



IAC-AH-DP/DH-V1

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

Appeal Number: AA/10439/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17th July 2015**

**Decision & Reasons Promulgated
On 4th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**N T
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins of Counsel instructed by Sentinel Solicitors
For the Respondent: Mr D Clark, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant has appealed against a decision of Judge of the First-tier Tribunal Monaghan (the judge) promulgated on 12th March 2015.
2. The Appellant is a male citizen of Albania born 4th June 1999 who arrived in the United Kingdom clandestinely on 12th November 2013. His asylum claim was refused on 13th November 2014.

3. However because the Respondent accepted that the Appellant was an unaccompanied minor for whom there were no adequate reception conditions in Albania, he was granted discretionary leave to remain until 4th December 2016. The Appellant appealed pursuant to section 83 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). His appeal was heard by the judge on 25th February 2015.
4. The judge accepted the Appellant as a credible witness, and accepted his claim that there was in existence a blood feud between the Appellant's family and another unknown Albanian family. The judge accepted that the Appellant had established that there was a threat against himself, and accepted that the Appellant was a member of a particular social group with reference to the 1951 Geneva Convention.
5. The judge however dismissed the appeal, finding that the Appellant had the option of reasonable internal relocation within Albania, and that there existed in Albania a sufficiency of protection.
6. The Appellant was subsequently granted permission to appeal to the Upper Tribunal.

Error of Law

7. The appeal came before me on 29th May 2015. It was contended that the judge had erred in law in his consideration both of internal relocation and sufficiency of protection.
8. The Respondent accepted that the judge had erred in law, noting that in considering internal relocation the judge had failed to make any findings as to whether the Appellant was actually in contact with his family members in Albania. The Respondent's view was that if the Appellant is in contact with his family, the Tribunal could consider whether it would be viable for the Appellant to relocate with the support of family members. The Respondent did not challenge findings of fact made by the judge to the effect that there was in existence a blood feud, and that the Appellant had established that there was a threat against himself.
9. I found that the judge had erred in law in not taking into account that the Appellant was from Shkoder in the north of Albania where Kanun law predominates, and that EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) indicated that there was no sufficiency of protection in those areas where Kanun law predominates.
10. I found that the judge had erred in considering internal relocation, by not making findings as to whether the Appellant was in contact with family members.
11. With the agreement of both representatives, I indicated that the findings of fact made in relation to the blood feud were preserved, and these findings of fact were set out in paragraph 5 of the Appellant's grounds contained within the application for permission to appeal. The hearing

was adjourned for a continuation hearing to take place so that an interpreter could be provided and evidence given in relation to internal relocation and sufficiency of protection.

12. Full details of the application for permission to appeal, the grant of permission, and my reasons for finding an error of law are contained in my decision dated 1st June 2015.

Re-Making the Decision

Preliminary Issues

13. The Appellant attended the hearing together with an appropriate adult. I explained the procedure that would be adopted to the Appellant, and the roles of those within the hearing room. There was no difficulty in communication between the Appellant and interpreter and the language used was Albanian.
14. I ascertained that I had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed. I had on file the documents submitted before the First-tier Tribunal. The Appellant's solicitors had submitted a further bundle, comprising three sections, which included both the Appellant's bundle and Respondent's bundle that had been before the First-tier Tribunal.
15. I received from Mr Collins case law, ME (Albania) [2014] EWCA Civ 902, and TN and MA (Afghanistan) [2015] UKSC 40.

Oral Evidence

16. The Appellant adopted as his evidence his witness statements dated 30th January 2014 and 17th February 2015, and the contents of his interview record dated 2nd April 2014 as his evidence. His evidence as contained in those documents may be briefly summarised as follows.
17. The Appellant is from a village in the Shkoder district in northern Albania. He lived with his parents, and had two brothers and three sisters.
18. The whereabouts of his brothers are unknown, although he believes they may be in Greece. They left Albania for economic reasons about two years before the Appellant left Albania.
19. The Appellant has three sisters who are all married and living in the Shkoder area.
20. One of the Appellant's cousins was arrested in Italy, following a shooting, in which it was alleged that the Appellant's cousin had shot another Albanian. Arrests were made by the Italian police and the Appellant's cousin and others were arrested and were discovered to be armed, and in possession of a large quantity of stolen goods.

21. The family of the Albanian man who had been shot threatened the Appellant's family with a blood feud. Due to the fact that the Appellant's cousin's father was deceased, the threats were passed on to the Appellant's father.
22. The Appellant's father left Albania due to the threats. The Appellant was told to stay indoors. His mother and her cousin had made an attempt to try and have him excluded from the blood feud but the other family refused.
23. In the middle of August 2013 shots were fired into the Appellant's house.
24. Arrangements were made for the Appellant to leave the country. He travelled by air to Italy on 30th August 2013 remaining in Italy for two weeks before travelling to Belgium and staying there for two months. On 12th November 2013 he entered the United Kingdom hidden in the back of a lorry.
25. The Appellant has four paternal uncles in Albania, but all have gone into hiding. Before he left Albania the Appellant's family contacted the police but they could not offer protection. The Appellant was in telephone contact with his mother when he left Albania, but he lost contact with her when he was in Italy. He has tried to telephone her but there has been no response to his calls.
26. The Appellant was questioned by both representatives. His oral evidence may be briefly summarised as follows.
27. The Appellant described the name of the town where his family lived, stating that 500 or 600 households comprised the town. His home did not have a postal address. He had never visited Tirana in Albania.
28. The Appellant explained that when he telephoned his mother's number there was no ring tone. Social services had not advised him to contact the Red Cross.
29. When cross-examined the Appellant confirmed that he had three married sisters in Albania, four paternal uncles, three paternal aunts, three maternal uncles and two maternal aunts. He had previously disclosed this in interview. He did not have the contact details of these family members. He said that they all used to live in villages near to his family home. They had telephones.
30. The Appellant confirmed that female family members were not targeted in a blood feud. He agreed that there would be no reason for female family members to leave their homes because they were not targeted. It was put to the Appellant that if he returned to Albania he might be able to contact his mother and sisters, and his response was that he would be killed if he went back. The Appellant denied that he was being untruthful when stating that he could not contact his family members.

31. The Appellant was asked whether, if he could contact his mother, she would move with him to Tirana. His response was that he would be killed, and he did not think his mother would move to Tirana, and she would be unable to protect him even if she went to Tirana with him.
32. The Appellant confirmed that he had never met the other family involved in the blood feud, and he did not know if they had any influence with the police in Albania.
33. The Appellant was asked about the Italian newspaper article that had been produced to show that the Appellant's cousin had been involved in a shooting incident in Italy and had been arrested, and he stated that this was obtained via the internet.
34. When re-examined the Appellant was how many of his members lived outside the Shkoder area, and he confirmed that none did.

The Respondent's Submissions

35. I was asked to make a finding that the Appellant has family members living in Albania. Mr Clark submitted that the Appellant had not given evidence about the reach, influence and commitment of the other family in the light of the feud, to prosecute that feud.
36. Mr Clark submitted that the Appellant's family members could assist him if he went back to Albania, and pointed out that they had helped him to leave the country. I was asked to find that it would it not be credible that the Appellant could not contact his family.
37. Mr Clark also submitted that it would be reasonable for the Appellant's mother to travel to Tirana with him to relocate there.
38. Mr Clark also submitted that the Appellant was 16, and background information on Albania indicated that many children left school earlier than that, and it would not be unduly harsh for a 16 year old to relocate to Tirana, even without an adult.
39. Mr Clark submitted that the Appellant had not given any evidence as to the commitment of the aggressor family to prosecute the blood feud, and on that basis the appeal should fail.
40. The Supreme Court decision TN and MA related to tracing, and Mr Clark submitted that it was difficult to see how the Appellant had been prejudiced because his family had not been traced. There was an indication in the Home Office minute contained within the Respondent's bundle, which sets out the reasons for granting discretionary leave to remain, that some steps had been taken by the British Embassy in Tirana to carry out verification checks on the Appellant and to trace his family. That minute showed that the family certificate for the family, confirmed that they were living at an unspecified address in Shkoder, Albania, and

that the Appellant left Albania for Italy by air on 30th August 2013, which was consistent with his account.

41. I was asked to dismiss the appeal on the basis that the Appellant had a reasonable option of internal relocation, and a sufficiency of protection existed in Albania.

The Appellant's Submissions

42. Mr Collins referred to the third paragraph of the head note to EH, submitting that this confirmed that on the facts as found in this case, there was no sufficiency of protection in the Appellant's home area.
43. I was reminded that the Appellant's account had been accepted as to the existence of a blood feud, and that he was at risk because of that.
44. I was asked to note that the Appellant had provided to the Respondent details of the village where he lived and had given as full an address as existed. It was not clear from the Home Office minute what steps had been taken to trace the Appellant's family.
45. Mr Collins submitted that as the Appellant's evidence was that he was unable to contact his mother, it was difficult to draw a rational conclusion that his mother could accompany him to Tirana. I was asked to conclude that it was unreasonable for a 16 year old boy to live alone in a city that he had never previously visited.
46. Mr Collins pointed to the Appellant's Statement of Evidence Form and in Part A, he had given his address in Albania, and had named the school that he had attended. In Part B he had given the names of his family members, and the addresses of his mother and sisters. The comment in the Home Office minute that the Appellant had provided limited information about his family members, and failed to provide contact details and an address, was not accepted.
47. I was asked to accept the Appellant's evidence that he had lost contact with his family and had not been able to contact them since he reached the United Kingdom.
48. I was asked to find that this appeal could be distinguished on the facts, from the appeal considered in MF (Albania). In that case it had been found that the Appellant's mother could if necessary live with him in Tirana and provide support. That finding was made on the basis that the Appellant's mother could be contacted. Mr Collins referred to paragraph 20 of MF (Albania) in which it was accepted that if a minor Appellant's mother was not prepared to move with him to Tirana, it could properly be argued that it would be unduly harsh for a minor Appellant to live in Tirana on his own.

Mr Collins summarised the Appellant's case as being that if he returns to Albania, there was no sufficiency of protection in his home area, and it would be unduly harsh for him, as a child, to live in Tirana with no family support.

49. In relation to tracing family members, I was asked to consider the evidence in the round and to bear in mind that the Appellant had provided the Respondent with all the information that he could, and it was not clear what attempts had been made by the Respondent to trace the Appellant's family members. I was asked to find as a fact, that the Appellant had been unable to contact his family.
50. At the conclusion of oral submissions I reserved my decision.

Preserved Findings

51. The findings of the First-tier Tribunal that are preserved are set out below;
 - "32. The Appellant's credibility is not damaged by his failure to claim asylum in various safe countries en route. This is because he has provided a reasonable and credible explanation for that failure; namely that he was under the control of those agents to whom his family had paid money to facilitate his journey to the United Kingdom. A particular striking part of his oral evidence was the fact that he told me that whilst in Belgium he stayed with the people he was with and was kept for a two month period in a room in an old house.
 33. I do not share the Respondent's concern as to the alleged discrepancies in the account given of the shooting incident which predicated the alleged blood feud. I accept that the differing answers given by the Appellant were not inconsistent or contradictory. He first said that they had heard that there had been a shooting outside a club. He later said that he knew that there was an argument, and that they were together having coffee in a coffee shop and then an argument started and then fighting took place, the shooting happened that sort of thing. The Appellant explains that these are different parts of one and the same story - it did start in a coffee shop and then carried on to the nightclub. Further I take into account that the Appellant was only 14 years of age when these events occurred and that he has consistently said throughout that his family did not tell him many of the details of the incident because he was so young. That too in my view is an entirely credible explanation on his part. He cannot be expected to know all the precise details of the event in those circumstances, just the substance of it. For similar reasons he is unlikely to know whether the victim of the shooting was wounded or killed. Similarly he is unlikely to know the name of the family of the victim.
 34. The Respondent's further concerns that there was no objective evidence to support the claim that the incident was reported in the media have now been resolved by the production in evidence of an online report from a known Italian newspaper, the translation of which appears at P18 of the Appellant's bundle. This records that on 03/02/13 there was a fight in front of a pub involving four Albanians and that shots were fired. Subsequently two men ZP and NT (the

Appellant's cousin) were arrested a couple of days later after a raid. The two young men were said to be armed and were in possession of stolen goods with a value of more than EUR50,000 at the time of their arrest. The gun which fired the shots could not be found. The report was dated 19/10/13. The report had appeared because the two men had appeared the day before in court for a preliminary hearing and were sentenced. The Appellant says this was the report his family saw but of course it cannot be given that it was dated a month after he left Albania. I accept however that given the seriousness of the incident, the fact that guns were fired and that there followed a police raid involving dozens of police and a significant amount of valuable stolen items were found that it is highly likely it was reported in the Italian media at the time of the incident itself or shortly thereafter when the men were arrested. The fact that this is an online report means that I attach no less weight to it than the paper version.

35. Given the report and given that I find the Appellant a credible witness who did not attempt to exaggerate to embellish his story and has been consistent about what little he knew I accept and find there is in existence a blood feud between his family and another unknown Albanian family.
36. In making this finding I have also had regard to the case of EH. I have considered the history of the feud and the notoriety of the incident which led to it which is shown by the newspaper report. I cannot be certain whether the victim was killed or seriously wounded. The Appellant himself does not know. However it was clearly a most violent incident as confirmed by the report which states that iron bars were used first of all and that three shots were heard and that 7.65 calibre shell casings from the gun were found on the floor. It was also noted that upon the police raid a pistol, a replica of a Smith and Wesson (which had been fired), dozens of other bullets and a long rifle were recovered.
37. EH also reminds me that the Appellant must establish his profile as a potential target and whether he or other family members are or have been in self-confinement. As the Appellant is the youngest male cousin and given that NT's father is deceased the threat has been passed on to his own father, brothers and himself. His profile is therefore established in this regard. As I find him a credible witness I accept his account that he was himself in confinement in Albania before he fled after shots were fired into his house whilst he was at home. Therefore the Appellant has established that there is a threat against himself.
38. I accept it is reasonably likely therefore that the Appellant is the subject of a blood feud in Albania and therefore he is a member of a particular social group which engages the Convention."

My Conclusions and Reasons

52. I have taken into account all the evidence both oral and documentary placed before me, together with the submissions made by both representatives. I have considered the evidence in the round and taken into account the circumstances at the date of hearing.

53. The burden of proof is on the Appellant and the standard of proof can be described as a reasonable degree of likelihood. I am conscious of the need to take great care before making adverse findings of credibility in asylum cases.
54. The issues before me relate to a sufficiency of protection and internal relocation. I will deal firstly with sufficiency of protection in the Appellant's home area. I set out below paragraph 3 of the head note to EH;
 3. The Albanian state has taken steps to improve state protection, but in areas where Kanun law predominates (particularly in northern Albania) those steps do not yet provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant. Internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan.
55. The First-tier Tribunal found that an active blood exists, and affected the Appellant. The Appellant lived in Shkoder in northern Albania where Kanun law predominates. Applying the principles in EH, to the facts as found by the First-tier Tribunal, I find that there is no sufficiency of protection for the Appellant in his home area.
56. Therefore I have to consider whether there is a reasonable option of internal relocation, to another area where there would be a sufficiency of protection. I have carefully considered the evidence given by the Appellant, which is contained within his interview record, witness statements, and oral evidence before the First-tier Tribunal and the Upper Tribunal. I accept that he has proved to the lower standard of proof that he is not in contact with any family members in Albania, and has not been in contact with them since he travelled from Italy to Belgium, en route to the United Kingdom.
57. I find that the Appellant's evidence on this point has been consistent. I accept that consistency does not automatically mean that an account is true, but taking into account that the Appellant has not only been interviewed on this point, but has been cross-examined on two separate occasions, I find it is appropriate to place weight upon the consistency of his evidence.
58. It is not the Appellant's case that he has no relatives in Albania. He has explained that his two brothers left for economic reasons prior to the existence of the blood feud, and that his father left because of the blood feud. The Appellant confirmed, and I accept his evidence, that his mother and his three married sisters remain in Albania. The Appellant disclosed in his Statement of Evidence Form, answers in interview, and witness statements, the addresses that he had for his mother and sisters. The Appellant explained, and I accept this evidence, that their houses do not have an exact postal address. The Appellant also disclosed to the

Respondent in his Statement of Evidence Form, the name of the school that he attended.

59. The Appellant provided in interview, the names of his paternal uncles and explained that they had also gone into hiding because of the blood feud.
60. In my view the Appellant has provided to the Respondent as much information as possible in relation to the whereabouts of his mother and sisters. It is clear that some steps were taken to verify this evidence, as the Respondent refers in the Home Office minute granting leave, to the family certificate of the Appellant's family, in the area where he explained they lived, and also finding evidence that the Appellant had left Albania by air on the date that he claimed, and travelled to Italy which supports his account in that respect.
61. I am satisfied that as at the date of the hearing before me, that the Appellant was not in contact with his family, and had been unable to make contact with them since travelling from Italy to Belgium on his way to the United Kingdom. I accept the Appellant's account that he did have a telephone contact number for his mother but that when that number is called there is no ring tone.
62. Internal relocation was considered in EH and in paragraph 69, the Respondent's current guidance on internal relocation contained within the May 2012 Operational Guidance Note is set out. The Upper Tribunal recorded the following at paragraph 70 of EH:

"Internal relocation will be effective to protect an Appellant only where the risk does not extend beyond the Appellant's local area and he is unlikely to be traced in the rest of Albania by the aggressor clan. A crucial factor in establishing whether internal relocation is a real possibility is the geographical and political reach of the aggressor clan: where that clan has government connections, locally or more widely, the requirement to transfer civil registration to a new area, as set out at 2.4.4 above would appear to obviate the possibility of 'disappearing' in another part of the country, and would be likely to drive the male members of a victim clan to self-confinement in the home area as an alternative. Whether internal relocation is reasonable in any particular appeal will always be a question of fact for the fact-finding Tribunal."
63. The Appellant has been unable to give any comprehensive details about the aggressor clan. He has not for example claimed that they are a powerful clan with influence either in government or police. His response when asked about the other family involved in the blood feud, is that he does not know any details. The First-tier Tribunal found it credible that his family would not have informed him of all the details, because of his young age.
64. The fact that the Appellant is not able to give evidence that the aggressor clan is a powerful clan with influence throughout Albania, does not assist his case, but in my view is not fatal to it.

65. What is clear from the facts found by the First-tier Tribunal, is that the incident that led to the blood feud occurred in Italy not in Albania. The aggressor clan were able to locate the Appellant's family in their home area, and shots were fired into the Appellant's home. These findings made by the First-tier Tribunal were not challenged and are preserved. The issue is whether the Appellant could relocate to another area without that relocation being unjustly harsh, and whether he would receive sufficiency of protection in the area to which he relocated.
66. Internal relocation must be considered in the light of the findings that I have made that the Appellant is not in contact with his family and is 16 years of age.
67. The Court of Appeal in MF (Albania) agreed with the Tribunal finding that it would not be unduly harsh to expect a minor Appellant's mother to relocate to Tirana to provide him with support. In this case it is suggested that the Appellant could reasonably relocate to Tirana.
68. I set out below in part paragraph 20 of MF (Albania);

"20. In my view there is force in Ms Laughton's point, so far as it goes. If there were evidence that the Appellant's mother was not prepared to move to Tirana, even though it would not be unreasonable for her to do so, the Appellant could properly argue that conditions for him as a minor living alone in a big city would be unduly harsh."
69. In this case, there is no evidence as to whether the Appellant's mother would agree to relocate to Tirana. The Appellant has been unable to contact his mother. Therefore on those facts, if the Appellant relocated he would do so alone. He has never previously visited Tirana. He would not have family support. As he is a minor, I find on those facts, that it would be unduly harsh for him to relocate to Tirana.
70. I therefore conclude that there is no sufficiency of protection for the Appellant, and in the absence of contact with his family and the absence of family support, means that he does not have a reasonable internal relocation option open to him. He is therefore entitled to a grant of asylum.
71. As this is an appeal pursuant to section 83 of the 2002 Act, human rights are not in issue.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I allow the appeal on asylum grounds.

The Appellant is not entitled to humanitarian protection.

Anonymity

The First-tier Tribunal made an anonymity direction. This is continued pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings shall directly or indirectly identify the Appellant. Failure to comply with this direction could lead to a contempt of court. This order is made because the Appellant is a minor.

Signed

Date 25th July 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee is paid or payable. There is no fee award.

Signed

Date 25th July 2015

Deputy Upper Tribunal Judge M A Hall