



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

Appeal Number: PA/00159/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC**

**On 31<sup>st</sup> October 2018**

**Decision & Reasons**

**Promulgated**

**On 26<sup>th</sup> November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**[R S]**

**(ANONYMITY DIRECTION MADE)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Mr V Jagadeshm (Counsel)

For the Respondent: Mr C Bates (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Lloyd, who in a hearing dated 6<sup>th</sup> July 2018 dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a male, a citizen of Albania, and was born on [~] 1970. He has two dependent children, namely, [ES<sup>1</sup>], who was born on [~] 1997,

and is 21 years of age, and his son, [ES<sup>2</sup>], who was born on [~] 2001, and is 16 years of age. He appealed against the decision of the Respondent Secretary of State, refusing his application for asylum and humanitarian protection, in a decision dated 18<sup>th</sup> December 2017, pursuant to Section 339C of HC 395.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that on 21<sup>st</sup> March 2014, the Appellant's wife took her own life. Her brother blamed the Appellant for her death. Her father told the Appellant's father that they had started a blood feud and that they wanted to take revenge for her death. The Appellant also maintained that his wife's nephews would threaten also to kill him when he was out working or out in public walking down the street. Indeed, his wife's family reported the Appellant to the police, and there was a coroner's investigation, which found that the death was due to suicide.
4. In addition to this, there is another feature of this case, namely, the medical health of the Appellant's son, [ES<sup>2</sup>], who is in need of a care plan and there have been expert reports from the CAMHS nurse, Lisa Slater, on page C of the Respondent's bundle, which states that social services visited the family in June 2015 after their first asylum claim had been refused. While the social worker was at the home, [ES<sup>2</sup>] took a knife and pointed it at his stomach. He did not injure himself. The Appellant took the knife from him. [ES<sup>2</sup>] was then taken to the A&E where he was assessed. He was offered counselling support for a short period of time (paragraph 39). The CAMHS nurse states that when she asked [ES<sup>2</sup>], he said he would take his own life if he had to leave the UK (paragraph 40). There is also an expert report from Antonia Young, which is 60 pages long, and this makes it clear that blood feuds still exist in Albania.

### **The Judge's Findings**

5. The judge refused the Appellant's claim. Before he did so, he began with the expert report. First, he noted that the expert states that it is plausible for the Appellant and the children to fear for their lives due to threats from his wife's family. The expert states that it is only a matter of time before the Appellant is hurt and the state will not protect him. The judge observed that, be that as it may, "the Appellant said he continued to drive his lorry after threats were made and he went out in public" (paragraph 77). The Appellant was not hurt or targeted. The judge observed, "the fact that the Appellant continued to work and go outdoors in public as normal persuades me he was not in fear of his life from a blood feud" (paragraph 78).
6. Second, it is said that the Appellant's in-laws asked the police to investigate the Appellant's wife's death and bring criminal charges against the Appellant. The report at pages 224 to 228 states that no criminal proceedings were brought against the Appellant. The coroner found that the wife had committed suicide. The judge observed that, "this does not

however sit well with a family who have enough influence to bribe the authorities” as had been claimed (paragraph 79).

7. Third, the background evidence suggests that the response of the police to blood feuds is improving, but the Appellant himself did not approach the police at any time (paragraph 80).
8. Fourth, the Appellant states that the coroner released his report on 28<sup>th</sup> August 2014, and his father-in-law came to see the father. The father-in-law said the Appellant should leave or go into hiding. The Appellant said at the appeal hearing that threats had been made against him and his children. The daughter said she was in fear of her life. Despite this fact, the Appellant left Albania and travelled to Italy with only his son. He left his daughter behind. The judge did not consider this to be credible (paragraph 81).
9. Fifth, the Appellant states that his daughter was not threatened after he left Albania as his in-laws wanted to harm male members of the family only. He said his brothers had left Albania due to the risk to their life. The Appellant said he thought they left at the end of 2014. The Appellant’s mother sent a letter dated 18<sup>th</sup> July 2015. This states that one brother was preparing to leave Albania. The Appellant had left ten months before but no harm had come to his brothers in any blood feud. The judge observed that, “if the brothers had left and felt threatened by the blood feud, I find they would have left Albania shortly after the Appellant left, as they were a target in the absence of the Appellant” (paragraph 82).
10. Sixth, the judge was clear that, “no harm has come to any member of the Appellant’s family. His parents are still in Albania” (paragraph 83).
11. Seventh, the Appellant said that he received a call from his brother-in-law who lives in Italy at the end of October 2014. The brother-in-law had said to the Appellant that he knew that the Appellant himself was in Italy and that they would find and kill him. Yet, the judge observed that, “the Appellant stayed in the same house and he did not leave Italy until 16<sup>th</sup> December 2014. Again this is not the act of someone in fear of their life” (paragraph 85).
12. Finally, the background evidence suggested that it was unlikely that a person would be able to establish a need for international protection as a consequence of a blood feud as state protection is generally available (paragraph 87).
13. In relation to the medical condition of the Appellant’s son, [ES<sup>2</sup>], the judge had regard to the consultant psychiatrist’s report dated 8<sup>th</sup> February 2016. He observed that [ES<sup>2</sup>] had said he was visited at his maternal grandparents’ house in April 2014 and that his mother’s relatives threatened to kill [ES<sup>2</sup>] and pushed him from the first floor of the house onto some metal bars outside. [ES<sup>2</sup>] could not remember what happened next. But neighbours dressed his wound. [ES<sup>2</sup>] had scars of old wounds on his back. [ES<sup>2</sup>] stated that the family left Albania two days later. [ES<sup>2</sup>]

did not tell his family about the incident and he did not want to discuss it in front of his father.

14. The family then moved to live in the capital of Italy for several months. The judge observed that this account:

“Contradicts what the Appellant and his daughters say happened. [ES<sup>2</sup>] says the family left Albania in April 2014, but the Appellant says they left in September 2014. [ES<sup>2</sup>] says he and his family saw his uncle in Italy and they fled the same day. The Appellant says he did not see the uncle in Italy. He only received a phone call from him. The Appellant says they did not leave Italy for six weeks after they were contacted by his mother-in-law. Due to the inconsistencies in [ES<sup>2</sup>]'s account compared to that given by his father and sister I place limited weight on it. The psychiatrist said it was unclear what caused the scars. If [ES<sup>2</sup>] had deep cuts to his back, I find it reasonably likely his father would have noticed this” (paragraph 91).

15. The appeal was dismissed.

### **Grounds of Application**

16. The grounds of application state that the judge had made adverse credibility findings without taking account of the evidence and had made subjective plausibility findings without giving adequate reasons, together with discounting the conclusions of the expert report. There was a flawed assessment of the mental health of the Appellant's younger child.
17. On 13<sup>th</sup> August 2018 permission to appeal was granted by the Tribunal.

### **Submissions**

18. At the hearing before me on 31<sup>st</sup> October 2018, Mr Jagadeshm, appearing on behalf of the Appellant, relied upon the grounds of application.
19. First, he submitted that the judge had made findings of fact almost exclusively on the basis of the Appellant's evidence alone and failed to consider the evidence in the round, before making findings as to the Appellant's credibility. The reality was that there was a wealth of corroborative evidence in this case. This came from the Appellant's daughter, [ES<sup>1</sup>], who provided detailed written and oral evidence to the Tribunal. It came from the Appellant's son, [ES<sup>2</sup>], and the disclosure to [ES<sup>2</sup>]'s professionals about the harm he suffered at the hands of his grandfather. It also came from the Reverend Robinson who spoke about the family's evident trauma through his pastoral involvement with them. The judge did not address the evidence properly in these respects. My attention was drawn by Mr Jagadeshm, to the cases of **AK (Failure to assess witnesses' evidence) Turkey [2004] UKIAT 00230**, and I have also taken into account the decision of **Y (Sri Lanka) [2009] EWCA Civ 362**. Mr Jagadeshm, emphasised that there was a serious error by the judge in not referring to the evidence of the Appellant's daughter, [ES<sup>1</sup>], who was privy to the threat being made against her father (see paragraph 22 of her witness statement). This evidence was not referred to. The mother's letter at pages 23 to 24 was not referred to either.

20. Second, the judge materially erred in repeating phrases like “not reasonably likely” (at paragraphs 79, 80, 84, and 85) in making findings against the Appellant. The judge had made findings that were not based upon credibility and consistency but upon what she believed was probable or plausible. Yet, in the case of **HK [2006] EWCA Civ 1037**, the Court of Appeal highlighted the special need for caution when assessing “improbability” in asylum claims. In the same way, the judge failed to state what if any weight she placed upon the expert report (see paragraph 77). The judge’s note that “most of the reports or articles referred to by the expert are several years old” fails to acknowledge the fact that there was a timeline of events in Albania and each section began with older events or sources but ended with events and sources from 2018 and thus was completely up to date. The judge stated, in fact, that the attempted suicide by [ES<sup>2</sup>] in mid-July 2015, took place in the presence of the social worker and his family, and that “this is the only report of self-harm attempt”, but failed to take into account the report of Miss Lisa Slater, which was confirmed by Dr Abbas, the consultant psychiatrist, who endorsed the assessment of Miss Slater, that the Appellant was indeed very vulnerable and at risk of suicide. Indeed, Miss Slater refers to a clear care plan (see paragraph 53) and even gives her own telephone number to the Appellant should this be required for the assistance of [ES<sup>2</sup>] if a difficulty arose, which was quite unusual.
21. For his part, Mr Bates submitted that there was no error of law. First, it was not the case that the judge did not refer to the evidence of the Appellant’s daughter, [ES<sup>1</sup>]. When the judge is looking at the account that the Appellant’s son, [ES<sup>2</sup>], was visited at his maternal grandparents’ house and that he was threatened and pushed from the first floor of the house onto some metal bars, the judge observes that, “this account however contradicts what the Appellant and his daughters say happened” (paragraph 90). It is clear that the judge is totally observant of the account given by the daughter.
22. Second, the judge was mindful of the fact that, in the midst of claims that the Appellant was at risk of being mistreated and was going to be targeted, he was actually performing a very public role in terms of both going out, and working driving a lorry and yet at no stage was he actually ever targeted.
23. Third, it was entirely inconceivable, that the Appellant’s wife’s relatives would seek to engage in a blood feud against the Appellant, on account of the suicide death of their daughter, but at the same time be targeting the wife’s own children, which is what was being stated here. Both [ES<sup>2</sup>] and [ES<sup>1</sup>] were said to have been at risk and this was simply not credible.
24. Fourth, when the Appellant went to Italy, he went to a town where his in-laws lived (see paragraph 84). The judge observes how the Appellant fled Albania and travelled to Italy. The brother-in-law lived in Milan. The Appellant himself lived on the outskirts of Milan. The judge observed that, “I find it is not reasonably likely that the Appellant would travel to a country, and to an area where a member of his in-laws lived and where he

could possibly be found. This is not the act of someone who wants to remove himself from any risk from his in-laws” (paragraph 84). In short, all these aspects, addressed specifically by the judge, only showed how much lacking in credibility the claim was as presented by the Appellant.

25. Fifth, if the Appellant knew that his family would be targeted, when he himself was no longer in Albania, it did not make sense for why he would leave his daughter behind for a couple of months, as this simply puts one in the path of the very threats that the Appellant claimed to have been setting out to avoid.
26. Sixth, it was suggested that if the Appellant was not then in Albania then his parents would be at risk, but the fact remained that the parents were still there and no harm had come to them whatsoever. As the judge observed, “no-one has been harmed in the Appellant’s family despite his parents still living there and his brothers having lived there until at least 2015” (paragraph 86).
27. Seventh, insofar as it is being suggested that the evidence of the two children, [ES<sup>2</sup>] and [ES<sup>1</sup>], were not factored into the overall body of the evidence, this would have made no difference whatsoever, in the light of what has been said above. The son, [ES<sup>2</sup>], claimed to have had scars, but the father was never made aware of them, and it was difficult to verify how the scars actually arose, and the judge was rightly sceptical of this.
28. Finally, in so far as the medical condition of, [ES<sup>2</sup>] the son, was concerned, Mr Bates submitted that there was nothing in this either. If one looks at the NHS report (at page 53 of the bundle) it refers to there being a possible PTSD condition for [ES<sup>2</sup>]. It states that this may need therapy. [ES<sup>2</sup>] himself then made the decision that he did not want to engage in any therapy. The medical professionals for their part did not press matters any further. None of this suggests that [ES<sup>2</sup>] was in a particularly acute condition. Quite the contrary is the case. In the same way, it is not the case that there is a well fleshed out care plan in existence. The matter is left for the family to decide (see page 55). The family themselves do not decide that they want to initiate and proceed with a care plan for [ES<sup>2</sup>]. Therefore, the judge’s conclusions at paragraphs 91 to 92 and paragraphs 94 to 95 were those which were entirely open to him.
29. In his reply, Mr Jagadeshm submitted that the case of **SQ (Pakistan) [2013] EWCA Civ 1251** and the case of **AE (Algeria) [2014] EWCA Civ 653** are cases where it was made clear that “there can be circumstances in which the high threshold can be reached in relation to a child where it would not be reached in the case of an adult” (at paragraph 17) and one had to bear in mind here that one was considering the position of [ES<sup>2</sup>], who was simply a 16-year-old child. The case of **SQ** made it clear that, “what this case demonstrates is that in some cases, particularly but not only in relation to children, Article 8 may raise issues separate from Article 3” (paragraph 26). The court was clear that particularly in relation to a child, Article 8 may be more protective than Article 3 (at paragraph 7).

30. This indeed, submitted Mr Jagadesham, was the position of [ES<sup>2</sup>]. Under Article 8 he had a better protective cover in relation to his human rights than under Article 3. This had not been properly evaluated by the judge. Both Miss Slater and Dr Abbas had concerns about the condition of [ES<sup>2</sup>]. The judge could not just reject such evidence. Furthermore, the judge ignored the fact that there was pressure being put upon the family members of the Appellant so that they should disclose the Appellant's whereabouts.
31. The general tendency was to target the menfolk. Only if the menfolk could not be found would the tormentors then move on to other members of the family. Yet, the judge had repeatedly used the phrase that he did not find it reasonably likely that a particular course of events would have followed. This was a distinctly unhelpful way of approaching an asylum appeal.
32. He asked me to allow the appeal.

### **No Error of Law**

33. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
34. First, I take the medical evidence first in relation to [ES<sup>2</sup>], the son of the Appellant. Whereas it is true that there is a report from Lisa Slater, which is endorsed by Dr Abbas, a consultant psychiatrist, the fact remains that the established case law in relation to expert reports is clear that experts do not decide cases. Judges do. The expert's function is to advise the judge. The judge is fully entitled to accept or reject expert opinion. If the judge decides to reject an expert's advice, he or she must provide a sound basis upon which this has been done and must then also explain why the advice has been rejected: see **M-W (A child) [2012] EWCA Civ 12** (per Wall LJ at paragraph 39). I
35. In this case, the judge does indeed come to her own view about how to decide the issue of medical evidence and is clear that it does not point to the Appellant being at risk of harm. The judge first sets out the medical evidence (at paragraphs 38 to 40). However, there is then an extended analysis of this and the judge is clear that [ES<sup>2</sup>] did not harm himself in mid-July 2014, and the incident took place in the presence of a social worker, and it is the only reported self-harm attempt. Moreover, the psychiatrist in A&E, to which [ES<sup>2</sup>] was immediately taken "was not concerned about [ES<sup>2</sup>]'s mental state at this time. This was despite the fact that [ES<sup>2</sup>] said he would kill himself rather than be deported. He was given counselling for a short period of time for low mood" (paragraph 91).
36. The judge expressly considers [ES<sup>2</sup>]'s protestation that he would kill himself if he is deported, but the judge is clear that he did not report self-harm when the first refusal letter was issued in June 2015 and that [ES<sup>2</sup>] is

not on any medication “and none has ever been prescribed for him”. The psychiatrist was not concerned about his mental health in A&E despite his threat to kill in June 2015” (paragraph 94). These conclusions were entirely open to the judge in the manner that he reached.

37. Second, in relation to the question of there being a blood feud, on account of the Appellant’s wife having committed suicide, where her relatives are now threatening the Appellant, the judge gave ample reasons for why this did not attract a sustainable protection claim. First, the Appellant himself freely moved around his town, working as a lorry driver, and going out, and never once being attacked. Second, when he did leave to go to Italy, he did not leave immediately, but much later, and then went and settled in Milan, which was the very place where his brother-in-law lived. And again no harm whatsoever came to him. Third, there is also the issue of how it can be said that the children of the Appellant’s wife, namely [ES<sup>1</sup>] and [ES<sup>2</sup>], were also themselves targeted, and the judge does not believe that this was the case, and finds the evidence in this regard to be inconsistent and lacking in credibility.
38. Accordingly, in what is a careful and well compiled determination, Judge Lloyd was entitled to come to the conclusions that she did and there is no error of law.

### **Notice of Decision**

39. There is no material error of law in the original judge’s decision. The determination shall stand.
40. An anonymity direction is made.

### **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

Deputy Upper Tribunal Judge Juss

23<sup>rd</sup> November 2018