



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

Appeal Number: PA040542015

THE IMMIGRATION ACTS

Heard at Field House

On 4th May 2017

**Decision & Reasons
Promulgated
On 30th May 2017**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OSMAN DIDA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Withwell, Home Office Presenting Officer
For the Respondent: Ms A Radford of Counsel, instructed by Fadiga & Co
Solicitors

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Callender Smith promulgated on 18 July 2016 (the “Decision”), in which his appeal against the Secretary of State’s decision refusing to grant him

asylum was allowed. For ease, I shall refer to Mr Dida as the Appellant and the Secretary of State as the Respondent, as they were before the First-tier Tribunal.

2. In a decision promulgated on 10 November 2016 Upper Tribunal Judge Jordan [see Annex for the decision in full] found a material error of law in the Decision as follows, “that the treatment by the First-tier Tribunal Judge as to the evidence about the blood feud was materially flawed. In particular, I do not regard that there is sufficient analysis of the issues in the determination to support the conclusion that the appellant was at risk as a result of a blood feud” (paragraph 14). This followed criticism of the First-tier Tribunal’s decision in that the findings made were a recitation of the Appellant’s claim without evaluation of the evidence, that documentary evidence was considered to be reliable only because the Appellant was reliable and a failure to address head-on the reliability of two sources of information (the certificate of conviction and the Albanian authorities’ response to the Respondent’s inquiry) which were conflicting.
3. Upper Tribunal Judge Jordan adjourned the hearing to allow the Respondent to make enquiries from the Albanian authorities as to the authenticity of the certificate of conviction, if she felt it right to make such enquiries. At the resumed hearing on 19 January 2017, an adjournment was sought by the Respondent for further time to conclude those enquiries which was granted.
4. Due to an internal administrative error, further evidence was submitted on time and in accordance with directions given on 19 January 2017 by the Respondent as to the authenticity of conviction but it did not reach the appeal file. Prior to sight of the evidence, directions were issued to the parties on 22 March 2017 that the issue to be determined in the re-making of the decision was whether the Appellant is at risk on return to Albania as a result of a blood feud. The re-making decision would be on the basis of evidence already available unless the parties wished to submit evidence as to the Albanian Criminal Code which may be relevant as to the findings on the certificate of conviction. Neither party had given any indication of additional evidence that they wished to rely on.
5. The appeal came before me on 4 May 2017 for the re-making decision. Despite the Respondent re-submitting the further evidence of her enquiries from the Albanian authorities following receipt of the last directions, that evidence had still not reached the file and was handed up. There was also a further administrative difficulty in that Counsel for the Appellant had not had sight of the evidence or the directions until the night before the hearing, albeit that at least the latter had been received by those instructing her. In the circumstances, Counsel was in some difficulty as to preparation for the hearing.
6. At the error of law hearing stage, Upper Tribunal Judge Jordan expected the results of any enquiries by the Respondent of the authorities in Albania as to the authenticity of the certificate of conviction to determine the

credibility of the Appellant. However, although the outcome of those inquiries was that the certificate was genuine, the Respondent's position is that that is not necessarily inconsistent with her earlier evidence from the Albanian authorities that there was no blood feud. There is, in my preliminary view, support for that contention in the Respondent's reasons for refusal letter dated 1 December 2015 by reference to the Albanian Criminal Code which includes specific provisions for blood feud related murders, which were not the articles cited in the certificate of conviction in this case. The matter is not therefore as straightforward for the determination of the Appellant's credibility as previously thought.

7. In the circumstances where Counsel for the Appellant expressed some difficulty proceeding to deal with the appeal on 4 May 2017 (in particular on the Albanian Criminal Code point) and where the wider issue of the Appellant's credibility and risk on return to Albanian had to be determined (which was not as straightforward as anticipated), it was agreed that this case was more suitable to be remitted to the First-tier Tribunal for fresh determination in accordance with paragraph 7.2(b) of the Senior President's Practice Statement 7.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law.

The decision of the First-tier Tribunal is set aside.

I remit the case to the First-tier Tribunal.

No anonymity direction is made.

Directions to the parties

1. This appeal is remitted to the First-tier Tribunal for complete rehearing. There are no preserved findings of fact.
2. Any further evidence relied upon shall be filed with the First-tier Tribunal and served upon the other party no later than 14 days prior to the hearing of the remitted appeals.
3. The Appellant is to file with the First-tier Tribunal and serve upon the Respondent no later than 14 days prior to the hearing of the remitted appeal a skeleton argument setting out relevant issues, with reference to evidence and case-law.
4. The First-tier Tribunal may issue further directions as required.

Directions to administration

1. The appeal is remitted and shall be heard at the Taylor House hearing centre on a date to be fixed by that centre.
2. The remitted appeal is to be listed before any Judge except Judge Callender Smith.
3. There is a time estimate of 3 hours for the hearing.

Signed



Date

5th May 2017

Upper Tribunal Judge Jackson

ANNEX



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04054/2015

THE IMMIGRATION ACTS

Heard at Field House
On 10 October 2016

Determination Promulgated
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Before
UPPER TRIBUNAL JUDGE JORDAN

Between

The Secretary of State for the Home Department

Appellant

and

Osman Dida

Respondent

Representation:

For the Secretary of State: Mr D. Clarke, Home Office Presenting Officer

For the Respondent: Ms A. Radford, Counsel, instructed by Fadiga & Co., Solicitors

FINDING ON ERROR OF LAW

1. The Secretary of State appeals against the determination of First-tier Tribunal Judge Callender Smith promulgated on 18 July 2016 allowing the appeal of Mr Osman Dida against the decision of the respondent refusing to grant him asylum. For the sake of consistency, I shall refer to Mr Dida as the appellant as he was before the First-tier Tribunal.
2. The appellant is a citizen of Albania who was born on 1 October 1999. He is now 17 years old. He arrived in the United Kingdom on 9 April 2015, aged 15. He claimed asylum on the basis that he feared that if he were returned to Albania he would become a victim of a blood feud. In particular, he claimed that he would be killed by the Muja family and specifically by Edmond Muja.

3. The respondent did not accept the appellant's family was involved in a blood feud with the Muja family. The appellant's claim that his grandfather accidentally killed a child of that family which resulted in Edmond Muja killing both his father and uncle was rejected by the respondent.
4. The appellant himself gave evidence in the First-tier Tribunal and submitted documentary evidence in the form of a copy document of 28 September 2005 evidencing Edmond Muja's conviction (in absentia) for the killing of his father. This document was submitted on 6 June 2016 less than a fortnight before the hearing of the appeal before the First-tier Tribunal and some 11 years after the events which it purported to describe. There is no discussion in the determination as to the provenance of this document.
5. The First-tier Tribunal Judge found the appellant to be credible. The findings are a recital of his claim which the Judge found to be entirely consistent with the documentary evidence and the background material. It is not, therefore, an evaluation of the evidence so much as a recital of it.
6. There were, however, matters raised by the Secretary of State in the refusal decision which went either to the adequacy of the material submitted at the time of the application or to the applicant's credibility. For example, although the respondent made checks with the Albanian authorities, the appellant had only provided Internet links which the respondent was not able to read in English or which did not support his claim that his father was killed by Edmond Muja as a result of a blood feud. Importantly, the respondent noted in paragraph 37 of the refusal decision that checks that the respondent had conducted with the authorities in Albania revealed

"the family members of the [Albanian] national Flutura Dida (your mother) are not confined [*in prison?*] and do not have any conflicts or revenge and blood feud issues with the Muja family or any other family."
7. If accurate, this information from the Albanian authorities effectively demolished the appellant's claim.
8. Whilst the checks that the respondent conducted with the Albanian authorities are not identified, it is reasonable to suppose that the official in Albania who provided that information had consulted the relevant sources or would not have been able to make that assertion. In order to assert that there were no members of the appellant's family 'confined' (which I take to mean were in prison), the checks are likely to have involved a check with the police or judicial authorities.
9. Furthermore, if in 2005, Edmond Muja had been convicted of a murder of the appellant's father and was sentenced, in absentia, to a period of 20 years imprisonment, the conviction apparently belied the assertion made by the official to

the Home Office that there were 'no revenge or blood feud issues' with the Muja family or any other family.

10. On its face, these two documents - the certificate of conviction and the Albanian authorities' response to the Home Office's enquiry - were irreconcilable. Either the conviction was a falsity or the checks had not been made as the Albanian authorities asserted. My provisional view is that there is no room for treating both documents as reliable.
11. It is of course possible that the official in Albania who provided information to the Home Office was wrong, was lying, or did not consult the relevant sources of information. It may be that, although he knew of the conviction of Edmond Muja in 2005, he did not consider that this currently amounted to a blood feud although I would regard this as improbable.
12. The Judge made no reference to this difficulty. It is true, of course, that the respondent did not check with the Albanian authorities that the certificate of conviction was genuine. However, since it was only provided a few days before the hearing, this is understandable. It is also true that the respondent did not seek an adjournment to check the authenticity of the conviction.
13. However, it can also be said that the Judge's reliance on the conviction appears to be on the basis that he found the appellant's account consistent and credible and, on the strength of this, accepted that the documentary evidence in support of it was reliable. This might be classified as a reverse *Tanveer Ahmed* point: if the appellant is reliable; so, too, are the documents he produces.
14. I am satisfied that the treatment by the First-tier Tribunal Judge as to the evidence about the blood feud was materially flawed. In particular, I do not regard that there is sufficient analysis of the issues in the determination to support the conclusion that the appellant was at risk as a result of a blood feud. For these reasons I find there was a material error of law.
15. This was a case where the Judge was required to approach head-on the reliability of these two conflicting sources of information. The starting point is the starred decision of *Tanveer Ahmed* (2002) Imm AR 318, in which the Immigration Appeal Tribunal (Collins J, Mr Ockelton and Mr Moulden) decided that:

"35. In almost all cases it would be an error to concentrate on whether a document is a forgery. In most cases where forgery is alleged it will be of no great importance whether this is or is not made out to the required higher civil standard. In all cases where there is a material document it should be assessed in the same way as any other piece of evidence. A document should not be viewed in isolation. The decision maker should look at the evidence as a whole or in the round (which is the same thing).

36. There is no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants. Doubtless there are cost and logistical difficulties in the light of the number of documents submitted by many asylum claimants. In the absence of a

particular reason on the facts of an individual case a decision by the Home Office not to make inquiries, produce in-country evidence relating to a particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office. "

16. In concluding that the First-tier Tribunal Judge made an error on a point of law, I am mindful that this is a case where the respondent has made checks but, at the date of hearing, had not checked the authenticity of the certificate of conviction. There is normally no obligation upon the respondent to check the authenticity of documents and, in normal circumstances, in accordance with the approach set out in *Tanveer Ahmed* he will not be penalised for failing to do so. However, in the context of this case, the respondent has already made checks with the Albanian authorities. If the certificate of conviction is genuine, the Judge was fully entitled to rely upon it and the information mentioned in the decision letter that the Dida family '*do not have any conflicts or revenge and blood feud issues with the Muja family or any other family*' was wrong. In this event, the First-tier Tribunal Judge reached the correct conclusion.
17. I cannot require the Secretary of State to make those enquiries and I do not do so but they appear to me to be relatively simple and easier for the Secretary of State to make and to be satisfied about the accuracy of the response than if the applicant made the enquiries. Lines of communication already exist for the Secretary of State. If the response from the Albanian authorities is clear-cut, it seems to me that it is likely to be determinative. If the certificate of conviction is genuine, the appellant is likely to succeed on the basis of the findings of fact made by the First-tier Tribunal. If it is a falsity, he fails.
18. I adjourn the hearing for the re-making of the decision to a date no earlier than 17 January 2017 to enable the respondent to make such enquiries as she feels it right to make. I would expect the results of those enquiries to determine the credibility of the applicant. If she chooses not to make those enquiries, the Upper Tribunal Judge who considers the re-making of this decision will have to assess the weight that should be attached to the comments made by the Albanian authorities and to the certificate of conviction.



ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
19 October 2016