judge or how the adverse findings impact upon the assessment of credibility. There was evidence from the appellant's side indicating the appellant's husband had gone to prison but also the evidence commented upon by the Judge, in relation to the same aspect of the claim, which was contradictory in relation to a material element. It is reasonable to expect that if a key member of the family had been imprisoned those with direct knowledge of the fact would be fully aware of how long a prison sentence had been given. The Judge was clearly concerned with the variation in that evidence, claiming that a prison sentence was six years, four years and two years, which led the Judge to be arguably entitled to come to the conclusion that the appellant had not established that her husband was convicted of the alleged offence and sent to prison as claimed. The challenge to this finding based upon others stating the appellant's husband had gone to prison or the fact of imprisonment was of more relevance than the length sentence is, in reality, a challenge to the weight the Judge chose to give to the evidence as a whole and an assertion that the appellant's own evidence in relation to imprisonment should be determinative.
14. It is clear the Judge considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made in relation to this aspect of the case. As such, the weight to be given to the evidence was a matter for the Judge. It has not been shown that the adverse credibility findings, reached in an assessment of the evidence as a whole in relation to both the above and other matters recorded in the decision under challenge, is in any way arguably irrational or perverse.

15. In relation to the claim the discrepancy should have been put to the appellant, such claim has no arguable merit. This is not a matter that resulted from further research undertaken by the Judge or which only came to the Judges knowledge after the hearing based upon evidence or matters upon which the parties have been denied an opportunity to comment, amounting to a procedural error based upon the principle of fairness. Proceedings in the First-tier Tribunal are adversarial. The appellant was represented at the hearing by Miss Fisher and the discrepancy identified by the Judge at [76] is clear on the face of the evidence. Miss Fisher had the opportunity to ask questions by way of examination in chief or to clarify any confusion that may have arisen as a result of cross examination in re-examination, and also had the opportunity to deal with such issues by way of her closing submissions. The fact it appears no opportunity was taken to resolve this issue does not impose a greater obligation upon the Judge on the facts. No issue of fairness arises as there was ample opportunity for the appellant to have dealt with such matters during the course of both the evidential stage of the appeal process and the hearing itself.
16. Other discrepancies noted by the Judge and issues of concern were, again, not matters upon which it has been established there was any legal obligation or duty upon the Judge to refer to the appellant before making adequately reasoned findings of fact.
17. The third challenge is to the Judges treatment of the medical evidence and the appellant's mental health issues. The Judge noted the material that had been provided and although the Judge does not make specific reference to the practice direction concerning vulnerable adult and sensitive witnesses, it is known this forms an important part of the training of First-tier Tribunal judges and it is reasonable to assume the Judge was fully aware of the content of that guidance. No specific examples have been made out either in the pleadings or submissions made to the Upper Tribunal to show that the Judge conducted the hearing in a manner contrary to the guidance, in a way that denied the appellant a fair hearing, or that may have warranted a different approach being taken to the evidence the First-tier Tribunal received.
18. Miss Fisher submitted a contravention of the guidance could have led to findings been affected by health issues. It was submitted the appellant was distressed through the hearing which would no doubt have been noted by the Judge. In response to a specific question from the Bench Miss Fisher accepted the appellant had not been 'browbeaten' and was unable to identify any specific concerns regarding the Judges conduct of the hearing. It was submitted that the only issue is whether when weighing up the evidence the Judge did not factor the appellant's mental health into the assessment.
19. The Judge clearly considered the mental health elements and makes findings upon the same. The conclusion of the Judge is that the evidence of health issues was determinative of the appellant's presentation, as the mental health difficulties referred to are not challenged or disputed by the Judge, but were not found to be

determinative of causation. The author of the medical report was required to address the question of alternative causes for an individual's presentation. The evidence referred to in submissions is a letter from a Dr Rahim dated 20 May 2015 together with copy letters from the appellant's GP one of which dated 10th February 2015 indicates the appellant had been hit by a car and sustained a number of physical injuries and that she remained in the care of an NHS mental health team. The letter from Dr Rahim refers to the appellant having some tangible stressors in the form of a physical injury resulting from the car accident in relation to which although pain was gradually improving in May 2015 it was limiting the appellant's functioning and her mobility and, more pressing, that she was awaiting a date for an appeal hearing for her immigration status which it is stated she was ruminating on, on a daily basis, making her quite distressed. The letter also states "she also ruminates on the incident some years ago in Albania involving a family feud which has resulted in threats being made to her children's lives".

20. There was no definitive diagnosis before the Judge to discount any other reason for the appellant's presentation or which required causation to be assessed other than in line with the appellant's overall credibility. The Judge did not accept that the appellant had given a credible account for the reasons set out in the decision under challenge. As the core of the account had not been established it was an arguably available rational conclusion of the Judge that the appellant's presentation is not based upon her claim but on other matters.
21. Ground 2, which Miss Fisher addressed next, asserts the Judge placed no weight upon documents other than by general reference to corruption in Albania and it is not explained why documents from the Committee of Nation Reconciliation were not reliable. The Judge asserts that in dismissing the documents from the Albanian court the First-tier Tribunal failed to put concerns to either the appellant or her husband and that if this was a matter of such importance the appellant should have been given an opportunity to produce further evidence from the appellant's chosen expert, Dr Antonia Young.
22. As stated above, the Judge gave adequate reasons for finding that the evidence the appellant's husband had been convicted was not credible. The appellant instructed a country expert, Dr Antonia Young, whose report was contained in the appellant's appeal bundle. Dr Young has been criticised in other cases for lacking objectivity and for, in effect, becoming an advocate for an appellant although no such issue was raised in this appeal.
23. The Judge clearly considered the documentary evidence provided and, as stated above, the weight to be given to those documents was a matter for the Judge. The Judge found that the documentary evidence provided was not genuine and that some of the evidence, such as the letter from the appellant's children's school conflicted with the appellant's own testimony. The Judge gives adequate reasons for rejecting the evidence and even if there was no challenge to the

documents in the reasons for refusal letter this does not prevent the Judge from dealing with the weight to be given to this evidence in the determination. The Secretary of State is not the person required to make the decision on an appeal. The author of a refusal letter may not raise concerns in that document but that does not tie a judge's hands. The Judge notes one of the concerns that arose was a discrepancy between the letter from the school and the appellant's own testimony. If the author of the reasons for refusal letter was unaware of such conflict one would not expect such challenge to appear in the refusal letter. The issue of the court documents is also raised. The Judge clearly considered the translated documents as there is specific reference to the same at [75] of the decision. The Judge noted that no additional evidence had been produced to establish the credentials of the decision relied upon or in relation to those proceedings. It was found the appellant's husband would be in possession of such documents. The Judge was clearly concerned about the evidence of corruption in Albania when considering that evidence together with the other material and concluded no weight could be placed upon the court documents. It goes without saying it was not accepted that the appellant's husband had been imprisoned or been subject to court proceedings, yet the documents were produced to prove that he had. The Judge was entitled to place little weight upon the same when assessing which aspects of the case were accepted and which were not.

24. These documents are, again, documents that were available to the appellant throughout the proceedings and additional comment could have been made upon the same if the appellant chose to do so. She did not. It is also not established that Dr Antonia Young is a document expert.
25. Ground 1 is a direct challenge to the Judge's treatment of the expert report. Miss Fisher contends that in dismissing the appellant's account that there is no blood feud no mention of the expert report is made. It is also stated that Dr Antonia Young had been in contact with Gjin Marku of the Committee of Nationwide Reconciliation to confirm the feud is still ongoing and the family continues to refuse reconciliation.
26. It is noted, again, that Dr Antonia Young chooses to refer in her expert report to previous charges against Gjin Marku having been dropped, which is accepted as true. This related to an investigation concerning fraudulent practices and documents being produced supporting asylum claimants in countries such as the United Kingdom claiming they could not return as a result of a real risk arising from an existing blood feud. It is of course not the job of Dr Young to defend Mr Marku who has himself been subject to criticism in other decisions. I also referred the advocates to a further incident involving Mr Marku who produced a report for a case before the Upper Tribunal heard by myself and Deputy Upper Tribunal Judge French (now retired) in which Mr Marku produced written notes and gave oral evidence that two members of the family in question, both female, had been attacked in Tirana by members of the family allegedly involved in a blood feud. Mr

Marku was adamant that his note recalling the incident was accurate even when it was put to him that one of the named individuals who he claims was attacked in Tirana on the stated day and date was in the United Kingdom at that time according to her own evidence. It is also the case that one of the Missionaries of the Committee of Nationwide Reconciliation who also gave oral evidence and who purportedly saw the incident only referred to one family member and was adamant that two family members were not involved. Serious doubt has been placed upon the credibility of Mr Marku and the reliability of his evidence, particularly in relation to the case referred to above.

27. The grounds referred to the decision of the Court of Appeal in Mibanga [2005] EWCA Civ 367 in which it was found that if an experts evidence was rejected it was necessary to say clearly why.
28. It is accepted in terms of reasons given that an individual judge is required to give adequate reasons for findings made. If one of those findings is that no weight can be placed upon an expert's opinion reasons must be given. It is not necessarily an error of law, however, for the Judge not to have set this out in a specific paragraph provide it is clear the content of the decision that the expert report was considered with the required degree of anxious scrutiny and an adequate explanation for the findings made has been provided. In this regard, it is noted at [10] that the Judge states that he has read and evaluated all the evidence before the respondent at the date of the decision appealed against together with additional evidence that has been submitted. The Judge also states he has taken into account the evidence of the appellant, her husband and her other two witnesses and makes findings as to the credibility of their account, where relevant. The evidence, where submitted, will include the evidence in the respondent's appeal bundle.
29. The report of Dr Young sets out documents considered and then devotes a considerable number of pages to the background evidence (pages 83 - 112 of the appellant's appeal bundle). Dr Young only deals with the specifics of the case from section 5 which sets out the definition of a blood feud at 5.1 to 5.7. At 5.8 Dr Young writes:

"I conclude, from the documentation with which I have been supplied, there is an ongoing blood feud between the two families: [D] and [R]. The development of the blood feud is consistent with numerous other such feuds.

30. Thereafter Dr Young confirms she obtain verification from Mr Marku and sets out an email received from him on 28 May 2015, some 18 months before the date of the hearing. There is then the letter regarding the suspicion concerning Mr Marku issuing Certificates confirming the existence of specific blood feuds which has been commented upon above.
31. Dr Young acknowledges in 5.9 that the opposing family may not be able to locate the appellant if she returned to Albania immediately but could do so 'in the long term' without giving any reasons for why this may happen at some unidentified point in the future. The claim in the report that notwithstanding steps made to improve state protection

there will be no effective sufficiency of protection is contrary to country guidance and up-to-date country information. Dr Young at 5.13 refers to a country information report published in March 2012, and to confirmation provided by another country expert in October 2012 of developments within Albania following the passing of laws to improve state protection. Country information indicates that steps have been taken, as part of the desire of the Albanian government to join the EU, to take action including noting in criminal cases whether there is an element of blood feud which would serve to increase the length of any sentence given to a person convicted.

32. The assertion by Dr Young at 5.22 that if returned to Albania the appellant and the family would be forced to live in self confinement is not arguably made out on the facts of this case. The issue identified by Dr Young at 5.23 is expressed in the following terms “based on the documentation with which I have been supplied it seems clear that there is an ongoing blood feud between the two families which neither the police nor the local Elders have been able to resolve” shows that opinion is based upon only one part of the available evidence.
33. The Judge had much greater evidence including hearing and seeing the appellant and others give evidence, and it has not been made out that there was either any artificial separation by the Judge, a failure to consider the evidence provided by the appellant or others, or that the evidence of Dr Young was determinative of the outcome of the appeal.
34. It is also important to note in the determination under challenge that the Judge does not only note the expert evidence in [87] where it is written:

“I have taken into account the evidence contained in the Appellants bundles regarding blood feuds and Kanun. I have taken into account the expert’s opinion regarding the risk to the Appellant and her children of persecution. I do not agree that there is any evidence to support the expert’s contention that the [R] family would have the ability to locate the Appellant’s family in the long term and that ability is considerable. That opinion is not supported by the fact that the [R] family are labourers with no influence”.

But also at [83] and in relation to the relocation point.

35. The Judge also clearly states that he has considered the expert report in light of the decision in the relevant country guidance case and that he has read the expert report in its entirety before making the findings which have been made in this decision. It was submitted on the respondent’s behalf that the Judge considered the expert evidence appropriately, which is a sustainable submission, and that the evidence of Mr Marku cannot be relied upon.
36. Considering the evidence as a whole, it is clear the Judge did not dismiss the evidence in documentary form out of hand and considered that material together with the oral evidence given during the course of the hearing.
37. It was also noted in the decision that the applicant gave oral evidence and was subject to cross-examination and re-examination. There are no concerns made out in relation to the way in which the appellant gave evidence save to it being noted by Mrs Petterson that when Miss

Fisher was conducting re-examination the appellant was pressed for an answer by her own advocate. The Judge notes at [49] where re-examination by Miss Fisher is noted:

49. The Appellant was asked if she returned to Albania with her family whether she could live with her other family members or whether they could offer financial assistance. She did not answer the question and was told to answer the question. The question was repeated. She said no they had their own families and it was dangerous if she went back to Albania. She was asked again why she could not go to live with her family in Albania. She said if she went back to she would have to keep herself and her children in self confinement otherwise they risk being killed. Her family members live in Tirana.
38. The Judges note of the re-examination does not indicate that Miss Fisher had any concerns regarding her client's mental health or ability to give evidence such that it was not appropriate to press her in re-examination.
39. As stated, no issues regarding the discrepancies identified by the Judge were raised in the evidence given by the appellant or her husband.
40. I make a finding of fact that the Judge gave adequate consideration to the evidence from all sources and has given adequate reasons to support the findings made. I find there is no evidence of an artificial separation between aspects of the evidence the Judge was required to consider, with specific reference to the expert material, and the overall conclusion.
41. I make finding of fact that the weight given by the Judge to the evidence was within the range of those the Judge was entitled to reach based upon an assessment of the evidence as a whole.
42. I make a finding of fact that the fact the appellant disagrees with the decision, considers that greater weight should be attached to certain aspects of the evidence, and/or seeks a different outcome, does not warrant a finding that the Judge has materially erred in law.
43. Considering the evidence as a whole, it is not made out that the decision to dismiss the appeal was outside the range of reasonable conclusions available or that any legal error made is material to the decision to dismiss the appeal.

Decision

- 44. There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

45. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 28 July 2017