



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA/11771/2016  
PA/11793/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 28 November 2017

Decision & Reasons Promulgated  
On 7 December 2017

Before

UPPER TRIBUNAL JUDGE LANE

Between

R X

R X

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Bahja instructed by Duncan Lewis & Co Solicitors  
For the Respondent: Mrs Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, RX and RX, who are brothers, are male citizens of Albania and were born in 1999 and 2004 respectively. Both appellants claimed asylum in August 2015. The appellants' claims for asylum were refused by the Secretary of State by decisions dated 12 and 13 October 2016. The appellants appealed to the First-tier Tribunal (Judge J Bartlett) which, in a decision promulgated on 2 June 2017, dismissed the appeal. The appellants now appeal, with permission, to the Upper Tribunal.

2. The appellants claim that they cannot return to Albania because they are the subject of a blood feud. The judge concluded that the evidence of the appellants was not reliable and found at [23] that:

the appellants face no risk of harm as a result of a blood feud in Albania. I find that the appellants are not subject to a blood feud in Albania. I do not accept the appellants have been in self confinement or would need to be in self confinement if they returned to Albania.

3. In addition, the appellants claim that their father was abusive to them. The judge observed that the appellants had had no contact with their father for a number of years. She found that the father “poses no risk to the appellants as he has made no threats and no contact with them and evinced no intention to have any contact with them for a number of years. I find that even if he could locate the appellants and sought to contact them as they would not live in the same household as him he poses no real threat to them.”

4. The judge then went on [26] to state as follows:

Even taking the appellants’ case at its highest which is that there is a blood feud and they feared harm from the M family I consider they would be able to return to Albania as they would be able to internally relocate and there was sufficient protection in Albania for the following reasons.

5. The judge concluded [27] that there would be a sufficiency of protection available from the Albanian state. At [28], the judge then considered the principles of *Januzi* [2006] UKHL 5 applying those principles to the facts of the appellants as she had found them. The judge found that the appellants would return to Albania with their mother. The judge was unaware of the immigration status which the mother may have in the United Kingdom. She considered it reasonable to assume, therefore, that the mother would also leave the country with the appellants. On the appellants’ own account, they had a maternal uncle in Albania who had assisted them in leaving the country and the judge found that the uncle would be able to provide practical and financial assistance to them and the mother when they returned to Albania. Throughout the decision, the judge has made it abundantly clear that she is aware that these appellants are minors but she did observe that they are “not very young children” and she found that there was no reason why the mother could not obtain work in Albania to support the family. She concluded by finding that “In all the circumstances I consider that internal relocation is not unduly harsh or unreasonable for the appellants.”
6. The main problem for these appellants in the appeal before the Upper Tribunal is that although Mr Bahja made forceful submissions on their behalf, the grounds of appeal are silent as regards the question of internal flight. The question of internal flight, of course, only arises in the event that the appellants may be at risk in their home area of Albania. All of the grounds of appeal are, in essence, challenges to the judge’s findings on the credibility of the appellants’ account of a blood feud and abuse from their father. The internal flight analysis properly starts from the position that the appellants’ account is accepted and risk on return to the home area proved

but the internal flight alternative may defeat a claim for asylum if it cannot be shown that it would be unduly harsh for the appellant to relocate. Such is a trite law but it has not been addressed by these appellants or Mr Bahja. Judge Bartlett has given careful and thorough reasons for finding that, even if she is wrong as regards the credibility of the blood feud account, it would not be unduly harsh to expect these appellants with their mother and with the assistance of other family members to relocate within Albania where they would enjoy a sufficiency of protection by the Albanian state. Somewhat belatedly in his skeleton argument, Mr Bahja at [18] has touched on the question of internal flight as regards which the grounds of appeal had been silent. However, those grounds of appeal seek to rely upon a European Asylum Support Office (EASO) country of origin report which was not before Judge Bartlett. In any event, that report concerns possible difficulties within the Albanian judicial system and I cannot see that it in any way undermines the judge's findings on the sufficiency of protection available in Albania. Somewhat oddly, the skeleton argument remarks, "It is clear that the judge's rejection of Counsel's submission to the effect that the M family were a powerful family and had connections with the authorities was based on objective evidence and she failed to take into account this evidence." I cannot see that the judge erred by basing her findings on objective material and, as I have recorded above, she could not have taken account of evidence which was not before her.

7. It follows that the appeals must be dismissed. The judge has reached sound and sustainable findings on internal flight which have not been challenged. Even if the judge had accepted the credibility of the accounts of the appellants, the availability of internal flight within Albania defeats these appeals.
8. I shall deal briefly with the remaining grounds. I have to say I find that those grounds, save for one (see [9] below), amount to nothing more than a disagreement with findings available to the judge. Mr Bahja, in his oral submissions, repeatedly referred to the evidence as giving rise to "reasonable inferences". He suggested such inferences were more appropriate than "mere speculation," the expression used by the judge to describe the evidence in several parts of the decision. The fact remains that the appellants claim that, for example, a motor vehicle suffered damage which they believe had been inflicted by the M family; the judge describes that evidence as "mere speculation" and gives good reasons for doing so whilst Mr Bahja characterises it as "reasonable inference". This descent into semantics indicates that the judge's findings of fact were plainly available to her and that Mr Bahja has been unable to show that the findings are legally unsound. The fact remains that there was no very clear evidence before the judge which might have compelled the conclusion that these appellants had been the subject of a blood feud.
9. I shall deal with the issue upon which Judge Osborne gave permission to appeal. I shall do so even though it is nugatory given my findings on internal flight. The appellants' mother did not attend the hearing before the First-tier Tribunal. Mr Bahja, who appeared before Judge Bartlett, told the judge that he had no idea why the mother had not attended. At [16], the judge again stresses the appellants' youth but found that their evidence was "extremely superficial". She went on [18] to

observe that more information was likely to have been available from the appellants' mother and, relying on *TK (Burundi)* [2009] EWCA Civ 40, she found that "the failure of the appellants' mother to provide a witness statement or attend the hearing is a strong pointer that the account given by the appellants is not true." Mr Bahja complains that the judge's intention to cite *TK (Burundi)* was not indicated at the hearing and he was unable to make submissions accordingly. Had he realised that the absence of the mother concerned the judge, then he may have applied for an adjournment. I reject that submission. It was not for the judge of her own motion to adjourn the hearing; the appellants were professionally represented and, if they and Mr Bahja considered it necessary to have the mother present, then they would not doubt have applied for an adjournment. They did not do so. I agree with Mrs Fijiwala that it was for the appellants to prove their case and it was open to the judge to apply relevant jurisprudence (viz. *TK (Burundi)*). I also agree with Mrs Fijiwala that the mother must have known of the hearing date because the second appellant is living with her in the United Kingdom. Mr Bahja sought to distinguish the facts of *TK (Burundi)* from those of the instant appeal but that is wholly inappropriate; the Tribunal is concerned only with the principles of legal authorities and is not concerned to adopt or reject authorities on the basis of a similarity or disparity of a factual matrix. The appellants and their representatives should have been well aware of the likely importance of the mother to the appeals of her two sons and they should not have been surprised that the judge expressed concern that she had failed to give oral evidence. I find that the judge did not err by assessing the credibility of the evidence in the light of the fact that the appellants' mother had not attended the hearing.

10. For the reasons I have given above, the appeals are dismissed.

### **Notice of Decision**

11. These appeals are dismissed.

### **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 their 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.

Signed

Date 6 December 2017

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

The appeals have been dismissed and therefore there can be no fee repayable.

Signed

Date 6 December 2017

Upper Tribunal Judge Lane