



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12852/2016

THE IMMIGRATION ACTS

Heard at Field House
On 17th July 2017

Decision & Reasons Promulgated
On 11th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR J S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Henry Ti (Solicitor)
For the Respondent: Mr T Wilding (Senior HOPO)

DECISION AND REASONS

1. The Appellant is a male, a citizen of Albania. He appealed to the First-tier Tribunal, against the decision of the Respondent, taken on 8th June 2016, to reject his application for refugee asylum status under the United Kingdom's obligations given the Refugee Convention, and the European Convention on Human Rights.
2. The Appellant's appeal was heard by First-tier Tribunal Judge Mayall at Hatton Cross on 22nd December 2016. In paragraph 64 of his determination, the judge said this:-

“Taking all of the matters above cumulatively I regret that, even applying the lower standard of proof set out above, i.e. that of a real risk, I do not accept his claim that he had been threatened by persons whom his father had arrested, associates of such persons. I do not accept that he had been threatened by any organised crime gang. It follows that, if indeed he was threatened at all, he has not disclosed any evidence suggesting who it was that threatened him.”

3. In the Grounds of Appeal, it is suggested that such a conclusion was irrational because the judge had earlier at paragraph 58 expressly recorded that,

“It is however abundantly clear from the documents, that the first incident (the threatening with the axe) occurred during his normal duties as a police officer. According to his own report, and that in the newspaper, he just happened by chance upon his assailant who proceeded to threaten him” (paragraph 58).

The grounds to the Upper Tribunal also draw attention to the *Shekuli* Panorama newspaper article which confirms reports of the attack.

4. At the hearing before me, Mr Wilding, appearing as Senior Home Office Presenting Officer, on behalf of the Respondent Secretary of State, accepted that the nature of the attack made on the Appellant’s father, the targeting of his children, and the source of the threats made to him had all been misinterpreted and misunderstood by the judge, and that there was a clear error of law, such that no findings could be preserved, and the matter had to be remitted back to the First-tier Tribunal to be heard by a judge other than Judge Mayall.

My Consideration of Appeal

5. A large part of the Appellant’s claim is that he is subjected to the “Kanun” in Albania. At question 100 of his interview, when asked what made him leave Albania, he had answered, “the Kanun says up to 17½ years then after that anything can happen up to the killing. They were using me to threaten me and my brother day after day, that my father should stop chasing them”.
6. In relation to this, the judge had stated at paragraph 62 of the determination that,

“The Appellant’s claim that he had been targeted since the age of 12 years, was not credible, given that, even in his own evidence, at interview, he had said that traditionally, under Kanun law, young males under the age of 17½ were not targeted I find it surprising to say the least, that these criminals will be targeting such a young child.”
7. It is clear from what the Appellant said at question 100, however, that he had not at all indicated that young males under the age of 17½ were not targeted for harassment, for threats, or mild physical assaults.
8. Moreover, in **EH (Blood feuds) Albania CG [2012] UKUT 00348** it is clear that children may well be subjected to ill-treatment in other ways.

9. I have concluded that the determination cannot stand and that the appeal should be remitted to the First-tier Tribunal for hearing afresh. It may well be that another First-tier Tribunal Judge will reach a similar conclusion, but before doing so they will need to make clear findings, and not misdirect themselves on the evidence, with respect to the Appellant's circumstances, as well as to the case law.
10. The matter is remitted for a hearing afresh by a judge other than First-tier Tribunal Judge Mayall.
11. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal.
12. An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

8th September 2017