



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04283/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

**Decision & Reasons
Promulgated**

On 31st July 2017

On 04th August 2017

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**VK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Eaton, Counsel instructed on behalf of appellant
For the Respondent: Mr Singh, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

2. 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. This direction applies both to the Appellant and to

the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who in a determination promulgated on the 7th June 2017 dismissed his claim for protection. The appellant underwent a screening interview on 16th March 2017 and a substantive interview took place on 30th March 2017.
4. The Appellant's immigration history and the basis of his claim is set out in the decision letter issued by the Secretary of State. It can be summarised briefly as follows.
5. The Appellant is a national of Albania. It was claimed that in 2013, a family relative killed another person and as a result the victim's family would take revenge on the killer's family by way of a "blood feud". Whilst the family sent emissaries to settle the matter, this did not succeed in the family went into self-imposed confinement. The appellant left Albania 2 to 3 months later arriving in the UK in or about March 2013. Since his arrival in the United Kingdom, it was claimed that his brother had stabbed two others in or about 2016 and was detained in prison. The appellant stated that he would be harmed by their family members if returned to Albania. Thus in essence, the claim for asylum arose out of two incidents which gave rise to the appellant's family members being a party to active blood feuds; the second being dependent upon what the appellant has been told by his family in Albania that occurred when he was in the United Kingdom.
6. In a reasons for refusal letter dated 21st April 2017 the respondent refused that application for asylum. In that decision, the respondent accepted his nationality but did not accept that he was involved in active blood feuds with different families in Albania. The respondent considered a newspaper article at paragraph 25 and set out a number of issues of inconsistent evidence (25 - 30). Further inconsistencies were noted in relation to the second active blood feud. The secretary of state set out the country guides decision of EH (Albania) [2012] and sought to apply that to the factual account. In summary it was considered that the appellant would be able to return to his home area in Albania and that he would not be at risk of harm. In the alternative, it was considered that he could access a sufficiency of protection and in the alternative could internally relocate
7. The Appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal on the 26th May 2017.
8. The judge set out his findings at paragraphs [36] to [63]. In relation to the first blood feud, at paragraphs 37 to 48, the judge made reference to the appellant's inconsistent evidence and that this had damaged his credibility. He therefore considered the further blood feud in the light of those findings and "with caution". In this respect he made reference to a vague chronology of claimed events and that there were further inconsistencies as to the dates given by the appellant and also in the names of the alleged victims (paragraph 55). Whilst the appellant claimed

his brother had been sentenced for the attack (question 61] that was found to be inconsistent with his claim that his brother was awaiting trial. The judge considered that overall the discrepant evidence led to the conclusion that the appellant could not be relied upon to provide a reliable account. The judge further found that his claims were inconsistent with the objective evidence; in particular that his brother was in a public place with permission but this was inconsistent with the objective evidence relating to a besa (EH at paragraph 71). He also found sufficiency of protection and that it would not be unduly harsh to internally relocate. Thus the claim for protection was dismissed on all grounds.

9. The Appellant sought permission to appeal that decision and the grounds are set out in the papers dated 21st June 2017. They were settled by Mr Eaton who has represented the appellant throughout the proceedings. Permission to appeal was granted by FTT Judge Bird on the 29th June 2017.
10. At the hearing before this Tribunal Mr Eaton relied upon the grounds that were before the Tribunal. Mr Eaton took the Tribunal through the points raised in the written grounds and made specific reference to the documentation. He made reference to 4 pieces of corroborative evidence which had not been either considered by the judge or given weight. The first evidence was an attestation letter (p137-139) but there was no consideration of that document within the determination. The second piece of evidence was from the appellant's mother. Whilst the judge did deal with this (paragraphs 54-55), the difference in name could not be deemed as significantly different and thus the judge did not give proper consideration to that piece of evidence. The third strand of evidence related to court orders from the appropriate area (page 128 - 130 translation). At page 130 made reference to court directions. Whilst the judge made reference to general inconsistencies, Mr Eaton submitted that the judge made no findings of fact relating to the court documents which corroborated his factual account concerning his brother's conduct but had made reference paragraph 43 to his failure to familiarise himself with documents sent from Albania to support its appeal. There was a fourth piece of evidence which with the family certificate (page 126) which demonstrated that the applicant was related to his brother. Whilst the judge made reference to the appellant's inability to demonstrate his relationship with cousin he did not consider that piece of evidence in the round.
11. As to the country guidance decision of EH, he submitted that contrary to the finding made at paragraph 59 to 62 in which it was concluded there was sufficiency of protection, EH found that there was no sufficiency protection in the area from which the appellant originates (see head note 3). Furthermore he misdirected himself when considering paragraph 71 of EH where he found that the appellant's account that his brother left confinement with permission was not in accordance with the objective evidence. At paragraph 71 it demonstrates that a besa can be given for an event.

12. Mr Singh on behalf of the Respondent submitted that having had the opportunity to consider the grounds in the light of the determination and the submissions which were directed towards the documentary evidence, including the documents from the Court and the parts of the CG decision of EH, he conceded that there was a material error of law in the credibility findings. In those circumstances he invited the Tribunal to set aside the decision and for the appeal to be reheard so that all issues relating to credibility could be considered and in the context of the documentary evidence and the CG decision of EH.
13. In the light of that concession made by Mr Singh that there is a material error of law in the determination of the First-tier Tribunal, it is the case that both parties agree that the determination cannot stand and must be set aside. I am satisfied that the submissions made on behalf of the Appellant to which I have made reference to above are made out. As set out earlier, the appellant factual claim related to two active blood feuds in Albania to which the applicant's family were a party to. The judge gave reasons as to why the appellant's inconsistent account did not demonstrate that he was reasonably likely to be involved in an active blood feud arising from the first set of circumstances (see paragraphs 37 - 48). However whilst the judge was entitled to consider the evidence of the further blood feud with caution (see paragraph 49) there were documents provided by the appellant which had not been taken into account in making a rounded assessment of whether or not there was in fact a second active blood feud and therefore applying the country guidance decision of EH. Whilst the evidence of attestation letters were referred to in EH, it did not necessarily mean that no weight could be attached to such documentation and thus an assessment was necessary. They were also documents from a court in the area and as Mr Singh stated there was no reference to those court documents in the assessment. The judge did make reference to the mother's affidavit and noted that the spelling of the name was different to that given by the appellant. Whilst Mr Eaton submits that this was not significantly different it was on the face of it inconsistent. It is not clear to me what was said by way of reply to that different spelling. However, for the reasons set out above there was material which had not been considered when reaching an overall view as to whether there was an active blood feud in Albania. As to the country guidance decision of EH, paragraph 3 of the head note makes reference to the steps taken by the Albanian state to improve state protection but that that in certain areas where Kanun law predominates those steps do not provide sufficiency protection if an active feud exists and affects the individual claimant. The applicant originates from such an area. Furthermore, whilst the judge made reference to paragraph 71 of EH, the applicant's account is not arguably inconsistent with paragraph 71.
14. Therefore for those reasons and in the light of the concession made by Mr Singh, the decision cannot stand and will be set aside.
15. As to the remaking of the decision, both advocates submitted that the correct course to adopt in a case of this nature would be for the appeal to

be remitted to the First-tier Tribunal because it would enable the judge to consider the Appellant's evidence in the light of all the documents, the decision of EH and any country materials post-dating EH; this is a case in which it is accepted that the adverse credibility findings cannot be preserved. Therefore the First-tier Tribunal will consider the matter afresh.

16. In the light of those submissions and the concession made by the Secretary of State, I am satisfied that this is the correct course to take and therefore I set aside the decision of the First-tier Tribunal and it will be remitted to the First-tier Tribunal to hear afresh.

Decision:

The decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside and it is remitted to the First-tier Tribunal to be remade.

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. The direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
Upper
Date: 31/7/2017

Tribunal

Judge

Reeds