Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08434/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
on 19 May 2016	**on 11 July 2016**

Before

Upper Tribunal Judge John FREEMAN

Between

Geron LITA
(ANONYMITY DIRECTION NOT MADE)

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: *Krystelle Wass*, counsel instructed by Barnes Harrild & Dyer
For the respondent: Mr Stephan Kotas

DECISION AND REASONS

This is an appeal from a first-tier decision, by Judge Richard Cassel, sitting at Taylor House on 25 February, by a citizen of Albania, born there on 24 October 1998, his age by now making 'anonymization' unnecessary. In 2014 he arrived and claimed asylum in this country, giving a history of a blood feud which had begun in 2001 or 2002. He said his father and paternal uncle had fled to Greece in 2002, and his father had been back twice a year since to see him and his mother. Eventually the appellant became involved in the blood feud himself, and had to leave Albania.

2. An important part of the Home Office's reasons for refusal appeared at paragraph 98 of the very detailed refusal letter, and began like this:

> "Attempts were made to trace your family in Albania and a response was received on 20 April 2015. The report confirmed that your father has only ever travelled out of Albania on two occasions; three days to and from Greece in 2011 and one day to travel to Montenegro in 2014. In relation to the responses you provided in your asylum interview, these findings were found to completely undermine your responses …"

and the letter goes on:

> "It is further noted that your father does not reside in Greece but is in fact currently in Albania and has been since his return from Montenegro in 2014. These findings therefore deem your responses regarding the blood feud with these families to be entirely inconsistent and absent of credibility."

3. The judge dealt with those points at paragraphs 37 to 38, and related Miss Wass's submissions for the appellant, to the effect that there was "… no supporting evidence for the conclusion that is reached at paragraph 98 as to the movements of his father and that he had left Albania on just two occasions".

4. The need for supporting evidence for an assertion made in the refusal letter, or elsewhere in the respondent's case, is made clear at rule 24(1)(d) of the current 2014 Procedure Rules requiring the respondent to provide the Tribunal with "any other unpublished document which is referred to in a document mentioned in sub-paragraph (a) or relied upon by the respondent", and that by sub-paragraph (a) includes the refusal letter.

5. As the judge correctly went on to note, there had been no specific challenge before that stage to the assertion at paragraph 98; nor had there been any request for disclosure of material to support it. If it had not been for the terms of what is now rule 24, the judge might have been well justified in relying on those points, and not allowing such late and unheralded challenges on this point.

6. However, the predecessor of rule 24 was in identical terms and was dealt with in *MH* [2010] UKUT 168. The panel cited the relevant provisions. At paragraph 13 they said this:

> "The requirements of rule 13 are mandatory. Their intention is clear: it is to enable the appellant to know the case he has to meet, and the Tribunal to have the material upon which the case can be judged."

The panel went on to mention the section 108 procedure, then available in cases of forgery; but it is quite clear that their decision was not limited to cases of forgery or falsity of documents, but based on the wording of the rule, which remains the same. Surprising as the effect may be, where there had been no request for disclosure of the material relied on, it seems to me that I ought to follow it, as a ''reported' decision of this Tribunal.

7. The remaining point is the one raised by Mr Kotas to the effect that, even if the judge was wrong on that point his mistake was not material to the result, since there were certainly other grounds for disbelieving the appellant's account of his family's movements, which appear at paragraphs 32 to 33.

8. However, turning to the way in which the judge ended paragraph 38, dealing with the material mentioned at paragraph 98 and saying this: "I find that the information is reliable and it significantly undermines the account given by the appellant", it would be hard to say that it was not material to his credibility decision and I do not think I can.

9. The other points raised by Mr Kotas refer to the history of subsequent difficulties, or lack of them, given by the appellant and dealt with by the judge at paragraphs 41 to 44, those paragraphs refer to the killing of a member of the opposing clan in 2001 and goes on:

> "41. … No attempts have been made to take revenge since then and no direct problems have been suffered by the appellant and no attempt by the Koka family have been made to take revenge.
>
> 42. On the appellant's account no member of his family has had any direct problems from either of the aggressor families and on his account he regularly attended school until he left Albania and was not located or targeted.
>
> 43. On the appellant's account his father worked for the police, although he resiled from his position in giving evidence stating that he was told to claim that to be the case by his mother. There is no credible evidence that the police would not provide protection to the family or to the appellant.
>
> 44. Similarly there is no credible evidence that there is an active blood feud affecting him personally."

Looking back at the cross-examination of the appellant about that at paragraph 11, there clearly was some inconsistency between the accounts he had given at different stages as to when he had been going to school.

10. At paragraph 29 the appellant's statement is dealt with, and the question of what had been the involvement of his grandmother and his mother. However, it is clear from paragraph 30 that the appellant's account was this: "His problems were compounded in March 2014 when the Zhupani family also declared a blood feud against him".

11. So it was equally clear that the appellant's case, well-founded or not, was that he remained at risk in Albania at the time of his departure, and it is impossible to say that the judge's treatment of this point, at paragraphs 41 to 44, involved treating his account at its highest throughout, in which case the question of his credibility might not have been material.

12. The remaining point arises on the judge's paragraphs 45 to 48, dealing with internal relocation. The judge did refer to the appellant's account at paragraph 46 and dealt with this point on the basis that there had been "an active act of violence" but no evidence that the appellant was being actively pursued.

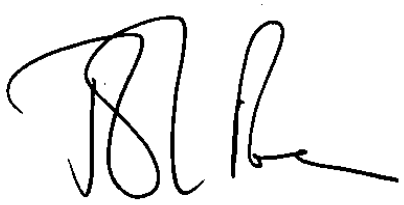
13. The judge went on to say that, on his account, the appellant had failed to demonstrate that the authorities were unable or unwilling to provide him with a reasonable level of protection and that, even if he were likely to be

at risk in his home area, it would not be unreasonable to expect him to relocate.

14. The appellant's case about his movements is set out at paragraph 9 in the course of his cross-examination to the effect that "he had moved around a lot in Albania but lived at his last place of residence for somewhere between four and five years". That does not suggest to me that this was a young man who would necessarily find relocation difficult. The question is whether the judge, despite the mistake about the paragraph 98 material, was entitled to conclude that the appellant would not be at any real risk outside his home area, and this is the point which gave me serious cause for reflection.

15. It seemed to me that Miss Wass was right in saying that in a case of this kind there had to be a valid determination of what risk it was the appellant faced in his home area, before deciding whether he would be reasonably likely to face that risk elsewhere too. That was not the case here, for the reasons I have given, and the result must be a fresh hearing before another first-tier judge.

Appeal allowed: first-tier decision set aside
Fresh first-tier hearing, not before Judge Cassel



(a judge of the Upper Tribunal)
25 May 2016