Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00887/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th March 2020	**On 14th April 2020**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

MR ALKET ALIA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iengar, Counsel instructed by Karis Solicitors Ltd
For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Colvin, promulgated on 14th October 2019, dismissing the appeal by the appellant against a decision refusing his protection and human rights claim dated 28th November 2018. This decision followed the making of a deportation order against the appellant on 26th November 2018.

Background

2. The appellant is a national of Albania who was born in 1982. He entered the United Kingdom illegally in January 2001. He made an asylum claim in May 2002. This asylum claim was refused by the respondent. An appeal against this refusal was dismissed by Judge Gillespie on asylum grounds but allowed under Article 2 of the ECHR. I briefly summarise the basis of the appellant's protection claim. His cousin, AD, was a notorious gangster who was involved in the killing of a large number of people in Albania in the 1990s. The appellant was targeted by AD's victims pursuant to a blood feud. The appellant believes that AD was killed in Greece in 1998.

3. Judge Gillespie accepted the appellant's claim to be the subject of a blood feud and to have a real risk of serious ill-treatment if removed to Albania. Following his successful human rights appeal the appellant was granted Exceptional Leave to Remain and then Indefinite Leave to Remain (ILR) in May 2007. On 16th February 2018 the appellant was convicted of keeping a brothel for prostitution and received a fifteen month prison sentence.

4. Following the making of the deportation order, the appellant made representations. He claimed that he would still be at risk of serious ill-treatment if deported to Albania on account of the blood feud. He had returned to Albania on six occasions since first leaving the country but maintained that these were only for short visits, a week or under, in 2007, 2008, 2009, and on three occasions in 2017. He did not believe that he would be at risk for the very short periods he claimed to have returned to Albania. He stayed with his mother in different rented properties in different places in Tirana, the mother frequently changing residence. He claimed that an aunt was harassed in 2014 after returning to Albania and obtaining a mobile phone. This was reported to the police but the police discontinued the investigation.

5. In her refusal letter the respondent did not believe that the appellant would be at risk after sixteen years' absence from Albania. Central to the respondent's decision was the appellant's relatively regular return to Albania. The respondent additionally believed that the appellant would now be able to obtain a sufficiency of protection from the Albanian authorities. The appellant appealed that decision to refuse his protection and human rights claim pursuant to Section 82 of the Nationality, Immigration and Asylum Act 2002.

The decision of the First-tier Tribunal

6. The judge had before her a bundle of documents prepared by the appellant's legal representatives that included a statement from him, reference to news videos relating to AD and other background evidence. On the date of the hearing the appellant's second manuscript witness statement was provided.

7. The appellant gave oral evidence. During cross-examination it was put to the appellant that a stamp in his passport indicated that he had in fact spent four months in Albania in October 2007 rather than one week as he initially claimed. He had spent over a month in Albania between December 2008 and February 2009, he had spent almost four months in Albania from February 2009 to June 2009. The appellant again claimed that he stayed with his mother in rented accommodation in different parts of Tirana. He also referred to staying in France and Italy in 2015 when he travelled without travel documents.

8. The judge's findings are contained under the heading 'findings of fact and consideration'. The judge accurately directed herself with respect to the relevant standard and burden of proof and the appropriate legal tests for establishing an entitlement to refugee protection. The judge was aware that being the subject of a blood feud based on how many memberships was now a category recognised under the Refugee Convention.

9. At paragraph 26 the judge considered that the central issue before her was whether, some seventeen years after the appellant left Albania, he remained at real risk of the same blood feud. The judge then considered the evidence relating to the appellant's many visits to Albania since 2002. The judge considered the appellant's claim to have only stayed for a week or less and his claim to have travelled because his mother was unwell and that this was inconsistent with the documentary evidence relating to his travels. The judge made reference to the appellant's three visits in 2017 but noted that there was no evidence as to the length of these visits from any travel document available and the judge questioned the reliability of the appellant's evidence in this regard. I note that there has been no challenge to the accuracy of the judge's reference to the various dates and periods of visits.

10. At paragraph 26 of her decision the judge stated, "On each visit to Albania he [*the appellant*] says he stayed with his mother in Tirana in rented accommodation that she frequently changed although there was no evidence before me corroborating this latter point." Then at paragraph 27 the judge contextualised the appellant's fear of the blood feud in Albania. The judge noted that the appellant had not known of any further blood feud killings since 1998 following the death of AD and dealt with the threat made to the appellant's aunt. There has been no challenge to the judge's assessment in relation to this aspect of her decision.

11. At paragraph 28 the judge then indicated that she had taken account of the background information set out in the respondent's refusal letter relating to the improving situation in Albania of blood feuds. She once again reminded herself of the need to be cautious in reaching an adverse decision in a protection appeal, particularly when the appellant had previously been at risk of serious ill-treatment.

12. At paragraph 29 the judge stated,

> "Considering all the evidence before me in the round I am satisfied even to the lower standard of proof that the appellant is not reasonably likely to be at real risk at the present time on return to Albania. I agree with the respondent that his regular visits back to Albania have themselves demonstrated that he has no difficulties in staying in that country for long periods with his mother in Tirana who has never been targeted. There is no evidence that he was in hiding during these visits or in any other way taking special precautions. There has been no incident when he has had to seek protection from the police and, of course, this is all in the context that it appears that the blood feud may well have ended in 1998 when the appellant said that the last killing occurred on either side."

The judge was consequently satisfied that the appellant no longer held a well-founded fear of persecution under the Refugee Convention or of being subjected to serious harm contrary to Articles 2 and 3 of the ECHR.

13. The judge then went on to consider the appellant's Article 8 rights, with respect to the Immigration Rules relating to foreign criminals and in particular Section 117C of the 2002 Act. The judge concluded that the appellant's deportation would not breach Article 8. There has been no challenge to the Article 8 findings and I need say no more.

The challenge to the judge's decision

14. The appellant challenges the judge's decision in relation to her assessment of risk. The grounds are commendably focused. They contend that the judge erred in law in rejecting the assertion that the appellant's mother changed address on the basis that there was no evidence corroborating this. Specifically, the grounds contend:

(a) that it was never put to the appellant that he had not provided corroborating evidence of his mother's changing of addresses;

(b) that the judge erred in law in that it was incorrect to say that there was no evidence of his mother changing addresses as the appellant himself gave oral evidence on this point and the judge failed to make a clear finding as to whether she accepted or rejected this evidence; and

(c) the judge erred in law in requiring the appellant to provide corroborating evidence in any event.

These grounds were said to materially undermine the crucial factual element of the appellant's claim. Permission to appeal was granted by the Upper Tribunal on these three narrow points.

15. Ms Iengar adopted the grounds of appeal. She reminds me that Judge Gillespie found an extant blood feud in his decision in 2002 and that the blood feud had a pervasive and enduring hold. She submitted, with respect to paragraphs 26 and 29 of the judge's decision, that the issue of the absence of corroborative evidence was not put to the appellant, that there was no finding by the judge as to whether his mother had stayed in different places in rented accommodation, and in any event, the judge erred in law in requiring corroborative evidence on this point. She provided the decision in **HKK (Article 3: burden/standard of proof) Afghanistan [2018] UKUT 00386 (IAC)** in support. Her commendable submissions reflect the written grounds of appeal.

16. Ms Jones relied on a case of Secretary of State for the **Home Department v BK (Afghanistan) [2019] EWCA Civ 1358** in submitting that the judge properly applied the **Devaseelan** principles and, despite the strong finding by Judge Gillespie, was entitled based on the appellant's frequent returns to Albania to reach the conclusions that she did. She submitted that it was implicit in the decision that the judge had taken account of all relevant matters.

Discussion

17. in respect of ground of appeal (a), the appellant essentially contends that it was never put to him that he had not provided evidence of his mother's frequently changing address, and that this was therefore procedurally unfair. The obvious relevance of any evidence relating to the length of time that the appellant remained in Albania, and the circumstances in which he stayed with his mother, was however manifestly apparent from the basis of his claim and would have been clear to the appellant throughout the appeal process. There was no need for the absence of such evidence to be specifically put to him when the burden of proof rests of him and where the importance of the existence of such evidence was self-evidence. The appellant was represented by the same solicitors since at least August 2018 and he has been aware since at least November 2018 of the respondent's view that his repeated visits to Albania undermined his protection claim. This is readily apparent from the reasons for refusal letter. The appellant and his solicitors knew of the appeal hearing, which took place in June 2019, as early as February 2019 when the notice of hearing was issued. The appellant could be expected to be aware of how long he remained in Albania and this was clearly and effectively put to him in cross-examination. There was no need for the appellant to be told that he had not provided corroborating evidence of his mother changing address and there has been no procedural unfairness.

18. In relation to ground of appeal (b), I find there is no merit in the contention that the judge was incorrect to say that there was no evidence that the appellant's mother changed address. It is of course correct that the appellant's oral evidence constitutes evidence. The judge was however demonstrably aware that the appellant gave evidence and of the content

of his oral testimony. It is satisfactorily clear from paragraph 26 of the judge's decision that she did take into account the appellant's claim, and that any reference by her to an absence of evidence, properly considered in the context of the decision, related to an absence of independent evidence. It is irresistibly clear from the decision, read as a whole, that the judge rejected the appellant's claim that his mother frequently changed address.

19. The third ground (c) contends that the judge erred in requiring corroborative evidence. I am not however persuaded that the judge did require corroborative evidence. The burden of proof rests on the appellant to prove that he is a refugee or someone who is at risk of a breach of Article 3, albeit to the lower standard of proof. At paragraph 26 of the judgment the judge is pointing out that the appellant has not discharged the burden of proving his case. There is a distinction between pointing out the absence of sufficient evidence required to discharge a case to the lower standard of proof, and requiring evidence to be produced.

20. However, if I am wrong in that regard, I consider, in the alternative whether the judge did err in law in requiring corroborative evidence. There is no requirement for corroborative evidence in this jurisdiction but a judge is entitled to take into account the absence of evidence that one would reasonably expect to be available. The appellant has known since at least November 2018 that his visits to Albania were very much in issue. If he returned for lengthy periods of time this would undermine his claim that he continued to be at risk from the blood feud. The length of time that the appellant remained in Albania during his various visits is, with respect, obviously relevant. If the appellant stayed with his mother in rented accommodation one would reasonably expect to see evidence of rental agreements or other evidence connecting or associated with the mother's residence at different addresses. The importance of providing such evidence must have been apparent to the appellant, and indeed to his legal representatives. I find, in these circumstances, that the judge did not err in law to the extent that she drew an adverse inference from the absence of corroborative evidence of the mother staying in various rented accommodations in Tirana. I am not satisfied that the judge has made an error of law requiring the decision to be set aside and I dismiss the appeal.

Decision

The appeal is dismissed

No anonymity direction is made.

D.Blum 20 March 2020

Signed Date

Upper Tribunal Judge Blum