



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

Appeal Number: PA/03903/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2017**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**A P
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Harding of Counsel, instructed by Marsh & Partners

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Maxwell promulgated on 6 June 2017.
2. The Appellant is a citizen of Albania born on [] 1996. He left Albania, he says, on the third attempt on 23 May 2013, travelling in the first instance to Italy. He then made his way to the United Kingdom, arriving on 28 May 2013 - at which time he would have been 16 years old, approaching his 17th birthday. He made an application for asylum. The application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 22 July 2013. However, the Appellant was granted discretionary leave to remain as an unaccompanied child asylum seeker until 9 June 2014.

3. On 4 June 2014 the Appellant applied for further leave to remain. Whilst the application was pending the Respondent solicited evidence via the British Embassy in Tirana, which was received by way of two letters, dated 15 June 2016 and 12 August 2016 (Annex F of the Respondent's bundle before the First-tier Tribunal).
4. The Appellant's application for further leave to remain was refused for reasons set out in a RFRL dated 3 April 2017. In substantial part that letter repeated the contents of the previous RFRL, but also placed additional reliance upon the evidence obtained via the British Embassy.
5. The basis of the Appellant's asylum claim and his narrative account of events that led to him fleeing Albania are set out at paragraphs 11-21 of the Decision of the First-tier Tribunal. No particular criticism or challenge has been made to the summary of events as set out therein. I do not propose to rehearse again those matters, but simply to emphasise and mention certain aspects of the account.
6. The Appellant described in his applications the circumstances of his childhood and the character of his father, who was variously described as an alcoholic, a drug addict, and a gambler. The Appellant's father's gambling habit, it was said, had caused him to get into substantial debt with an individual to whom I shall refer as K. K was said to be part of a large criminal family involved both in running gambling shops and in making loans at extortionate rates. The Appellant also related how his childhood had been marred by the behaviour of his father, including that he had been put to work in an attempt to finance his father's gambling habit. The Appellant related that his father's debts reached such a level that K decided to seek repayment by the method of kidnapping the Appellant and holding him for ransom. It is said that the Appellant's father was unable to pay the ransom - indeed it is suggested that he expressed a degree of disinterest in the fate that his son might therefore face. Be that as it may, the Appellant secured the assistance of his uncle, who was prepared to pay a small portion of the debt in order to secure the Appellant's release.
7. Shortly after the episode of the Appellant's claimed kidnap, K was shot dead. A number of people were arrested and questioned in respect of this, it is said, including the Appellant's father - although he was released without any charges being brought. The Appellant says that in consequence of the killing K's family wished to declare a blood feud on the Appellant's family. It is in those circumstances, he says, that he feared that he would become a victim of that blood feud.

8. In this latter context I note in particular what is said at question 81 of the asylum interview that was conducted on 8 July 2013: *"...it is not the money they are after now. It is a blood feud"*. I take that answer to indicate that although the Appellant's narrative account related the attempt to secure repayment from his father and his own victimisation as a consequence, the core of his asylum claim was not so much his father's gambling debts and the threats that have been visited upon the Appellant in consequence, but that the tension between the Appellant's family and K's family had descended into one of a blood feud.
9. The Appellant lodged an appeal against the decision of 3 April 2017 with the Immigration and Asylum Chamber. The appeal was dismissed for reasons set out in the Decision of First-tier Tribunal Judge Maxwell.
10. The Appellant sought permission to appeal, which was granted on 20 September 2017 by First-tier Tribunal Judge Shimmin.
11. Mr Harding's grounds of appeal manage at the same time to be both lengthy and succinct: lengthy in the sense that there are many of them; and succinct in the sense that each is expressed with helpful concision. Indeed, I am grateful to both representatives for the helpful and precise submissions that have been made in exploration of the issues before me.
12. I reject significant aspects of the challenge that has been brought on behalf of the Appellant.
13. In my judgment, there is nothing untoward in the observations made by the First-tier Tribunal Judge at paragraphs 27 and 28 in respect of the filing of original documents with the Tribunal. The Judge identifies this circumstance at paragraph 27, and observes that such documents should not have been filed with the Tribunal - and indeed would better have been served on the Respondent, which would then have afforded the Respondent the opportunity of seeking to verify any such documents if she so wished. Be that as it may, the First-tier Tribunal Judge dealt with the matter by allowing the Respondent's representative to have sight of the original documents whereupon it was indicated by the Presenting Officer that no particular issues arose with regard to the originals and the Respondent was content to proceed with the appeal.
14. It seems to me that the Judge was simply expressing some concerns about procedural matters. I am not persuaded that there was anything beyond the expression of such concern; in particular I am not persuaded that it

involved the Appellant's supporting documentary evidence being considered from an initial position of any adversity or cynicism.

15. Nor am I persuaded that the First-tier Tribunal Judge erred, as pleaded, in failing to have regard to country information.
16. The Judge directed himself to the country guidance decision of **EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC)**, and indeed set out the guidance summarised in the headnote: see Decision at paragraph 23.
17. Nothing has been identified in the course of the Appellant's grounds to this Tribunal, or the submissions before me, by way of any country information that had been filed before the First-tier Tribunal that put any different complexion on the country situation than that related in the case of **EH**. It seems to me that the Judge had sufficient regard to the country situation by having regard to the most relevant and pertinent 'country guidance' case.
18. Nor am I persuaded that the Judge failed to follow the structured framework for decision-making set out in **EH**. In particular, with reference to paragraph 41 of the Decision, it seems to me clear that the Judge was turning his mind expressly to some of the matters that feature in paragraphs 6 and 7 of the headnote in **EH**.
19. Yet further, I am not persuaded that there is substance to the challenge brought in respect of paragraphs 30-32 of the Decision.
20. In those paragraphs the Judge refers to the Appellant's answers at the screening interview (also referred to as the Lille Loophole Interview), and identifies that the stated reasons for claiming asylum appeared to be limited to concerns about his father's gambling problem and the fact that his father owed money to others; the Appellant also referred to his own experience of having been kidnapped. However, what the Judge identified and considered discrediting was that the Appellant did not mention anything concerning the subsequent shooting of K, and did not otherwise make any reference to the existence of a blood feud.
21. I acknowledge, as Mr Harding has urged upon me, that notwithstanding that the screening interview took place on 28 May 2013 it was as soon as 18 June 2013 that the Appellant provided a more detailed witness statement in respect of his claim in which he did raise those matters that are now at the core of his claim (as adverted to above by reference to the

answer at question 81 of the interview). It seems to me, however, that in directing my attention to the witness statement Mr Harding is in substance re-arguing the case as it was before the First-tier Tribunal by way of seeking to marginalise the nature or significance of the answers given at interview.

22. It may be that a different judge would have taken a different approach to the contents of the screening interview and would have accepted that the relatively quick amplification of the basis of claim diminished the notion that the Appellant had not been forthcoming as to his claim initially to an extent that it damaged his credibility. However, equally, it seems to me entirely sustainable for the Judge in the instant case to consider that this was an adverse feature of the case. In my judgment, the challenge is really one of disagreement rather than identification of error of law.
23. I am, however, persuaded that there is substance to the challenge brought in respect of paragraph 29 of the First-tier Tribunal's decision.
24. Paragraph 29 is in these terms:

"It is common ground that the appellant made a lawful exit from Albania using his own passport. The details of his passport are set out at F2 in the respondent's bundle and it is notable that his passport was issued on 28 July 2011. There was no explanation as to why the appellant, whose father it is said forced him to leave school and made him undertake menial work to support his addiction would have arranged for a passport to be obtained for the appellant. There was no apparent reason for this other than an intention to travel outside of Albania and the inference is that in leaving Albania, travelling to Italy and thence to the United Kingdom was that intended journey."

25. Ms Willocks-Briscoe acknowledges that no issue in respect of the passport or its date of issue was raised by the Respondent in the RFRL. Nor is it apparent upon perusal of the Record of Proceedings that the Respondent's representative at the hearing put any questions to the Appellant in this context, or otherwise made submissions in this regard. I am satisfied that this matter was a matter that was not explored with the Appellant at the hearing, and in the circumstances he was afforded no opportunity of dealing with it.
26. In context it seems to me that what is to be implied from paragraph 29 is that the Judge considered that the father's obtaining of the Appellant's passport undermined the narrative account of the Appellant in respect of

the treatment that he had received from his father. Also implicit in this analysis is that there had all along been an intention to leave Albania for a better life in the United Kingdom, and to that extent it seems that the Judge must inevitably have placed reliance on his analysis as undermining the Appellant's account of the events that he claimed precipitated his departure.

27. In such circumstances I conclude that there was procedural unfairness in embarking upon this analysis: the Judge did not hear, and therefore did not consider, what the Appellant had to say about the point because the point quite simply was not put to him.
28. I am also persuaded that the Judge's approach to the documentary evidence at paragraph 36 of the Decision is unsatisfactory. Indeed, it seems to me that this aspect of the case is of more significance perhaps than the procedural unfairness identified in respect of paragraph 29 of the First-tier Tribunal's Decision.
29. Paragraph 36 appears in the Decision shortly after the Judge's consideration of the Appellant's failure to refer to the blood feud in the course of his screening interview. In addition to the adverse analysis in respect of the screening interview (which I have concluded above was sustainable), the Judge also identified as adverse features of the Appellant's testimony: the issuing of the passport in July 2011 (at paragraph 29, and to which I have referred above, finding there to have been procedural unfairness); and an inconsistency in respect of which family (K's or the Appellant's) was reluctant to engage in reconciliation meetings, as between one of the supporting documents and the Appellant's own account (paragraph 33). The Judge says this at paragraph 36:

*"I find that, when I apply the principles as set out in **Tanveer Ahmed** and take proper account of those matters I have already referred to, the documents relied on by the Appellant cannot be said to be accurate or reliable evidence as to the existence of a blood feud between his family and the [K] family. Bearing in mind the standard of proof required present instance, I have come to the conclusion that the Appellant has failed to discharge his burden of proving the existence of a blood feud between his family and the [K] family."*
30. The Judge then concludes that *"the credibility of both the appellant his account"* are significantly undermined because of the failure to mention a blood feud and a murder allegation against his father in his initial interview (paragraph 37).

31. The Appellant provided a number of items of documentary evidence in support of his claim. The Judge lists these at paragraph 22, with some brief comment on the contents of each of the documents. I note that two of those documents were by way of affidavit evidence, one from the Appellant's maternal uncle, and one from a former school friend. However, four of the documents purportedly emanated from state institutions within Albania: two originated from the Mayor's Office of Gruemire (the Appellant's local area), one was from the Ministry of Internal Affairs, and one was from the Head of the Village Omaraj.
32. Beyond the short statement at paragraph 36 in respect of these documents, and the observation of an inconsistency as between one document and the Appellant's account as to which family was uncooperative in respect of reconciliation meetings, the Judge does not descend to any other analysis of their contents by reference to the Appellant's account, or any analysis of the documents in and of themselves as to their nature and their potential reliability. It seems to me that these documents have in effect been completely marginalised in the Judge's consideration on the basis of the credibility assessment without more.
33. I am not satisfied that the Judge has demonstrated in his reasons that the guidance in **Tanveer Ahmed** was duly applied. Indeed it seems to me that the Judge's approach runs contrary to the guidance, and otherwise constitutes a failure to consider all issues 'in the round'. The Judge has in effect determined that the documents are not "*accurate or reliable evidence*" *because* he has rejected the Appellant's credibility, rather than determining the Appellant's credibility and the credibility of the documents by reference to all matters in the round.
34. I also accept that there are no clear or reasoned findings of fact on any of the aspects of the Appellant's narrative account. Whilst the Judge's overall conclusion that there was no blood feud is stated clearly enough, there is nothing else by way of findings as to any of the precedent matters that the Appellant says precipitated the feud. It seems to me that that constitutes a deficiency in the fact-finding of the First-tier Tribunal.
35. I have had regard to the Judge's alternative consideration of the internal flight alternative. However, given my concerns about the evaluation of the case as a whole, I am not persuaded that the decision can, as it were, be 'saved' by reference to this alternative finding. In this regard, it seems to me that it cannot realistically be said that the Judge took the Appellant's case at its highest because if he had done so he would have had to have accepted the Appellant's evidence as set out at paragraph 7 of his witness

statement of 10 May 2017 that K's family's influence extended beyond the local area. The Judge premises his consideration of internal flight on the basis that *"there is no evidence before me as to the extent to which the [K] family has influence outside of the local area"*. Whilst it may well be that there was no evidence beyond the Appellant's own evidence, as I say, it cannot be said that the Judge took the Appellant's case at its highest if he rejected the Appellant's evidence in this regard. In any event, it seems to me that the Appellant is entitled to a proper evaluation and findings on the core elements of his claim and that has not happened on the facts here.

36. For completeness, I add that I am not persuaded in respect of the ground of challenge alleging a misapplication of the standard of proof, although I acknowledge that the significance of the Judge's recitation of paragraph 339L of the Immigration Rules (paragraph 38) and the following comment (paragraph 39) is unclear to the point of obscurity.
37. In my judgement the First-tier Tribunal Judge adequately directed himself on the standard of proof at paragraph 7: *"The burden of proof is on the appellant to show that as at the date of this decision there are substantial grounds for believing..."*. He also referred to the appropriate standard: during the course of his decision-making - *"...the lower standard required..."* (paragraph 40); and in his conclusions - *"...a reasonable degree of likelihood..."* (paragraph 42).
38. Paragraph 339L offers guidance on the evaluation of an applicant's statements when *"not supported by documentary or other evidence"*: if certain specified conditions are met the unsupported aspects *"will not need confirmation"*. This was not a case where the Appellant had provided no supporting documentary evidence, and accordingly it is difficult to see what role paragraph 339L might have been thought to have. Be that as it may, in circumstances where the Judge made reference to the appropriate standard of proof in the paragraphs identified above, I am not persuaded that the Judge's observation that the Appellant could not rely on the provisions of paragraph 339L *"so that he might be given the benefit of the doubt"* is indicative of a misapplication of the standard of proof.
39. Notwithstanding the apparent identification and application of the appropriate standard of proof, I am for all the reasons indicated persuaded that the Judge's analysis and consideration of the evidence was deficient to an extent that there were errors of law that require the decision of the First-tier Tribunal to be set aside. It is common ground between the representatives today that in those circumstances the appeal requires to be remitted to the First-tier Tribunal to remake the decision with all issues at large.

40. Before leaving this case I should make some brief observation in respect of the evidence that was obtained via the British Embassy in Tirana (Annex F of the Respondent's bundle).

41. The Embassy wrote to the Respondent by way of letter dated 15 June 2016, and then again by way of further letter dated 12 August 2016. Both letters are a matter of record on file, and I do not propose to go into any further recitation from them, save to identify one passage in the letter of 12 August 2016. The relevant passage is quoting a translated version of information obtained through checks via the Albanian authorities and is in these terms - bearing in mind, as I say, that it is a translation:

"Following verifications it is found that the above-mentioned nationals are not confined due to any conflicts, revenge or blood feuds with the [K] family and such a fact does not exist."

42. For my own part, on first reading I took the final words - *"such a fact does not exist"* - to be a reference to a blood feud. In other words, I understood this sentence to mean that not only were members of the Appellant's family not confined to their homes, but also that a blood feud did not exist between them and the family of K. First-tier Tribunal Judge Maxwell, however, seems to have taken a different approach to this passage - and indeed one that in the event was favourable to the Appellant. Judge Maxwell appears to interpret the words *"such a fact does not exist"* as referring to the concept of confinement of the family, expressing the view that the passage *"does not directly address the existence of a blood feud"*: see paragraphs 34 and 35. Bearing in mind that my view differs from Judge Maxwell's, it would suggest that the translated passage is ambiguous. Whether that ambiguity resides only in the translation, or whether it also resides in the Albanian language source document, is not a matter that the Tribunal can resolve at this distance.

43. In the circumstances it seems to me that if the Respondent wishes to continue to place reliance upon the information obtained via the British Embassy in Tirana in this regard, it would be helpful to the Tribunal if some clarification could be sought - whether by way of checking the translation (and necessarily also therefore the source document), or by way of checking the source if the ambiguity is indeed to be found in the Albanian language document. Of course, if upon checking it is to be said that the ambiguity arises simply by reason of an unclear translation, then it would only be right and fair that the Appellant's representatives have an opportunity of seeing the original language document so that they can consider this issue for themselves.

44. However, what happens next in this regard is essentially a matter for the election of the Respondent, and I leave it without making any specific Direction. Of course, if the Respondent leaves the issue as it is without further clarification it is to be expected that the Appellant's representatives on the next occasion will simply invite the Tribunal to consider that the document is indeed ambiguous and therefore not to be relied upon as detrimental to the Appellant's case.
45. I also see no particular reason to issue any directions other than standard directions in the appeal.

Notice of Decision

46. The decision of the First-tier Tribunal contained material errors of law and is set aside.
47. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-Tier Tribunal Judge Maxwell, with all issues at large.

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.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **21 November 2017**

Deputy Upper Tribunal Judge I A Lewis