



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

Appeal Number: AA/05380/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8th January 2016**

**Decision &
Promulgated
On 27th May 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**PK
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms A Everritt; Home Office Presenting Officer

For the Respondent: Ms F Iveson; Counsel instructed by Howe & Co Solicitors

DECISION AND REASONS

1. The First-tier Tribunal has made an anonymity order and for the avoidance of any doubt, that order continues. PK is granted anonymity

throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. This is an appeal against a decision and reasons by First-tier Tribunal Judge Taylor promulgated on 25th September 2015 in which he allowed an appeal against a decision made by the Secretary of State on 11th March 2015, to refuse the claim for asylum made by PK.
3. The appellant before me, is the Secretary of State for the Home Department and the respondent to this appeal, is PK. However for ease of reference, in the course of this decision I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this decision, refer to PK as the appellant and the Secretary of State as the respondent.
4. The appellant is an Albanian national. Borrowing from paragraph [9] of the decision of the First-tier Tribunal Judge, I summarise the background. The appellant is married with three children. On 7th April 2014 the appellant's 18 year old son, MK, was involved in an argument and a fight, in which a one of the victims died of a stab wound, and the appellant's son stabbed another several times such that he was in hospital for one and a half months. On the same day the appellant had travelled to Montenegro and only became aware of the incident when his wife called and asked him to return because of the fight. The appellant started to return but received a further call from his wife to tell him that his son had caused a killing and wounding, and as a result, the family was in a blood feud. The appellant therefore remained in Montenegro with his sister in law, and had not returned to Albania since. The appellant's son was arrested on 8th April 2014 for murder and causing injury. The Appellant had not personally had any contact with any member of the victims family, but the father of the deceased victim

father had made threats, that he had nothing to lose after the death of his only son. The appellant believes that the deceased's father was adamant for revenge under Kanun law. The appellant had asked his cousin to seek the assistance of the Peace Reconciliation Missionaries, and they visited the deceased's family with the elders of the village on 24th or 25th May 2014 but were told that there was no hope of reconciliation. The appellant stated that the remaining male members of the family were currently in hiding in Albania and his son had been in prison since 8th April 2014. His son had one court appearance but had not yet been sent for trial. The appellant had not seen, or spoken to his son since his arrest. The appellant remained in hiding in Montenegro until he travelled to the UK on 12th June 2014. He had no problems in Montenegro.

5. The respondent's case as set out in her reasons for refusal letter of 11th March 2015 is set out at paragraph [7] of the Judge's decision and nothing is to be gained by repeating the content in this decision. At paragraphs [10] and [11] of his decision, the Judge sets out the appellant's evidence and at paragraphs [12] and [13] he sets out the evidence of the two witnesses called by the appellant in support of the appeal. Neither of these witnesses were in Albania at the time of the incident on 7th April 2014, but both had heard of the events.
6. The submissions made on behalf of the respondent are set out at paragraph [14] of the Judge's decision. In very broad terms, the respondent submitted that there was no trace in court records of the appellant's son's claimed conviction for murder and that in any event, even if the murder had taken place, there was sufficient protection available to the appellant in the south of the country. At paragraph [15], the Judge records the submissions made on behalf of the appellant. In very broad terms, the appellant submitted that there was overwhelming evidence that the murder occurred, and that a blood feud would ensue as both families are from the north. The attempt at

reconciliation had failed and all male members of the family were in hiding. The deceased's family had connections, which made the appellant more vulnerable. Both parties drew the Tribunals attention to the decision of the Country Guidance case of **EH (Blood feuds) Albania CG [2012] UKUT 00348 (IAC)**.

The decision of First-tier Tribunal Judge Taylor

7. At paragraphs [16] and [17] of his decision, the Judge considers the documents relied upon by the appellant and the respondent. He states at paragraph [17]:

“17. ...Given the number of supporting documents from different sources, and the absence of evidence that any of them are false or forgeries, I find that the weight of the evidence on the lower standard of proof indicates that the murder took place as claimed and that the appellant's son was currently serving a prison sentence for murder.”

8. At paragraph [18] of his decision, the Judge refers to the country guidance case of **EH (Blood feuds) Albania** and states:

“18. ... The case of EH advises that the number of blood feud cases was decreasing, however in areas where Kanun law predominates, particularly in northern Albania, the steps taken by the state to improve state protections do not yet provide sufficient protection if an active feud exists. The appellant accepted that his house received protection, but only for the duration of the funeral of his son's victim. There is no dispute that Shkoder is in the far north of Albania and therefore applying the guidance of EH, there would be a risk in that area if there was an active blood feud. The appellant's evidence of the existence of a blood feud has been supported by the oral evidence of his supporting witnesses, as well as the lawyer's letter, the priest letter and the certificate in respect of reconciliation. This evidence is also supported by EH and the background information that blood feuds remain in the north of the country, the murder and the individuals concerned all originate from the

north of the country. While the certificate regarding reconciliation may not be reliable on its own, it has to be considered in the light of all of the other supporting evidence of the murder and the blood feud. On the lower standard of proof I am satisfied that the appellant is a target in a blood feud and would be at risk if he returned to his area of Albania....”

9. The Judge then considers internal relocation at paragraph [19] of his decision, and states:

“19. ...There is no dispute that the appellant had lived in Albania for all of his life, he spoke the language and could find work. The issue is whether he could live in any part of Albania if the family came to know that he had returned. The appellant and his supporting witness stated that his wife and daughters were in hiding, and that his remaining brothers had fled. I have found that the murder took place and there seems little doubt that the fact of the murder was well known, it has been in the press and spoken about in the local area. Even if the appellant returned to the south of the country, the murder took place in the north and a feud is in place, both families are from the north and although the level of protection may change, the feud does not necessarily come to an end at the border between north and south. The appellant gave evidence of danger living in the south, and that people had been killed in the south as a result of feuds. The appellant has given evidence that the family is influential and very likely to aggressively pursue the feud, an attempt at reconciliation had failed. I am not satisfied that relocation to the south of Albania would provide the protection which the appellant would seek, I find that he was a well founded fear on return.”

The grounds of appeal and the hearing before me

10. Permission to appeal was granted by Designated First-tier Tribunal Judge Murray on 13th October 2015. The matter comes before me to consider whether or not the decision of First-tier Tribunal Judge Taylor involved the making of a material error of law.

11. The respondent submits that the Judge failed to make findings on material matters and has given inadequate reasons for finding that the appellant would be unable to relocate to the south and seek the protection of the authorities.
12. First, the respondent submits that the Judge failed to make a finding as to whether or not he accepted or rejected the report relied upon by the respondent, following the checks carried out with the Prosecution Office in Albania. The checks had revealed that there were no records relating to the appellant's son. Second, the respondent had referred to various objective evidence, but in reaching his decision as to whether the appellant could relocate to the south, the Judge failed to consider the objective material and/or failed to provide adequate reasons for his finding that the appellant would be at risk of reprisals in the south. Furthermore, the Judge failed to provide adequate reasons for his finding that the family with whom the alleged feud exists, is influential in Albania.
13. Ms Everritt submits that the matters referred to in the grounds of appeal, were explicitly challenged in the respondent's reasons for refusal letter. She submits that the Judge failed to make any findings as to the influence or reach of the deceased's family in Albania, and in the absence of reasons, it is not clear why the Judge came to the conclusion that the appellant could not relocate to the south.
14. In reply, Ms Iveson submits that the Judge carefully considered the evidence from the British Embassy that was relied upon by the respondent, and it was properly open to the judge to prefer the evidence of the appellant. She submits that the letter from the British Embassy is generic in nature, and as the Judge identifies, does not provide sufficient information as to the search that was carried out. She submits that it was open to the respondent to make a very specific enquiry in light of the information available. She submits that the

objective evidence that is referred to in the reasons for refusal letter is lengthy, but much of it is irrelevant. Ms Iveson submits that it was open to the Judge, having considered the country guidance case, to reach the conclusion that he did at paragraph [19] of his decision. She submits that there was a considerable amount of evidence before the Judge and the Judge plainly has all of the evidence in mind in reaching his decision.

Discussion

15. As to the asylum claim, the issue for me to decide is whether or not the Judge was entitled to conclude that the appellant has failed to demonstrate to the required standard, that he is in need of international protection. In that respect I follow the guidance of the Court of Appeal in **R & ors (Iran) v SSHD [2005] EWCA Civ 982**. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is "perverse" embraces findings that are irrational or unreasonable in the *Wednesbury* sense, and findings of fact that are wholly unsupported by the evidence. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really could not understand the original judge's thought process when he was making material findings. I apply that guidance to my consideration of the decision in this appeal.
16. I have also had regard to the decision of the Upper Tribunal in **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 IAC** where it was stated in the head note that:

"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."

17. It is useful at this stage to also set out the headnote to the decision of the Upper Tribunal in **EH (Blood feuds) Albania CG [2012] UKUT 00348 (IAC)** because it provides useful guidance as to the issues relevant in this appeal not only in relation to the availability of internal relocation, but also as to matters that a Tribunal should consider in determining whether an active blood feud exists and the approach to be adopted to attestation letters from Albanian non-governmental organisations, and documents originating from the Albanian courts, police or prosecution service.

1. While there remain a number of active blood feuds in Albania, they are few and declining. There are a small number of deaths annually arising from those feuds and a small number of adults and children living in self-confinement for protection. Government programmes to educate self-confined children exist but very few children are involved in them.

2. The existence of a 'modern blood feud' is not established: Kanun blood feuds have always allowed for the possibility of pre-emptive killing by a dominant clan.

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.

4. International protection under the Refugee Convention, Qualification Directive or Articles 2 and 3 ECHR is not available to an appellant who is willing and intends to commit a revenge killing on return to his country of origin, by reference to that intention.

5. Where there is an active feud affecting an individual and self-confinement is the only option, that person will normally qualify for Refugee status.

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.

8. *Attestation letters from Albanian non-governmental organisations should not in general be regarded as reliable evidence of the existence of a feud.*

9. *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 v Secretary of State for the Home Department (Pakistan) [2002] UKIAT 00439 (Tanveer Ahmed).*

10. *Unless factual, prompt and consistent, Albanian press reports will add little or no evidential weight in considering whether a feud exists.*

11. Whether the feud continues and what the attitude of the aggressor clan to its pursuit may be will remain questions of fact to be determined by the fact-finding Tribunal.

18. I deal first with the Judge's finding at paragraph [17] that the weight of the evidence on the lower standard of proof indicates that the murder took place as claimed and that the appellant's son is currently serving a prison sentence for murder. If this were the only ground of appeal I would have no hesitation in rejecting the submission made on behalf of the respondent that the Judge made no finding as to whether or not he accepts or rejects the contents of the report relied upon by the respondent. The Judge's decision at paragraphs [16] and [17] should be read as a whole. He set out the evidence relied upon by the respondent and notes at paragraph [16]:

"... The document produced is a report of the search, it is not a report compiled by the person who carried out the search or the method of the search. The document does not record the nature of the search, if it was made against the case number supplied, or the date of birth."

The Judge weighed that against the various strands of evidence relied upon by the appellant from different sources. It is the adequacy or sufficiency of the reasons given by the Judge which is crucial, and in my judgement there can be no doubt that, without expressly rejecting the evidence relied upon by the respondent, the Judge was prepared to attach greater weight to the evidence relied upon by the appellant than the letter relied upon by the respondent, from the British Embassy in Tirana for the reasons that he has identified.

19. Having found that the murder took place as claimed, the Judge found that the appellant is a target in a blood feud and would be at risk if he returned to his home area of Albania. The question of internal relocation arises, and despite Ms. Iveson's arguments to the contrary, I am unable to discern any reasoning of significance in the Judge's

decision as a basis for his finding at paragraph [19] that relocation to the south of Albania would not provide the protection which the appellant would seek. I accept, as **Shizad** points out, that reasons need not be extensive providing that they give a brief explanation on the central issues and conclusions or findings made by a Judge. As is often said: a determination must set out sufficient reasoning to entitle the parties (particularly the losing party) to know why they have won or lost.

20. The case put by the respondent and appellant respectively is set out in the decision at paragraphs [7] to [15]. The respondent had expressly taken issue with the appellant's claim that the deceased's family held high positions in Albania and were influential, because the appellant was unable to state which positions he believed were held by members of the family. Furthermore, the respondent had maintained that there was no evidence that the appellant's family had taken steps to inform the authorities of the threats to the appellant, despite accepting that the appellant could approach the police on the matter. In my judgement, the Judge does not at any point explain which of those submissions he accepts and which of those submissions he rejects and, importantly, why he did so. It is not possible to say that the Judge has simply accepted all that the appellant put forward as the basis upon which a positive findings of fact could be made. I am simply unable to discern any reasoning process indicating why the appellant's evidence that the deceased's family is influential and very likely to aggressively pursue the feud in the event that the appellant relocates to the South, has been accepted such that relocation to the south of Albania would not provide the protection which the appellant would seek. I find that the failure to make findings or to take account of those issues means that the Judge has not properly engaged with the principles set out in **EH** in terms of assessment of internal relocation.
21. I am therefore satisfied that the Judge erred in law by failing to give any or any adequate reasons for his finding that internal relocation is

available to the appellant. In paragraph 2 of the head note in **Shizad** it is said as follows:

"Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her."

22. Whilst I accept that the Upper Tribunal will not set aside a decision where the error was not material or could not have made any practical difference to the outcome of the appeal that is not the situation here. I would have to be satisfied that the only factual findings open to the Judge were those made in paragraphs [17] to [19] of the decision. In my judgement this is not an appeal where the decision, despite an error of law, would inevitably stand.
23. A careful reading of the evidence and the parties' submissions readily demonstrates that the Judge's findings were not necessarily inevitable. The proper course in this appeal is that it should be remitted to the First-tier Tribunal for a de novo re-hearing before a different judge who can consider the evidence again and make appropriate findings with adequate reasons based upon that evidence without any findings of fact preserved.
24. For the above reasons, in my judgement the decision of the First-tier Tribunal to allow the appeal on asylum grounds involved the making of an error of law. That decision is set aside.
25. The decision needs to be re-made and I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having

taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012 which states;

'7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that;

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.'

26. In my view the requirements of paragraph 7.2(b) apply, in that the nature and extent of any judicial fact-finding necessary with regard to the asylum claim will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

27. The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside.
28. An anonymity direction is made.

Signed

Date 27 May 2016

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

29. No fee is paid or payable and therefore there can be no fee award

Signed

Deputy Upper Tribunal Judge Mandalia