



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

Appeal Numbers: PA/02318/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 23 September 2019**

**Decision & Reasons Promulgated
On 3 March 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**DR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Anderson, Counsel instructed by Law Lane Solicitors
For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant is a citizen of Albania. On 1 August 2014 he claimed international protection as a refugee upon arrival clandestinely on 30 July 2014. On 27 February 2019 a decision was made to refuse the application and to remove him from the United Kingdom. The Appellant appealed and his appeal was heard by Judge of the First-tier Tribunal Coutts (hereafter "the judge"). In a decision promulgated on 29 April 2019 the judge dismissed the appeal.

2. The basis upon which the Appellant pursued his appeal is set out in the Decision and Reasons of the judge at [19] to [43]. Essentially, the primary focus of the Appellant's claim was that there was an ongoing blood feud between his family and the D family and further that he was a victim of modern slavery.
3. The Respondent accepted the Appellant's account that there was a blood feud between the Appellant's family and the D family and, that he was a former victim of modern slavery, but did not accept the Appellant had been targeted as part of that blood feud and concluded that he could be safely returned to Albania and would be sufficiently protected by the State.
4. The judge agreed with the Respondent. The judge was satisfied that the Appellant was not a target of this blood feud. In essence the judge found that following the death of a member of the Appellant's family of "equal blood", the blood feud had ended [56]. The judge considered that this conclusion was reinforced by the fact that the Appellant's father returned to Albania having previously fled in consequence of the blood feud. In view of the judge's conclusion that the blood feud had come to an end, he did not find it credible that the D family would seek to target the Appellant (rejecting the account of an attempted abduction by the D family) and his older brother or, that there was any credible justification for the continuance of the blood feud.
5. Further, the judge found that while the Appellant was targeted by a criminal gang in Italy, there was no evidence to suggest that they would be able to identify him on return, or that the authorities would be unable or unwilling to provide protection.
6. Not content with the judge's decision, by Notice dated 10 May 2019, the Appellant made an application for permission to appeal to the Upper Tribunal. The grounds submit that the premise upon which the judge found that the Appellant was not a target of the blood feud involved the application of too high a standard of proof, the making of speculative findings, a failure to consider background evidence and apply applicable country guidance.
7. On 22 July 2019 Upper Tribunal Judge Martin granted permission on all grounds.

Was there a material error of law?

8. The Appellant's case as set out in the grounds is that the judge's adverse credibility findings were insufficient to support a conclusion that there was no extant blood feud, particularly so, in view that the Respondent conceded that one in fact did exist. It was argued that this conclusion was contrary to the background evidence which supported the Appellant's account which the judge failed to take into account. Insufficient regard therefore was said to have been given overall to the risk to the Appellant on return to Albania.

9. Further still, reliance was placed in the grounds on the fact that the judge failed to consider the issue of sufficiency of protection in accordance with country guidance namely EH (Blood feuds) Albania CG [2012] UKUT 00348.
10. Mr Anderson relied on the grounds as pleaded in respect of the first and second ground, and briefly amplified ground three and referred to headnote (6) & (7) of EH (op.cit) which he submitted the judge did not apply.
11. Mr Singh in brief submissions drew my attention to the judge's citation of EH at [12] and submitted the grounds amounted to a disagreement with the judge's findings.
12. I remind myself of the guiding principles that affect my approach to this appeal. These are well-known and are helpfully summarised in the case of R (Iran) -v- Secretary of State for the Home Department [2005] EWCA Civ 982:

“... it may be convenient to give a brief summary of the points of law that will most frequently be encountered in practice:

 - (i) making perverse or irrational findings on a matter or matters that were material to the outcome (“material matters”);*
 - (ii) failure to give reasons or any adequate reasons for findings on material matters;*
 - (iii) failure to take into account and/or resolve conflicts of fact or opinion or material matters;*
 - (iv) giving weight to immaterial matters;*
 - (v) making a material misdirection of law on any material matter;*
 - (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;*
 - (vii) making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the Appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made”.*
13. The Court of Appeal went on to emphasise that any error needed to be material.
14. In this case the judge stated that he had directed himself by reference to the country guidance case of EH and the background evidence at [12] but did not set out those parts which were material to the issues which

he had to resolve. Whilst that in itself is not a material error of law it does make it difficult to discern whether the judge considered the substance of the country guidance and background evidence relied upon by the Appellant in reaching his adverse findings or when considering risk on return.

15. The central plank to the Appellant's grounds is that the judge reached findings that were not open to him on the evidence. I have been mindful of the fact that in McGraddie (Appellant) v McGraddie (AP) and another (AP) (Respondents) (Scotland) [2013] UKSC 58 the Supreme Court reminded all appellate jurisdictions of the care that is to be taken when looking to reverse findings of fact made at first instance and that they should do so only when satisfied that the findings were plainly wrong and not supported by the evidence.
16. The question for me is whether despite the apparently careful consideration given to the evidence, the judge nevertheless made findings that were not sufficiently reasoned in light of all evidence or were not open to him.
17. I do not consider that it was open to the judge to find that the blood feud had ended or that there was a sufficiency of protection for the reasons that he gave without specific consideration being given to the background evidence and country guidance with reasons as to why this did not assist the Appellant's case. The judge's attention was drawn to the Country Policy and Information Note "Albania: Blood feuds v.3.0 October 2018" that indicates a blood feud can require the extinction of all male family members and can be characterised by the occurrence or recurrence of threats. The same background evidence is also supportive of the Appellant's case that the practice of self-confinement enabled his father to return to Albania despite of an ongoing blood feud. There is force in the argument that all this evidence is supportive of the Appellant's case and without any specific reference to it by the judge, I am not satisfied that adequate consideration was given to it before reaching conclusions as to credibility or otherwise.
18. Similarly, I also do not find that it was open to the judge to conclude that the Appellant's account was undermined by the fact that there was "no reason why the police could not investigate..." the attempted abduction against the Appellant. This runs contrary to guidance in EH that there is not a sufficiency of protection in areas where Kanun law predominates, which was applicable here. Whilst I observe that the Tribunal in EH at [74] were referring to circumstances where there was an active blood feud, I find for the reasons given above that the judge's consideration was insufficient in this regard in any event and that these conclusions cannot be compartmentalised.
19. Having found that the basis upon which the conclusion that the Appellant's account is not credible or that he is not at risk are not sustainable and amount to a material error of law, I have to decide whether the matter should be remitted to the First-tier Tribunal to be re-heard or whether it is

possible from the findings already made and the evidence received to re-make the decision myself. The parties invited the Tribunal to remit the matter to the First-tier Tribunal and I come to the view that it is appropriate to do so. There will have to be an assessment of the Appellant's account and a consideration of risk on return in light of the accepted facts by the Respondent with sufficient reasons being given as to why that account is accepted or rejected in view of all the evidence.

Notice of Decision

The appeal of the Appellant to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside. The appeal is remitted to the First-tier Tribunal for a rehearing de novo on contested facts by a judge other than Judge Coutts.

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 24 February 2020

Deputy Upper Tribunal Judge Bagral