



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

Appeal Number: PA/08182/2019

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 5 February 2021

On 24 February 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**H K (ALBANIA)
[ANONYMITY ORDER MADE]**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Ubah Dirie, Counsel instructed by Kingswood Solicitors

For the respondent: Mr Andy McVeety, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of H K who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 20 January 2020 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds and grant discretionary leave as an unaccompanied asylum-seeking child until 1 June 2020, six months before his 18th birthday.
2. The appellant is an Albanian citizen, born in December 2002 and now 19 years old.

Background

3. The basis of the appellant's claim is that he is at risk from a modern blood feud in his home area of Shkoder, Albania, and that no internal relocation option would protect him.
4. On 13 August 2009, when the appellant was 7 years old, his father was involved in a road traffic accident: a car containing two, or perhaps three, drunk young men from another family hit his father's truck, which was loaded with concrete blocks, and some of those fell off. The car behind crashed, and all (or both) of them died. The First-tier Judge noted at [46] that the appellant's father was cleared of all wrong doing and that toxicology reports showed that both of the young men in the car behind were drunk.
5. It is the appellant's account that his father is in self-confinement, for fear of attack by the family of the young men who died. The other family has not declared a blood feud officially yet. In fact, the appellant's family do not know the name of the other family whose sons died.
6. The appellant's father is said to be in self-confinement but leaves it for food and drink and to visit relatives, without any negotiation with the affected family. The appellant's dad has left Albania twice, once when all the family went to seek international protection in Germany, and on another occasion recently. The appellant continued to attend school and his football practices while in Albania.
7. The appellant claims to have been the victim of an attempted kidnap in 2012, when he would have been 10 years old. The judge found that the kidnap attempt, if it occurred, was not necessarily linked to the road traffic accident in 2009. The appellant left Albania with his family in May 2015, when he was 13 years old. The family claimed international protection in Germany unsuccessfully, and were removed to Albania in June 2017, again as a family unit.

8. In April 2018, when he was 15, the appellant left Albania alone, travelling via Serbia, Montenegro, Hungary, Germany and Belgium before climbing into a lorry and entering the United Kingdom clandestinely. On 16 April 2018, the appellant claimed asylum in the United Kingdom and was served with illegal entry papers. His statement of evidence form was submitted on 29 March 2019 and he provided a witness statement on 9 May 2019.
9. In the United Kingdom, the appellant has been living with his uncle, who has a Romanian restaurant which, while it used to provide a good living, is currently closed because of the Covid-19 pandemic. They were not able to pay solicitors to lodge the onward appeal promptly, but that is of no moment, as time has been extended.

Refusal letter

10. On 20 January 2020, the respondent refused protection. The appellant was then 17 years old and would not reach 18 until 1 December 2020. The respondent granted him discretionary leave until 1 June 2020, as she was not satisfied that there were adequate reception arrangements for him in Albania. The appellant had then been in the United Kingdom for one year and ten months.
11. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

12. The First-tier Judge directed himself at [42] that he should take all relevant evidence into account and consider credibility in the round. His self-direction on the correct approach is correct. He also gave himself a proper self-direction on the appellant's vulnerability, with reference to the Joint Presidential Guidance Note 2/2010, as the appellant was still a minor at the date of hearing, 18 February 2020.
13. At [13]-[25] of the First-tier Judge's decision he set out the appellant's account. The appellant confirmed that as at the date of hearing, there had still been no formal declaration of a blood feud. The appellant still did not know the name of the other family, though he had been told that they were a big, dangerous gang. They could also find him in Tirana, so internal relocation was not an option.
14. While the family was in Germany, their truck had been set on fire. The incident had been reported to the police, but they had not done anything. The family presumed it was to do with the blood feud with the other family. The appellant did not have any documents from the family's time in Germany, in particular no documents relating to any protection claim unsuccessfully made there.
15. After their return from Germany, the family lived with various relatives, maternal and paternal, and were in hiding. The appellant's father became very paranoid and moved, whenever he saw a new face. The appellant

said that he had two paternal uncles and three male cousins, who were living normal lives.

16. His father lived in partial self-confinement: he went out for food and drink, and to meet relatives who could help him, albeit rarely. His father had taken the appellant to football training, but the appellant now said it had occurred only once, so that the boy could 'feel normal'. The appellant mentioned for the first time that his father had been stabbed in the back, which 'must have been by the other family'. It was normal to make a mistake or forget a matter like that: it happened when the appellant was very young, on one of the occasions when his father had to go out from confinement.
17. The evidence of the appellant's uncle, with whom he was living in the United Kingdom, was that he also knew about the stab wound but had not mentioned it in his own witness statement. He had heard that there had been abortive attempts at reconciliation between the two families, 'and that people may have been sent for this purpose...but these attempts had apparently failed'.
18. In submissions for the appellant, Mr Slatter confirmed his position, which is summarised at [38]:

"38. [Mr Slatter] placed continued reliance on the [country guidance case *EH (blood feuds) Albania CG* [2012] UKUT 348 (IAC)] but said there had been a slight variation in the evaluation of what constituted a 'blood feud' in Albania (see 3.5.3 of the CPIN) and the definition had been widened as a consequence. He said that modern day criminality, as with the gang here, often ignores Kanun (an ancient Albanian system of local justice)."
19. The First-tier Judge had regard to the country guidance given in *EH (Albania)* and at [45] gave himself a proper self-direction that the issue was whether there was a blood feud in existence. At [46]-[59], the First-tier Judge set out why he found the account of a blood feud to lack credibility.
20. In particular, at [49], the judge found it not credible that neither the appellant, nor his uncle, could name the other family or gang, despite their claimed influence and power. The judge noted that *EH (Albania)* held that children under 15 were not usually involved. The appellant had said that as he got older, he had been able to ask more questions and learn about the feud, but this basic question had not been answered. The index event was in 2009, now some 11 years ago, and the appellant was 17 years old now. The First-tier Judge did not consider that the kidnap attempt, even if credible, was specifically linked to the claimed feud.
21. The new account by both the appellant and his uncle, that his father had been stabbed in the back in Albania, was a huge incident and it was not credible that the appellant and his uncle had both omitted to mention it until the First-tier Tribunal hearing. 'Sometimes things are forgotten' was not a credible explanation for that. The appellant's evidence was that his

father had left Albania for a second time, quite recently, and had returned by choice to what the appellant claimed was a life of self-confinement and an active blood feud.

22. The appeal was dismissed. The appellant appealed to the Upper Tribunal.

Permission to appeal

23. On 31 July 2020, Upper Tribunal Judge Mandalia granted permission on the basis that it was 'at least arguable' that the First-tier Judge had failed to consider background country material which was capable of undermining the findings made, and that in all the circumstances, including the appellant's young age, it was in the interests of justice to grant permission to appeal. Judge Mandalia gave triage directions, following which it was decided that an oral hearing was necessary.

Rule 24 Reply

24. The Secretary of State's Rule 24 Reply is dated 15 September 2020. It was out of time, due to administrative difficulties caused by the Covid-19 pandemic: as the appellant's appeal was also out of time and time has been extended, I see no difficulty in extending time for the Rule 24 Reply.

25. The respondent's contention in the Reply was as follows:

"5. There is no indication that the judge has failed to have proper regard to the background evidence. The points relied on in the grounds relate to highly specific incidents or are things which are said to sometimes happen. They do not represent the typical circumstances that occur in the case of blood feuds.

6. It was open to the judge to conclude in paragraph 47 that it was implausible 'given the circumstances', in this case that the appellant's father was entirely blameless, that a traffic accident does not seem to be the basis on which a blood feud can be established.

7. The appellant and his witness [the uncle] both claimed that the other family had influence and power. It is not credible that they would be in a position to know this but not have any idea who the other family were, particularly after a claimed feud that had run for many years. The judge's conclusion that this was not credible was sound.

8. The determination shows that the judge did properly consider the evidence and that his conclusions were properly reasoned. There is no error of law."

Rule 25 Response

26. The appellant responded to the respondent's Rule 24 Reply. He argued that where, as here, the judge found that events relied upon were implausible, it was an error of law to do so without taking account of evidence which showed that events, similar to those described, could and

did occur: see *SB (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 160 at [48] and at [62]-[64].

27. In particular, the appellant challenged the finding by the First-tier Tribunal that children under 15 were not usually targeted in a blood feud: the appellant relied on the respondent's CPIN at 3.3.1, 3.3.5 and 3.5.2 and that the judge should have diverged from the description of self-confinement in the country guidance decision *EH (blood feuds) Albania CG* [2012] UKUT 348 (IAC): at 4.1.1, the CPIN accepted that some blood feud affected families were *semi-isolated*, and that the description of the approach of the appellant's father to isolation fitted the semi-isolation there described.
28. As regards whether a blood feud could arise from a no-fault car accident, the appellant criticised the finding by the First-tier Judge at [47] that this was 'highly implausible to the point of being incredible'. The appellant contends that it was not open to the First-tier Tribunal to assume that the other family would act reasonably: see *Kasolo v Secretary of State for the Home Department* [13190] IAT, which quoted a passage by Sir Thomas Bingham (as he then was) in *Current Legal Problems*, as follows:

"... No judge worth his salt could possibly assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite - different - in accordance with his concept of what a reasonable man would have done."

29. In *HK (Sierra Leone) v Secretary of State for the Home Department* [2006] EWCA Civ 2037 at [28]-[29], the Court of Appeal emphasised the need to have regard to the available country evidence and reliable expert evidence, when reaching an holistic view of credibility:

"28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).

29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:

"In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."

30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala -v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account merely on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background."

30. The appellant contends that in this case, the judge made a wrong assumption of implausibility, with reference to the respondent's CPIN at 3.4.1, which asserted that blood feuds can arise for 'petty reasons', including car accidents. The appellant contends that the innocence of the appellant's father may not have been as obvious to the family of the men who died. The judge should have applied a child-sensitive assessment of the lower standard of proof applicable to protection claims: see *KS (benefit of the doubt)* [2014] UKUT 552 (IAC) at [99]. It was unsafe for the judge to assume that the appellant's parents and other family members would have told him which family was targeting his father in a blood feud.

31. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

32. In submissions for the appellant at the hearing, Ms Dirie relied on her written submissions above and argued that there was no reason to find the appellant's account to be implausible. She reminded me of the passages in the CPIN on which the appellant relied and asked that the appeal be allowed and remitted to the First-tier Tribunal for remaking afresh.

33. For the respondent, Mr McVeety said that it was not possible to establish a material error of law by alternative reasoning, as the appellant was seeking to do. The assertion that the appellant's father had been attacked was late-added and the judge's credibility findings were fully supported by the evidence before him.

34. The claimed blood feud was far from being within the norm. The appellant's account was that he did not know the name of the other family who were threatening his family. The judge had been entitled to say that the evidence before him did not amount to credible evidence of a blood feud: his decision was neither perverse nor *Wednesbury* unreasonable.

35. The CEDOCA report which was quoted in all of the passages in the CPIN upon which the appellant relied, when read in full, was not supportive of the appellant's account. There was nothing about the appellant's claim which could logically lead to revenge.

Albania: Blood feuds, CPIN February 2020 (version 4.0)

36. The appellant relies on the CPIN, arguing that had the First-tier Judge taken proper account of its contents, he would have reached a different conclusion about the credibility of the appellant's account. It draws heavily on the research of CEDOCA, the research unit of the Belgian Office of the Commissioner General for Refugees and Stateless Persons, published June 2017, entitled *Blood Feuds in contemporary Albania: Characterisation, Prevalence, and Response by the State*. The parties agreed at the hearing that the Tribunal could look at the source report if necessary, as it is quoted at such length in the CPIN.
37. Under the heading at 3.2, *Contemporary attitudes to customary law*, the CPIN quotes the 2017 CEDOCA report as saying that contemporary Albanian society no longer legitimates or accepts blood feud murders as an integral social obligation under customary law:

“Mentor Kikia [a journalist and civil society activist] stated: “Most people started to think differently; persons who were self-confined have understood now that they are no longer obligated to stay in their homes. Nowadays, they go to the police and say: I have nothing to do with it and I want to live my life.”

38. At 3.2.2, the CEDOCA report is quoted as saying that there despite a new, modern mentality that no longer sustains blood feuds, murders have still been committed in the 21st century in which the Kanun was invoked. Some people, particularly in the Shkoder Regional Police Directorate, still had the traditional mentality, and the old Kanun rules could be applied, including self-confinement.
39. At 3.3.1, the 2017 CEDOCA report said that the Albanian Institute for Public Affairs had said that the only thing left of the Kanun was self-isolation. The customs were not the same as those prescribed by the Kanun:

“...since the 1990s, it is not about honour any more. 80% is criminal and not related to customary law or medieval common law. It's about mafia-style killings. It's murder cases for other reasons than blood feud, just like they happen elsewhere. It's normal killings and vendetta killings. ... nowadays, people are killing even women and children for blood feud, which is not in accordance to the stipulations of the Kanun.”

40. In fact, CEDOCA's interlocutors concluded that very few of the recent murders were blood feuds at all. Quoting Mentor Kikia again, the CPIN says that criminal problems, individual conflicts or disputes, can happen to anyone and 'are very often wrongly labelled as blood feud'. Blood feuds

required the 'regulating role of the elderly' and they, as prescribed by the Kanun, would 'sometimes choose a target and the victim will lock himself up'. Nearly all of the recent blood feuds relate to property and land disputes. The Rules of the Kanun 'were respected in practically none of these cases and that it was nearly always very difficult to distinguish these murders from ordinary revenge killings'.

41. A passage from Operazione Colomba (the 'Non-Violent Peace Corps of the Association Comunita Papa Giovanni XXIII') in December 2017 said that the practice of vendetta was evolving, and gave examples of women and children under 15 who had been victims of blood feud violence: two girls aged 17 and 19, a Protestant pastor whose age is not given, and a child hit in error by a bullet aimed at his 22 year old uncle during a fight with another man.
42. At 3.4.1, under the heading *Reasons for Blood Feud*, car accidents are given as an example of an event which could start a blood feud:

"Car accidents. On 23 August 2012, a man was injured by a firearm when he was in his car with his girlfriend. *The police investigation assumed that this was an act of vendetta over a previous car accident in which the victim killed a member of the road police (Panorama, 19.11.2012).*"

[*Emphasis added*]

43. The same Operazione Colomba reported that there were 16 families in the Shkodra District living in self-confinement, and a total of 31 families in the centre north of Albania.

Analysis

44. Ms Dirie has kindly provided the Tribunal with a full copy of the CEDOCA report, the contents of which is so heavily quoted in the respondent's CPIN and which she contends would have led the judge to a different conclusion, had he reviewed the CPIN and approached his decision holistically, as he had directed himself to do. Both she and Mr McVeety were content for me to look at the original document, which forms the basis of most of the CPIN. I am satisfied, having read it, that it is accurately reflected in the CPIN.
45. The thrust of the CEDOCA report is that the old Kanun law form of blood feud is dying out, as the Tribunal found in *EH (Albania)*. What is sometimes called a modern blood feud is really no more than mafia-style criminality, with few if any of the ground rules which defined the traditional blood feud. In fact, they seem to be indistinguishable from ordinary murders.
46. It is right that there is one instance reported where the police *thought* a car accident might be related to a blood feud. What is really striking, though, about the evidence in this appeal is that there has been no formal declaration of a blood feud at all, and that, 11 years after the original incident, nothing that could not be otherwise explained has occurred.

47. I remind myself that the existence of the CPIN evidence was drawn to the judge's attention in submissions, and also that at [9] of his decision, he stated that he had the respondent's February 2020 CPIN on Albanian blood feuds before him, and at [10] that he considered all the evidence before him, even if not specifically referenced. My primary finding is that it is likely that the judge did consider the CPIN evidence, even if he did not set it out.
48. If I am mistaken, then having considered the CPIN, and the CEDOCA source, I am not satisfied that the contents of that evidence are sufficiently different from the guidance in *EH (Albania)* that it was necessary for the First-tier Judge to depart from the guidance.
49. I remind myself that the First-tier Judge heard the oral evidence of the appellant and his uncle, and that he is the fact-finding judge. The Upper Tribunal can interfere with findings of fact and credibility only in very limited circumstances: see *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 and *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296.
50. There is no perversity or *Wednesbury* unreasonableness in the judge's reasoning. His findings are based on reasonably drawn inferences and not simply on conjecture or speculation: was unarguably entitled to find that it was not credible after 11 years, that the appellant still did not know the name of the other family or gang, such that it was not possible for evidence to be produced about the reach of that gang and whether internal relocation was available.
51. The attempted kidnapping, if it occurred, had no obvious link to the claimed feud, and nor did the arson damage to the family truck while they were in Germany. It was certainly open to the judge to consider that the alleged stabbing of the appellant's father, mentioned only at the hearing, was a fabrication.
52. There is no material error of law in the judge's reasoning and I uphold this decision.

DECISION

53. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)

Date: 9 February 2021

Upper Tribunal Judge Gleeson