



IAC-TH-WYL-V2

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

Appeal Number: AA/06487/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19 November 2015**

**Decision & Reasons Promulgated
On 3 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bhachu of Counsel

For the Respondent: Ms Brocklesby-Weller, Senior Home Office Presenting Officer

DECISIONS AND REASONS

1. The appellant was born on 20 September 1986. He is a citizen of Albania.
2. He appealed against the Respondent's decision dated 20 March 2015 to refuse to grant him asylum, humanitarian protection and on human rights grounds. That appeal was heard by Judge Graham who in a decision promulgated on 20 August 2015, dismissed the appeal because she found that the appellant was not a credible witness with regard to events in

Albania, that he was not at risk on return and that as regards Article 8, he did not satisfy the Immigration Rules.

3. The grounds claim the judge failed to take account of material evidence. In particular, the report from the Chief of Police Station, Directorate of Tirana District Police at E8 of the Respondent's bundle. That report had been submitted to support the claim but the judge failed to make a finding in relation to that evidence which was relevant to the existence of the blood feud.
4. Judge Foudy granted permission to appeal as it appeared to her that the judge had not taken the report into account which might have affected the judge's findings upon credibility and her assessment of risk on return.
5. The respondent filed a Rule 24 response on 5 October 2015. She submitted that the judge directed herself appropriately. Whilst it was conceded that the judge did not make any specific findings about the report, it was clear from [8] of her decision that she had taken into account all the documents placed before her, including the police report. The judge found the appellant's credibility was central to the appeal and found against him on every aspect of his claim. See paragraph [39]-[51], which concluded "*I do not accept even the core of the appellant's account and I make comprehensive adverse credibility findings.*"
6. The police report referred to an attack on the appellant in Tirana in 2010 and that it involved the A Tribe from Kukes. That was in direct contradiction to the appellant's own evidence as outlined at [20] of the decision where it was stated that the police investigated the attack in 2010 but could not find the appellant's attackers as they were masked. It was therefore unclear how the police in Tirana could provide information that the appellant was attacked by the A Tribe. That information could only have been provided by the appellant.
7. In view of the fact that the appellant's claim had been disbelieved in its entirety it was difficult to see that the judge's failure to make a specific finding in relation to a document that contradicted the appellant's evidence, could amount to a material error of law.

Submissions on Error of Law

8. Ms Bhachu submitted that the report at E8 of the respondent's bundle from the Chief of Police Station, Directorate of Tirana District Police went to the core of the account because it evidenced that the appellant had made a complaint to the police in Tirana consistent with his claim and it was material because it showed he was in Tirana at the time, an attack took place, a blood feud was in existence and that it was the second of two incidents.
9. Ms Brocklesby-Weller conceded that the judge had erred in not referring to the report but the error was not material. That was because the

appellant's credibility was multi-dimensional as between himself and his brother and with regard to them both, the judge had made adverse credibility findings.

Conclusion on Error of Law

10. The issue regarding the report at E8 of the respondent's bundle was raised at a Case Management hearing on 3 July 2015. It was put to the Presenting Officer at that hearing that the document at E8 of the respondent's bundle was capable of verification and the Home Office was invited to obtain such verification. In the event, no such verification was obtained by the Home Office, however, the skeleton of Ms Bhachu was clear at [6] and [7] that the report was relied upon and issue was taken that despite the appellant having provided such documentation, despite the means being available that such documentation could have been verified by the respondent, the respondent had failed to make any effort in that regard.

11. The respondent's own guidance Blood Feuds: Albania October 2014 reads inter alia as follows:

"Documents originating from the Albanian courts, police or prosecution service, if genuine, may assist in establishing the existence of a blood feud at the date of the document relied upon, subject to the test of reliability set out in A (Pakistan) [2002] UKIAT 00439 [2002] Imm AR 318(Tanveer Ahmed)" See 1.3.6

Further:

"Staff at the British Embassy in Tirana are in a position to respond to queries from UK asylum decision makers via a newly introduced referral process. In cases where a person is not subject to state persecution (as would be the case in all "blood feud" claims) local checks can verify details of the person and all Albanian court judgments can be verified through the Prosecutor General's Office in Tiran2". See 1.3.7

12. The substantive hearing was unusual in that Ms Bhachu having signed in as representing the appellant, was called away urgently such that substitute Counsel, Mr Sawar represented the appellant. He adopted Ms Bhachu's skeleton but on checking the judge's Record of Proceedings, I can find no reference to the police report at E8. Its existence appears not to have been raised by Mr Sawar or the Presenting Officer.

13. Clearly, the judge erred in not referring to the police report at E8 which was conceded by Ms Brocklesby-Weller. I must decide whether the judge's failure to engage with that report was material, particularly bearing in mind her comprehensive adverse credibility findings both with regard to the appellant and his brother.

14. The existence of the report was always a core element of the appellant's claim. He submitted the report with his application and it was included within the respondent's bundle. In her Reasons for Refusal Letter, the respondent said that the documentation submitted had been considered under the principles set out in **Tanveer Ahmed**. The view of the Secretary of State was that they were entirely self-serving and did not assist the appellant's credibility. The document at E8 was not specifically referred to, however, the reasons for refusal made it clear that the appellant's account was rejected in its entirety.
15. The judge recited at [8] the documents she had considered, however, whilst she did consider some of the documentation at [43] - [44], she omitted to make any reference to nor carried out any analysis of the police report at E8. In particular, she did not consider whether it was genuine in terms of a complaint having been made to the police or whether, if such a complaint had truly been made to the police, whether the facts reported were truthful such that she could rely upon them.
16. I take into account that whereas the judge referred to the documents at E5 and E6 at [43] - [44] she made no comment upon whether she could rely upon them in terms of **Tanveer Ahmed**. Rather, she avoided coming to that decision by reference to inconsistencies in the appellant's evidence. I find that the judge was obliged to engage with the documentation and make findings as to whether she could rely upon it, such analysis having been apparently overlooked in the extensive adverse credibility findings arising from the oral evidence of the appellant and his brother. I find the judge's failure to engage with the documentation was a material error of law.

Notice of Decision

17. I set aside the judge's decision in its entirety which must be re-made in the First-tier following a de novo hearing. Directions are attached to this short decision.

Anonymity direction continued.

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 his 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 19 November 2015

Deputy Upper Tribunal Judge Peart



IAC-HW-MP-V1

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For the Respondent: Ms Brocklesby-Weller, Senior Home Office Presenting Officer

DIRECTIONS

1. Remit to the First-tier Tribunal, for a de novo hearing.
2. List first available date. Time estimate four hours.
3. Not later than ten working days prior to the hearing, the parties must file with the First-tier Tribunal and serve upon each other, all documentary evidence (including witness statements) upon which they intend to rely, as well as any skeleton arguments.

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Signed

Date 19 November 2015

Deputy Upper Tribunal Judge Peart