



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

Appeal Number: PA/06264/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> April 2022**

**Decision & Reasons Promulgated  
On 29<sup>th</sup> April 2022**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**FS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Burrett, Counsel instructed by Kilby Jones Solicitors LLP

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is an Albanian national born on 10<sup>th</sup> March 1961 and she seeks permission to appeal against the decision of First-tier Tribunal Judge Rowlands (“the judge”) promulgated on 12<sup>th</sup> September 2019 dismissing her appeal against the respondent’s refusal of her asylum and human rights claims. The appellant’s minor son, born on 11<sup>th</sup> May 2003, is a dependant upon her claim which relies on a risk of ill-treatment and an ongoing blood feud. As set out at [20] and [24] of the refusal letter, the respondent accepted that a blood feud existed between the appellant’s family and the Bajri family.

2. The grounds to the Upper Tribunal were refused by the First-tier Tribunal Judge Bristow and by Upper Tribunal Judge Kekić but appealed to the Court of Appeal, which quashed the decision of Upper Tribunal Judge Kekić on 27<sup>th</sup> January 2022. The Vice President of the Upper Tribunal granted permission to appeal on 14<sup>th</sup> February 2022 on all grounds.

3. The grounds were as follows:

Ground 1: Failure to assess credibility of a witness and failure to give reasons

4. The judge failed to assess and give reasons for his assessment of the credibility of the appellant's daughter, BN. One of the key aspects to the claim was the appellant's account that her husband had been targeted and approached by masked men in October 2017 and this was corroborated in the daughter, BN's, evidence. She recalled a conversation with her father describing the attempted attack.

5. At [25] the judge stated there was "no evidence to support" this aspect of the claim "other than" the daughter's claimed conversation with her father but then failed to reach any findings as to the credibility or weight of the daughter's evidence. The judge only concluded without giving any reasons that there was no current risk to the appellant and her son. The judge failed to provide a reasoned judgment as to the assessment of the daughter's credibility and the appellant herself. Contrary to **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** insufficient reasoning was given.

Ground 2: Failure to apply the country guidance

6. At [25] to [56] the judge found: "*I am not satisfied to the required standard that despite the fact of the earlier blood feud the risk to her and her son still exists.*" The judge failed to apply the analysis demanded by the country guidance **EH (Albania) v Secretary of State for the Home Department [2012] UKUT 348** which sets out that the assessment of risk in each case must be fact specific. The grounds cited the headnote, which gave guidance in determining whether an active blood feud exists.

7. The judge failed to apply any structured assessment of the factors listed in the country guidance and should have reached findings as to the issues raised by the appellant such that her husband had to go into hiding in Albania, AIR question 36, and that the brother had gone abroad because of the conflict, AIR question 47. The feuding family were renowned as being strong, AIR question 61, and the family were connected to the Socialist Party and had influence around Albania, AIR questions 68 to 74, and, further, nobody had been punished for the killing of X, the appellant's relative, AIR question 156.

8. Judges are obliged to take country guidance into account unless there are very strong grounds supported by cogent evidence justifying them not to do so, **SG (Iraq) v SSHD [2012] EWCA Civ 940**.

Ground 3: There was an erroneous assessment of sufficiency of protection and internal relocation

9. The judge failed to reach a reasoned and sustainable conclusion as to the sufficiency of protection and internal relocation. At [27] the judge relied on and accepted the report by the Belgian Office of the Commissioner General for Refugees and Stateless Persons (“Cedoca”) referenced by the respondent but failed to make any reference to the structured assessment of risk set out in **EH**. That was fundamental. The judge failed to ask himself whether the Cedoca Report provided strong grounds supported by cogent evidence to allow him to depart from the country guidance. Although the Cedoca Report is not unequivocal, as noted in the respondent’s CPIN note 2.5.4 – 5, various sources expressed doubt about the police’s success in dealing with blood feud, lack of police resources and corruption within the judiciary.
10. As to internal relocation, the judge found that the family “had dealt with it themselves” by previously moving from place to place, [28]. The judge failed to consider and apply the country guidance in **EH**, which stated that a crucial factor in establishing whether internal relocation is a real possibility is the geographical and political reach of the aggressor clan and the government connections and extent of those connections but the judge undertook no assessment of those details and the son had previously stopped attending school because he was afraid of being targeted in the blood feud (see the appellant’s witness statement and the son’s witness statement). Thus, the judge’s assessment of risk and internal relocation was materially deficient and in the absence of an application of the country guidance the judge’s assessment of internal relocation was sustainable.

Ground 4: Failure to consider a central aspect of the case and features leading to risk

11. The judge’s findings were incorrectly predicated upon an assumption that the appellant’s son would not be at risk because he had previously not come to harm in Albania ([24] to [28]). In so finding, the judge ignored the key aspect of the claim, which was that the appellant’s son is now at the age where he is likely to be targeted in the blood feud and that was specifically why the appellant had fled Albania. It was not in dispute that killings and attacks of male members of the family had occurred as part of the blood feud. The judge had failed to analyse this aspect of the case.
12. At the hearing Mr Burrett submitted that there had been a complete absence of the application of country guidance **EH (Albania) v Secretary of State for the Home Department [2012] UKUT 348** in relation to blood feuds in Albania.

13. To that end, Mr Burrett also submitted that there was a lack of material findings. For example, the son's evidence was that whilst relocated he had been unable to go to school and the judge had failed to make findings on that aspect of the claim. The judge should have made findings on what the threat was and further should have made findings in relation to the threats made to the husband, who was apparently no longer in Albania, and there was no finding as to what extent that was accepted or not.
14. Mr Burrett submitted that in this case the judge had found that the appellant had told the truth about the blood feud and stated at [24] that the appellant had not personally been threatened but the issue was in terms of the direct risk to her son. At [25] there was a lack of proper findings on the attempt on the appellant's husband and although those factors alone may not constitute an error of law, in the light of the complete failure to apply the country guidance, that was an error.
15. Mr Walker conceded that there was a material error of law and in particular the judge failed to apply the structured approach of **EH (Albania)** and thus failed to consider and determine whether there was an active blood feud existing.

#### Analysis

16. Insofar as material, the headnote of **EH (Albania)** at [6] and [7] sets out as follows:
  - “6. In determining whether an **active** blood feud exists, the fact-finding Tribunal should consider:
    - (i) the history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud;
    - (ii) the length of time since the last death and the relationship of the last person killed to the appellant;
    - (iii) the ability of members of the aggressor clan to locate the appellant if returned to another part of Albania; and
    - (iv) the past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek protection from the Albanian authorities.
  7. In order to establish that there is an active blood feud affecting him personally, an appellant must produce satisfactory individual evidence of its existence in relation to him. In particular, the appellant must establish:
    - (i) his profile as a potential target of the feud identified and which family carried out the most recent killing; and

(ii) *whether the appellant has been, or other members of his family have been, or are currently, in self-confinement within Albania.*"

17. The judge may have considered the history of the feud as recommended at [6(i)] but failed to consider whether it was an *active* blood feud and for example in the light of [6(iii)] of the headnote of **EH** to consider whether the members of the aggressor clan could locate the appellant if returned to another part of Albania. In particular, the judge failed to recognise in accordance with [7(i)] the particular profile of the potential target and that is the fact that the son, born on 11<sup>th</sup> May 2003, was becoming older and as such the threat would increase. It was the appellant's claim that the increasing threat to her son as he got older was a significant part of her case and that it was supported by her daughter's evidence. The judge addressed these aspects of the claim only in brief terms and indeed, there was an absence as to whether the daughter's evidence was considered credible or not. As pointed out, that deficiency would in turn taint the alternative basis for the judge's decision in relation to the adequacy of protection and the scope for internal relocation.
18. **SG (Iraq)** at [47] specifically enjoins judges to follow country guidance determinations stating, *'It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so'*.
19. It would appear that key elements of the claim were omitted from consideration and a lack of reasoning given as to why country guidance was not followed.
20. On that basis, I find a material error of law as indeed conceded by Mr Walker. This is an elderly appeal, and the son is now an adult and would be able to make an asylum claim in his own right. However, at the date of decision by the First-tier Tribunal judge on 12<sup>th</sup> September 2019, the appellant's son was still a minor. Owing to the nature of the findings to be made, the matter should be remitted to the First-tier Tribunal.

### **Notice of Decision**

The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

### **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 H Rimington

Date 20<sup>th</sup> April 2022.

Upper Tribunal Judge Rimington