



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

Appeal Number: PA/04285/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11<sup>th</sup> December 2017**

**Determination & Reasons  
Promulgated  
On 10<sup>th</sup> January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**[K K]  
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Akinbolu (Counsel), M & K Solicitors

For the Respondent: Mr P Nath (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge M R Oliver, promulgated on 24<sup>th</sup> July 2017, following a hearing at Hatton Cross on 2<sup>nd</sup> June 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Albania, who was born on [ ] 1997. He appealed against the decision of the Respondent Secretary of State dated 21<sup>st</sup> February 2013 refusing his asylum claim and his claim for humanitarian protection under paragraph 336 of HC 395.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that he has been involved in a blood feud, such that there is no sufficiency of protection available for him in Albania. It is also the case that he has suffered from haemophilia and vitamin K deficiency. With respect to the blood feud he fears the [L] family. He lived on a farm with his parents and sister. The [L] family were their neighbours. They wanted the family's lands because these lands were more fertile. The dispute began in 2007 and the following year the Appellant's father was badly beaten up by the [L] family. The police did not do anything. This was despite the incident being reported. In September 2010, the body of [AL], who had gone to school with the Appellant, was found in the local river. The Appellant's family were connected with the murder. The village elders expelled his family from the village. The situation escalated. This is the background to the Appellant's claim of fear of ill-treatment and persecution if he were to be returned home.
4. The judge rejected the claim that the Appellant was at risk from a blood feud. He held that the Appellant's family did not take the matter to court. When the initial claim to be a victim of a blood feud was refused the Appellant did not appeal that decision. Second, there was no reasonable likelihood that the Appellant would face reprisals from the [L] family on return. Third, the Appellant had been given ample opportunity to provide evidence that treatment for haemophilia and vitamin K deficiency was available in Albania. The Appellant's condition had been adequately treated over many years in Albania and there was no reason to think that this should not continue on return (see paragraph 36).
5. The appeal was dismissed.

## **Grounds of Application**

6. The grounds of application state that the judge erred in law by refusing to grant an adjournment, which had been applied for at the hearing, and by failing to make adequate findings on the credibility of the Appellant's claim to be a party to a blood feud, and also by failing to have regard to the evidence relevant to Article 3 with respect to his health.
7. On 30<sup>th</sup> August 2017, the First-tier Tribunal held that there was no error of law on the part of the judge.
8. When the application was renewed, the Upper Tribunal on 4<sup>th</sup> October 2017 held that there were arguable grounds in the application for the

following reasons. First, by refusing to adjourn the hearing, in order to give the Appellant an opportunity to obtain extra medical evidence, on the availability of treatment in Albania for his medical condition, the judge had arguably interfered with a fair hearing.

9. This is because from the date of the decision letter on 19<sup>th</sup> April 2017 to the date of the hearing on 2<sup>nd</sup> June 2017, there was only a period of about five weeks, whereas the Appellant's representatives required a period of eight weeks in order to get a medical Report. The Appellant arguably did not have a fair opportunity to prepare for the hearing.
10. Second, the country guidance case of **EH [2012] UKUT 00348** was not applied in relation to the threshold for medical treatment cases and the judge failed in this regard to give adequate reasons for his findings.
11. Third, the judge arguably overlooked the relevant medical evidence in rejecting the Appellant's human rights claim based on his medical condition.
12. On 31<sup>st</sup> October 2017 a Rule 24 response was entered by the Respondent.

### **Submissions**

13. At the hearing before me on 11<sup>th</sup> December 2017, Ms Akinbolu, appearing on behalf of the Appellant, relied upon her skeleton argument (of three pages). She submitted that the determination of the judge was very brief. The actual findings were only at the end at paragraph 31. There had been an adjournment request so that the Appellant could procure a comprehensive medical report. This was wrongly rejected.
14. A report by Dr Mary Mathias had already indicated that treatment for haemophilia was deficient in Albania (see page 65 of the bundle), and the medical practitioner concerned had in terms stated as follows: "I first met [K] in 2012 after he entered the UK." He goes on to reflect on how the "care for his severe bleeding disorder in his early childhood was very limited and consequently by the time I met him he had significantly damaged joints ...". The diagnosis goes on to say that, "he has significant lifelong damage in both his knees and ankles and is highly likely to develop some degree of ankylosis ...". This report is dated 23<sup>rd</sup> May 2017.
15. Ms Akinbolu submitted that it was an entirely sufficient basis upon which the judge ought to have granted an adjournment to enable a more comprehensive report to be provided in relation to the availability of treatment, which was already found to be deficient in Albania, were he to be returned back to that country.
16. Ms Akinbolu also drew attention to a more up-to-date letter (which could of course not in itself point to an error of law on behalf of the judge as it was not before the judge) dated 4<sup>th</sup> December 2017. However, she wished to make the point that the situation that the Appellant was in had not ameliorated by any stretch of imagination. She drew my attention to the

first paragraph which reads, “whilst [K] has received ad hoc treatment then in his earlier childhood, this was inadequate to prevent long-term significant joint damage and in addition expose him to a blood borne virus because of the lack of safety of the Albanian blood supply”.

17. Second, Ms Akinbolu submitted that it was entirely unclear from the judge’s determination (see paragraphs 34 and 35) whether he had even accepted the existence of a blood feud in the way that it had been put forward as a risk factor. The determination was by no means clear on this critical issue. It was the basis of the Appellant’s asylum claim after all.
18. Third, in relation in relation to Article 3 of the ECHR, Ms Akinbolu submitted that this was the only issue that the judge did expressly deal with (at paragraph 36) when concluding that, “I find that his condition has been adequately treated for many years in Albania and there is no reason to think that this would not continue on return”. Even so, however, the judge failed to take into account leading decisions such as **Paposhvili [2016] ECHR 1113**.
19. For his part, Mr Nath submitted that there was no error of law. This was because of the following reasons. First, the judge (at paragraph 27) was quite clear that no case had been made out for an adjournment “to obtain expert evidence about the availability of medical services in Albania” because “there had been more than ample time to obtain medical evidence”. Second, insofar as new medical evidence was now produced in the form of a letter from Haemophilia Centre and Thrombosis Unit, at the Royal Free Hospital, dated 4<sup>th</sup> December 2014, this was new evidence and was not before Judge Oliver, and could not go to show that he had erred in coming to a conclusion if the evidence was not before him, which the Appellant now wished to put in issue. Third, as far as the blood feud was concerned, the judge dealt with this adequately (at paragraphs 34 to 36), and took special care to look at the individual circumstances of the Appellant (at paragraph 34). The judge came to a firm view in relation to the failure of the Appellant to demonstrate that he had been a victim of a blood feud. Finally, proper reliance was placed upon the case of **Agyarko [2017] UKSC** which showed that the threshold for exceptional circumstances was very high and such that the Appellant could not possibly have met it. For all these reasons, there was no error of law.
20. In reply, Ms Akinbolu stated that even if one looked at the Home Office bundle itself, it was plain that there was evidence even in the Home Office’s own documentation that indicated a need for an adjournment to enable the Appellant to procure a medical report.
21. Thus, at F1 of the Home Office bundle there was a letter from Islington Social Services, dated 18<sup>th</sup> May 2015 which was quite clear that,
 

“[K] has severe haemophilia and is under the care of Great Ormond Street (being transferred to Royal Free as a adolescent as we speak). He has to inject himself with factor eight every two days and relies on

the health service to provide this. Whilst in Albania he has not been provided with the treatment he requires and as a result had uncontrolled bleeds into his joints ...”.

22. It even goes on to say that, “this inability for him to get the right treatment in Albania is life threatening”. Similarly, there is another letter from the Great Ormond Street Hospital for Children at F18 of the Home Office bundle, and this is dated 4<sup>th</sup> June 2015, which states that, “[K] is from Albania where haemophilia care is virtually non-existent”. It goes on to say that “unfortunately due to the plasma ..... treatment that [K] received in Albania he was infected with hepatitis C and is currently also seeing the hepatitis C service here at Great Ormond Street Hospital ...”. All of this submitted Ms Akinbolu, indicated that treatment for the Appellant was entirely inadequate in Albania.
23. Second, the European Court judgment in **Paposhvili** makes it clear that the appropriate question to be asked was whether the Appellant faces,
 

“A real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy”.
24. This was not a question, submitted Ms Akinbolu, that the judge had asked himself, still less to have answered it in an accurate manner.
25. Third, as far as the blood feud is concerned, the case of **EH [2012] UKUT 00348** recognises that blood feuds in Albania are few and declining. However, in certain areas, particularly in northern Albania, the risk remains and internal relocation is not necessarily available. Indeed, the decision goes on to recognise that in determining whether an active blood feud exists, the fact-finding Tribunal should consider a number of factors. These include the history of the alleged feud, the length of time since the last death, the ability of members of the aggressor clan to locate the Appellant, and the past or likely future attitude of the police.
26. In the instant case, however, the judge had not even referred to the case of **EH [2012] UKUT 00348**, and had not taken into account the factors that needed to be considered. The judge had simply stated that, “I find no reasonable likelihood that he will face reprisals from the [L] family on return”.
27. From this it was not clear what the judge had accepted or what he had rejected. It was not clear whether the judge accepted that a blood feud in fact existed. It was not clear whether, if this was the case, the Appellant would be exempt from such a blood feud. It was also not clear whether the judge actually challenged the existence of the blood feud at all.

### **Error of Law**

28. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, in relation to the Appellant's medical condition it was not the case that "there had been more than ample time to obtain medical evidence" (see paragraph 27).
29. On a matter as serious as this, there were barely five weeks, in which it was doubtful whether the Appellant even would have been able to procure an appointment with a medical expert.
30. Second, and allowing the witness, insofar as the medical evidence was considered, the judge's determination was unsustainable. The judge concluded that, "I find that his condition has been adequately treated for many years in Albania and there is no reason to think that this would not continue on return" (paragraph 36). In point of fact, precisely the opposite is the case as there was evidence, even in the Home Office bundle, both from Islington Children's Services on 18<sup>th</sup> May 2015 and from Great Ormond Street Hospital on 4<sup>th</sup> June 2015. Both sources highlighted the woefully inadequate treatment that the Appellant had received. So much so that the latter even made it clear that the Appellant had infected the hepatitis C and was also now having to see a hepatitis C specialist.
31. Third, in relation to the blood feud the strictures of **EH [2012] UKUT 00348** have not been applied and it is not clear whether the judge accepts a blood feud, or rejects it, or found it to be in existence, but thought that the Appellant would be exempt from it. For all these reasons, the decision was sufficiently in error for Practice Statement 7.2 to be applied in that the effect of the error has to be to deprive a party before the First-tier Tribunal of a fair hearing or of an opportunity for the party's case to be put to and considered by the First-tier Tribunal (see Practice Statement 7.2(a)).

### **Notice of Decision**

32. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the First-tier Tribunal. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Oliver under Practice Statement 7.2(a). The Appellant should have been granted adequate time to procure a comprehensive medical report. I direct that this appeal be not listed before the First-tier Tribunal until ten weeks after this determination. The findings below are not preserved and the matter will be determined de novo.
33. This appeal is allowed.
34. No anonymity direction is made.

Signed

Date 8<sup>th</sup> January 2018

Deputy Upper Tribunal Judge Juss