



IAC-FH-CK-V1

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

Appeal Number: PA/01270/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 June 2017**

**Decision & Reasons Promulgated  
On 23 August 2017**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**RM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Gilbert, Counsel, instructed by J D Spicer Zeb Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This appellant is a citizen of Albania and was born in July 1998. On 9 September 2015 the respondent refused an asylum and human rights claim but granted leave to remain until 6 January 2016 because he was an

unaccompanied minor and there were inadequate reception arrangements for him in Albania.

2. The appellant's appeal against the respondent's decision came before First-tier Tribunal Judge O'Garro ("the Ftj") at a hearing on 6 March 2017. She dismissed the appeal on all grounds.
3. The basis of the appellant's claim is that he is in a blood feud which started when he was caught with his neighbour's daughter in an illicit relationship. They were seen together, the appellant having had his arm around her. He was aged 15 and she was 13. He said that the cousin who saw them threatened that he would tell their parents. I shall refer to the girl as E.
4. The day after they were seen, E's father came to his house and spoke to the appellant's father, saying that he had disowned E and that no-one would now want to marry her. E's father wanted to speak to the appellant and take revenge on him by killing him. After E's father left, the appellant's own father beat him, and the appellant thereafter stayed indoors.
5. Initially, the appellant's father arranged for him to go to Italy, from where he came to the UK in 2014. The appellant was sent back to Italy and thereafter the Italian authorities returned him to Albania.
6. In February 2015, whilst he was unloading his father's friend's van, the appellant was attacked by two men who tried to drag him to their car and told him that they would take him to E's father. The appellant started screaming and shouting which brought the neighbours out and the men left. The men threatened to come back and said that E's father would kill him. Again, arrangements were made for the appellant to come to the UK, which he did in March 2015.

#### *The Ftj's findings*

7. At [26] the Ftj referred to guidance in respect of the assessment of the evidence of a minor. She also referred to the psychiatric report of a Dr Halari which states that the appellant has cognitive and psychological difficulties which impact on his ability to understand and answer questions. In the light of the conclusions in the report, the Ftj said that she did not find that the appellant's credibility was undermined by any inconsistencies that arose during his interviews.
8. The Ftj referred to background material, quoting extensively from the Country of Origin Report on Albania dated 2016 ("COI"), which also deals with domestic violence.
9. She concluded that the appellant had not given a credible account of having been seen in public with his arm around E, taking into account the background evidence of domestic violence and patriarchal traditions and customs, and having regard to the appellant's own witness statement at

[10]. In that paragraph of the appellant's witness statement he made reference to his difficult upbringing, the old-fashioned and less tolerant views that prevailed in the area where he lived, as well as that his father was a protective man, with the appellant needing permission for everything that he did. The appellant said that he believed that as he was the only son his father would find him a good wife and arrange everything for him. Thus, the FtJ found that it was not credible that the appellant and E, being aged 15 and 13, respectively, would have started a relationship. Even if they had, it was not credible that they would have been careless enough to allow themselves to be seen in a "compromising position" publicly, knowing the attitudes of this society that they lived in and the consequences of being caught.

10. She further concluded that E's father would have been violent towards her as well, but there was no evidence of that from the appellant, even though she had lived next door to him. That lack of detail in his account undermined his credibility, she found.
11. With reference to the background material, she noted that the appellant had not provided evidence that any blood had been shed which she found was an important ingredient of a blood feud. That background evidence indicated that children were never part of a blood feud, which again undermined his claim. Furthermore, in view of the appellant's age at the time, if there was going to be a blood feud it would have been against the appellant's father for allowing his minor son to do something viewed as dishonourable. The appellant had not provided any evidence that his father had any problem with E's father, his neighbour, after he left Albania.
12. Further, if E's father wanted to kill the appellant he would have had the opportunity to do so when the appellant left his home to go to Italy on the first occasion. That this did not happen was because there was no threat to kill the appellant by E's father. She concluded that there was no blood feud.
13. She rejected the appellant's contention that he was attacked by two men on his initial return to Albania. She found that the men would have waited to attack the appellant when he was away from his place of residence such that he would not be able to get assistance from neighbours or family members.
14. With reference to the decision in *EH (blood feuds) Albania CG* [2012] UKUT 348 (IAC), she concluded that the appellant had not established that an active blood feud existed. The appellant had not provided evidence of any blood being spilled, and there was no credible evidence that he or any member of his family was pursued by another family. The appellant was unable to establish an active blood feud affecting him personally or evidence of its existence in relation to his family.
15. She concluded in relation to the appellant's mental health and the assessment that he suffers from PTSD, that the appellant had not been

truthful and honest in his account and the findings of Dr Halari were based on a false account by the appellant. Accordingly, she attached no weight to Dr Halari's conclusion that the appellant is suffering from PTSD.

16. In relation to Article 8 of the ECHR, she found that the appellant was not able to meet the requirements of the Rules. In particular, there was no evidence that there would be very significant obstacles to his reintegration in Albania, and his Article 8 claim otherwise had no merit.

*The grounds and submissions*

17. The grounds can be summarised as follows. It is argued that the Ftj failed to have regard to the evidence of Dr Halari in terms of the appellant's intellectual ability, being that he is in the low average range and that he is likely to experience some difficulties in his general understanding of situations. His processing speed is within the "extremely low range" and the results of the cognitive assessment show that he is functioning within the low average range. His profile suggested that he would have significant difficulty understanding information and his difficulties are likely to affect his ability to process, understand and retain information. This Dr Halari said, would have a significant impact on his ability to understand and answer questions both at interview and in an appeal hearing.
18. Notwithstanding that the Ftj said that she did not find his credibility undermined by inconsistencies during his interviews having regard to Dr Halari's evidence, she did not have regard to Dr Halari's evidence otherwise in the assessment of credibility. Thus, the credibility assessment had been undertaken with only partial regard to Dr Halari's evidence.
19. In rejecting the appellant's claim that he started a relationship at the age that he did, and that he would not have been careless enough to allow himself to be seen publicly with E, it is argued that the Ftj failed to take into account the appellant's (first) witness statement at [12] which stated that they began seeing each other in secret, and would take the cattle to the farm land together so that they would spend time there together. They were spotted outside the village by E's cousin. Thus, the appellant's evidence was that this was not an open display of affection but rather something that happened whilst they were away from the village by themselves.
20. Furthermore, although the Ftj had made an adverse credibility finding in terms of there being no evidence as to what had happened to E, the appellant was not actually asked about what happened to her at the hearing, and indeed his evidence was that he has not had any contact with his family since he came to the UK.
21. As regards blood feuds, it is argued that the Ftj misunderstood the background evidence because part of that background evidence quoted by

the Ftj at [30] was that current blood feud killings sometimes no longer followed the traditional pattern established by the Kanun rules. Furthermore, the background evidence reports cases where even women and children are killed. The Ftj's conclusions rule out those possibilities and thus reject the appellant's claim.

22. Although the Ftj had concluded that the diagnosis of PTSD relied on the appellant's account which was found not to be credible, that conclusion failed to take into account Dr Halari's assessment which included consideration of documentary evidence and the administration of psychological tests. Furthermore, the rejection of the diagnosis of PTSD was inconsistent with the acceptance of Dr Halari's conclusions in terms of the appellant's cognitive functioning.
23. As to Article 8, the grounds point out that the appellant has an outstanding Article 8 application for leave to remain and therefore Article 8 did not need to be determined in the appeal. In any event, the Article 8 conclusions are flawed given that they fail to take into account the appellant's vulnerable mental state, both in terms of his cognitive function and PTSD.
24. In submissions Mr Gilbert relied on the grounds which he amplified in argument. I was referred in detail to aspects of the report of Dr Halari, including that he found that the appellant's symptoms could not have been feigned, and also his rejection of other possibilities for the appellant's PTSD. He further concluded that the appellant was not 'malingering'. It was not the case therefore, that the diagnosis of PTSD was simply arrived at on the basis of the appellant's account.
25. In relation to Article 8, the skeleton argument that was before the Ftj suggested that the removal decision was not in accordance with the law as the appellant had an outstanding Article 8 application. Furthermore, the prognosis of a worsening of the appellant's condition had not been considered by the Ftj.
26. Mr Melvin relied on the 'rule 24' response, which was to the effect that the Ftj was entitled to make the findings that she did. Those findings are neither perverse nor irrational. The Ftj had considered the medical evidence.
27. She had rejected what could be described as the 'nit-picking' by the respondent in the refusal letter in relation to the appellant's credibility in terms of inconsistencies. She had considered the medical evidence as well as the background material.
28. The psychological report was in fact one that was written by a psychologist, not a psychiatrist and accordingly the conclusions in it in terms of PTSD would not have been accepted by the respondent. At [27] the Ftj had plainly made allowances for the appellant's cognitive difficulties.

29. She was entitled to conclude that on his own evidence it was not credible that he and E would be allowed to enter that type of relationship or would have allowed themselves to be discovered. Likewise the FtJ's findings in terms of there being no evidence of anything that had happened to E, or to her father.
30. Overall, it was submitted that the appellant's grounds are simply an attempt to reargue the appeal.
31. As regards Article 8, the appellant was unable to meet the Rules and there were no compelling circumstances.

### *Conclusions*

32. A significant aspect of the FtJ's adverse credibility findings relates to the fact of the appellant having started a relationship with his neighbour's daughter, and the circumstances in which they were discovered together.
33. I have summarised those aspects of the grounds in terms of the psychological report which are relied on in this respect. Whilst the FtJ did resolve in the appellant's favour the issue of inconsistencies with reference to Dr Halari's report, relatively early on in her findings at [27], I cannot see in the FtJ's decision an appreciation of the extent to which the appellant's cognitive and processing difficulties could have had an effect on his decision-making at the time when the events he described are said to have taken place.
34. Whilst the FtJ very properly considered the appellant's account against the background of the circumstances in which he said he lived, and his upbringing, I do consider that further consideration needed to have been given to that aspect of the appellant's functional ability in the assessment of his credibility. Such consideration is in my judgement lacking.
35. I do not consider that the other matter raised in the grounds in terms of what the appellant said in his original witness statement about seeing each other in secret and their having been found together outside the village, is a matter that undermines the FtJ's assessment of the appellant's credibility. It is apparent from the FtJ's decision that she was aware of the contents of the appellant's witness statement and took it into account. Likewise, in terms of the lack of evidence from the appellant as to what had happened to E.
36. However, I do consider that there is merit in the complaint made about the FtJ's assessment of the appellant's claim with reference to the background material in relation to blood feuds. The FtJ said at [35] that the appellant had not provided evidence that any blood had been shed, which according to the background evidence was an important ingredient of a blood feud.

Further, in that paragraph she said that the background evidence also showed that children are never part of a blood feud, which further undermined his claim. However, at 5.1.2 of the COI, quoted at [30] of her decision, the FtJ referred to information from the Special Rapporteur to the effect that killings sometimes no longer follow the traditional pattern established by the Kanun rules, and that there are cases where a person may feel vindicated in killing any member of a family, including women and children. An example is cited in that report. The FtJ on the other hand, rejected the appellant's account effectively on the basis that it was wholly inconsistent with the background evidence.

37. I have taken into account that in *EH*, the existence of a 'modern' blood feud was found not to be established. However, it appears from [9] of that decision that that newer variant of the blood feud was suggested as being a situation in which the aggressor family undertakes pre-emptive killings of a number of male members of the victim's family or even women or children, rather than waiting to see whether the victim's family would retaliate in the traditional way for the original death. I do not see the guidance in *EH* as ruling out the proposition that women or children may be the victims of a blood feud.
38. Whilst the FtJ quite properly considered what needed to be established with reference to *EH* in terms of whether there was an active blood feud, I do not in any event consider that even if there is no blood feud properly defined in this case, that that answers the question of whether the appellant has established a real risk of persecution. He may nevertheless be able to establish a real risk of persecution even if there is no blood feud, with reference to his account of what had happened previously and what he says was an attempt to harm him.
39. I also do consider that the FtJ appears to have rejected the assessment of the appellant's suffering from PTSD *because* she had rejected the credibility of his account. At [45] she referred to the assessment of Dr Halari that the appellant suffered from PTSD. She referred to his having said that he was reliant on the appellant's account and that the alleged incidents were the likely precipitating causes. She noted that he had rejected other possibilities. However, she then went on to state that:

"As I find that the appellant has not been truthful and honest and it is on that false account Dr Halari bases his findings, I will attach no weight to Dr Halari's findings that the appellant is suffering from PTSD".
40. It seems to me that in this distinct respect the FtJ had rejected the assessment of PTSD because she concluded that his account was not credible, rather than assessing the diagnosis of PTSD in the context of the evidence overall. In addition, the question of whether the appellant suffers from PTSD seems to me to be integral to the assessment of whether the past events that he describes and his fear of return are credible. The FtJ did not consider that medical diagnosis in that context.

41. I do not accept the proposition advanced on behalf of the respondent by Mr Melvin to the effect that because Dr Halari is a psychologist and not a psychiatrist, his report should not be accepted. Dr Halari is a consultant clinical (neuro) psychologist. His experience and qualifications detailed in his report make it plain that he is very well qualified to have made the assessments that he did not only in terms of the appellant's cognitive ability but also in terms of his suffering from PTSD.
42. To summarise, in terms of the FtJ's assessment of credibility, I am satisfied that she erred in law in failing to have regard to the aspects of Dr Halari's report to which I have referred, in terms of his cognitive ability. I am similarly satisfied that she erred in law in relation to her conclusions regarding the diagnosis of PTSD, again as explained above. Although of less significance, I am also satisfied that her conclusions in terms of whether or not there is a blood feud failed to have regard to the background material to which she herself referred in her decision.
43. Those errors of law are such as to require the FtJ's decision to be set aside. In considering whether the appeal should be remitted to the First-tier Tribunal or retained in the Upper Tribunal for a re-making of the decision, I bear in mind that the hearing before the FtJ was the second time that the appeal has been heard before the FtT, a decision of First-tier Tribunal Judge Quinn at a hearing on 13 April 2015 having been set aside by the Upper Tribunal. Nevertheless, in circumstances where there must be a complete reappraisal of the appellant's credibility, I consider that the appropriate course is for the appeal to be remitted again to the FtT. No findings of fact can be preserved.

#### *Decision*

44. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal remitted to the First-tier Tribunal for a *de novo* hearing with no findings of fact preserved, to be heard by a judge other than First-tier Tribunal Judge O'Garro or Quinn.

#### **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.



Upper Tribunal Judge Kopieczek

22/08/17