



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-001782**  
**FtT No: PA/51061/2020**  
**IA/00162/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 09 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SL**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr F Clarke, Counsel, instructed by Sutovic and Hartigan Solicitors

For the respondent: Mr D Clarke, Senior Presenting Officer

**Heard at Field House on 4 July 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

## **Introduction**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Rodger (“the judge”), promulgated on 4 January 2023 following a hearing on 8 December 2022. By that decision, the judge dismissed the appellant’s appeal against the respondent’s refusals, dated 24 July 2020, of his protection and human rights claims, which had been made on 14 November 2017.
2. The appellant is a citizen of Albania, born in 2000. He came to the United Kingdom in 2015 as an unaccompanied asylum-seeking minor. His asylum claim had been based on an alleged blood feud. The appellant asserted that his father had been a commander in the Kosovo Liberation Army (“KLA”) during the war in that region between 1998 1999. He claimed that certain individuals had come to the family home demanding that the father provide them with information about the death of their relatives during the war. The father was threatened and he was told that the appellant would be killed unless relevant information was imparted. As result of this, the appellant claimed that he had effectively gone into hiding whilst arrangements were made for him to leave Albania, which he duly did in late 2014.
3. The appellant’s claim was refused and the subsequent appeal dismissed by First-tier Tribunal Judge Hamilton (“Judge Hamilton”) in a decision promulgated on 25 November 2016 (PA/00500/2016). Judge Hamilton rejected the entirety of the appellant’s claim on the basis of a multiplicity of reasons set out in her decision. In short, she found that the appellant had been untruthful in all material respects.
4. Judge Hamilton’s decision was not successfully appealed (it appears as though permission to appeal was refused by the First-tier Tribunal and the application was not renewed).
5. As a result of the appellant’s age at the time, he was granted discretionary leave. Prior to the expiry of that leave, the appellant put forward further submissions which were deemed to constitute the

protection and human rights claims which have ultimately led to the current proceedings.

6. In essence, the appellant's case before the judge was the same as that put forward to Judge Hamilton in 2016, albeit that further evidence had been provided in the form of: a psychiatric report by Dr P Singh; a book purporting to identify the appellant's father as a member of the KLA, with translated extracts ("the Book"); country expert reports from Ms Antonia Young and Mr Vebi Kosumi; witness statements for the appellant and two other individuals.

### **The judge's decision**

7. On any view, and notwithstanding the criticisms put forward in the grounds of appeal, the judge's decision represents a conscientious determination of the appellant's case. It is well-structured, clearly written, and, in the circumstances, appropriately concise.
8. I provide only a very brief summary of the decision here: the parties are obviously aware of its full contents and if my own decision is the subject of further scrutiny, the judge's analysis and findings will be examined in detail at the appropriate time.
9. The judge addressed the decision of Judge Hamilton in the context of the well-known Devaseelan principles, setting out the previous adverse findings in some detail and correctly stating that those findings constituted the "starting point" for her assessment: [18] and [50]. She then divided up her analysis of the evidence under the sub-headings: "Medical evidence"; "The Book"; "Country expert reports"; "The appellant's evidence"; "Statements" (relating to the two other individuals referred to in paragraph 6, above); and "Credibility of the appellant" (a cumulative conclusion on credibility in light of "all of the evidence"). Put shortly, the judge found the appellant to be untruthful in respect of all material aspects of his claim.

10. Under the sub-heading “Protection claim”, the judge brought all of her findings together and concluded that there had been, and was, no blood feud and consequently no risk on return: [51].
11. Of significance in this appeal, the judge went on to state “even if” conclusions as to the availability of sufficient state protection and/or internal relocation. She concluded that either were available to the appellant on the hypothetical basis that there was a blood feud: [51].
12. Under the sub-heading “Article 8”, the judge considered the appellant’s private life in the context of paragraph 276ADE(1)(vi) of the Immigration Rules and under a wider proportionality exercise. In light of various factors, she concluded that there would be no very significant obstacles to the appellant’s re-integration into Albanian society, nor would his removal to that country be disproportionate for any other reason: [53]-[57].
13. The appeal was accordingly dismissed on all grounds.

### **The grounds of appeal**

14. The grounds of appeal were drafted with clarity and conciseness, something not always encountered by the Upper Tribunal. Two challenges were put forward.
15. Firstly, it was said that the judge made a “fundamental” mistake of fact in assessing Dr Singh’s psychiatric report. Specifically, the judge was wrong to have stated that Dr Singh had not addressed the possibility that the appellant had feigned/exaggerated his mental health symptoms. That mistake led to the judge erroneously placing no weight on Dr Singh’s evidence. That in turn materially undermined the judge’s assessment of whether there would be very significant obstacles to the appellant re-integrating into Albanian society, with reference to paragraph 276ADE(1)(vi).
16. Secondly, it was “perverse/irrational” (for my part, I cannot see any distinction in terms of the terminology used) for the judge to have

concluded that the Book did not in fact refer to the appellant's father because of a "minor variation" in the spelling of the family name. The judge had failed to consider "objective evidence" as to the variation in spellings in the Albanian language. As a result of this allegedly perverse finding, together with an alleged error as regards the name of the appellant's home village, the judge's other findings and ultimate conclusion were flawed.

17. Permission was granted on both grounds.
18. There has been no post-permission application to amend those grounds.

### **The hearing**

19. I express my gratitude to both representatives for their skilful submissions in this case. Their oral submissions are a matter of record and I only summarise them here.
20. For the appellant, Mr Clarke relied on the grounds of appeal, emphasised particular points arising therefrom, and assisted in respect of any interventions from myself. He helpfully clarified that ground 1 related only to Dr Singh's assessment of the appellant's symptoms as they went to the very significant obstacles issue. There was no challenge to the judge's conclusion that Dr Singh had not made any comment on the credibility/plausibility of the appellant's account in so far as it might have been causative of the symptoms. Mr Clarke submitted that but for the mistake fact, the judge "might" have reached a different conclusion on paragraph 276ADE(1)(vi).
21. As to the Book issue, Mr Clarke suggested that if the difference in spelling of the family name had been of concern, the judge should have raised it at the hearing and the failure to do so had been procedurally unfair. When pressed, he submitted that such unfairness could constitute perversity. In any event, the judge's error was material because it effectively undermined all other findings made in respect of the

protection claim. In other words, if the judge had accepted that the Book referred to the appellant's father, all other aspects of the claim would have made more sense.

22. When I raised the issue of the alternative "even if" conclusions reached by the judge at [51], Mr Clarke accepted that there was no express challenge to these in the grounds of appeal, but submitted that they went to the materiality of the grounds which had been pleaded and he was entitled to contend that the judge had failed to explain why she had reached the conclusions.
23. For the respondent, Mr Clarke submitted that there was no error in respect of Dr Singh's report when the judge's decision was read as a whole. Even if an error was made out, it was not material. As regards the Book, the first two sentences of [31] stated only that the judge had noted the discrepancy in spelling and that had been open to her. There was nothing perverse in her overall assessment, particularly when the rest of her findings were taken into account. There were numerous unchallenged findings in the decision. The Book did not in fact support the appellant's case.
24. As to the alternative conclusions stated at [51], Mr Clarke submitted that they had not been challenged in the grounds of appeal and represented either a complete answer to the appellant's challenge or at least a significant barrier.
25. In reply, Mr Clarke confirmed that he was not placing great emphasis on the issue relating to the name of the appellant's village. He reiterated the narrow basis of ground 1 and the content of Dr Singh's report. As to what the judge said at the beginning of [31], it was submitted that what the judge had noted constituted one of the reasons for rejecting the relevance of the Book. Mr Clarke urged me to consider what was said at [33] in light of [43]. In respect of the alternative conclusions at [51], reference was made to paragraph 74(c) of EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) as regards state protection

and the judge had not provided any reasons as to why internal relocation would be a viable option.

26. At the conclusion of the hearing I reserved my decision.

### **Analysis and conclusions**

27. It is by now well-established that appropriate restraint should be exercised before interfering with a decision of the tribunal below, which will have read and heard the evidence as a whole and which had the primary task of reaching findings of fact and attributing appropriate weight to relevant considerations: see, for example, UT (Sri Lanka) [2019] EWCA Civ 1095, at [19]-[20] - observations subsequently endorsed in a number of other judgments of the Court of Appeal.

28. It is appropriate for me to read the judge's decision sensibly and holistically.

29. In the present case, and as mentioned earlier, the judge produced a detailed decision which addressed multiple sources of evidence. She quite properly followed the Devaseelan principles, regarding Judge Hamilton's adverse findings as a starting point, but nothing more than that. At the outset of her consideration of the evidence and findings, the judge stated that she had looked at the evidence "in the round", considering each aspect of the evidence individually and on a cumulative basis: [19]. Then, when drawing together various findings and stating her overall conclusion on credibility at [50], the judge once again confirmed that she had considered "all of the evidence". It is quite clear to me that she had indeed done what she said she would do, namely to have considered the evidence as a whole. I turn to address the narrowly-drafted grounds of appeal in that context.

### ***Ground 1***

30. On the very narrow basis on which ground 1 was drafted and as confirmed by Mr Clarke at the hearing, I find that the judge did make a mistake fact as to the content of Dr Singh's report.

31. At [23], the judge stated that:

“23...However, on considering what weight I can place on [Dr Singh’s] report and on the appellant’s report of a recurrence of thoughts relating to the experiences where his father was threatened, I note that there is no indication within the report that the expert has considered whether the appellant was malingering or exaggerating his symptoms or as to the credibility of his account of his symptoms.”

32. Then, at [26], the judge went on to state that:

“26. Having considered that Dr Singh has not commented on whether the appellant is credible in his reported symptoms and history of anxiety following alleged experiences in Albania, and on noting the inconsistencies in the account provided to Dr Singh, overall I am not satisfied that I am able to place any weight on the medical report with regards to alleged reported symptoms and do not accept that the report is supportive of the credibility of the appellant’s account regarding his experiences in Albania all the reasons that he left Albania.”

33. In fact, at paragraph 13.8 of the report, Dr Singh stated that:

“13.8. From my examination, I did not find that [the appellant] exaggerated his symptoms or adverse behaviour. He did not endorse every symptom I asked about and did not use hyperbole to describe the symptoms he has.”

34. It is apparent from the above that the judge’s mistake was very limited indeed: it related solely to the issue of the symptoms. Nothing was said by Dr Singh about any consistency between the symptoms and the appellant’s account of past events. In this regard, the judge was plainly entitled to find that the report was not supportive of the appellant’s credibility as regards past experiences and indeed Mr Clarke has expressly confirmed that there is no challenge to that aspect of the judge’s reasoning.



35. Subject to what I say about ground 2, below, the judge was fully entitled to find that the symptoms stated in Dr Singh's report were in no way causally linked to any adverse past experiences in Albania.
36. It is then important to consider what in fact Dr Singh's diagnosis and prognosis amounted to. The expert concluded that:
- (a) the appellant was not suffering from a diagnosable major health condition: paragraph 15.1;
  - (b) the appellant had symptoms of a subjective state of anxiety, low mood, and sleep disturbance: paragraph 15.1;
  - (c) the appellant had not received any treatment: 15.2;
  - (d) the appellant did not require any treatment: 16.1
37. Mr Clarke referred me to paragraphs 15.3 and 18.1-18.4 of Dr Singh's report. In summary, these passages state that the appellant felt safe in the United Kingdom, if he was to be returned to an environment which might trigger memories of "past unpleasant experiences Albania" it was possible that the mental health will deteriorate, and that the prospect of removal could make him "vulnerable to exacerbation of symptomology".
38. The significant problem facing the appellant here is that, as mentioned earlier, Dr Singh did not comment on the plausibility of the appellant's account in so far as the symptoms might have been causally linked to past experiences. The judge was correct to have recognised this and there has been no challenge to that aspect of her analysis. This, taken together with the numerous other adverse findings made by the judge (and, once again, subject to what I say about ground 2, below), very substantially (if not entirely) undermined Dr Singh's premise that a return to Albania might exacerbate symptomology because of possible triggering due to past experiences. In other words, the judge would have been entitled to approach Dr Singh's report and the issue of very significant obstacles (and indeed Article 8 on a wider basis) on the

correct premise that any symptoms had no causal link to claimed difficult past experiences.

39. In turn, if the judge had not made the mistake of fact, and taking what Dr Singh said at paragraph 15.1 of her report at face value, the potentially relevant factor of the appellant's mental health would have consisted of the following (subject once again to what I say about ground 2, below):

- (a) no diagnosed mental health condition;
- (b) no treatment received;
- (c) no treatment required;
- (d) no adverse past experiences which might act as a trigger on return;
- (e) familial support available in Albania;
- (f) country information in the relevant CPIN indicating that appropriate treatment for conditions such as depression are available in Albania (bearing in mind that the appellant had no diagnosable condition);
- (g) some country information in the same CPIN relating to the stigma attached to those with mental health disabilities, highlighting discrimination, but also a slight improvement in attitudes;
- (h) some support in Mr Kosumi's report on the issue of stigma.

40. The judge properly took account of Judge Hamilton's findings, the time spent by the appellant in the United Kingdom (8 years), his Albanian citizenship, his ability to work in that country, his educational achievements here, and the fact that he had not lost cultural or social ties with his home country: [54] and [56]. The judge correctly stated at [56] that the appellant did not suffer from a mental health condition as such.

41. Any consideration of the appellant's mental health would have been applied to the "elevated" threshold set by the very significant

obstacles test: Parveen v SSHD [2018] EWCA Civ, at [9]. It also have had to be factored into the well-known test of integration, as set out at [14] of Kamara v SSHD [2016] EWCA Civ 813; [2016] 4 WLR 152. At [56], the judge expressly concluded that the appellant would be enough of “an insider”.

42. Taking all of the above into consideration, if the judge had placed weight on the existence of the symptoms set out by Dr Singh, there is no realistic possibility that she “might” have decided the very significant obstacles issue differently. The evidence on the appellant’s mental health was simply too insubstantial, even when considered in conjunction with all other fsctors.

43. Therefore, contrary to the assertion in ground 1 that the judge’s mistake of fact was “fundamental”, I conclude that it was immaterial to the outcome of the assessment under paragraph 276ADE(1)(vi).

44. For the sake of completeness, My conclusion is precisely the same in respect of the wider Article 8 proportionality exercise undertaken by the judge.

## **Ground 2**

45. The first two sentences of [31] read as follows:

“31. Having reviewed the extract from the book and the English translation I firstly note that the name of the individual in the book is Gezim Hysni Lajci. This is a different spelling from that provided by the expert and by the appellant in his own witness statement.”

46. The spelling of the appellant’s father’s family name provided by the appellant in his witness statement and to Mr Kosumi was “Laci”. It is, therefore, clear that there was a difference in spelling.

47. The grounds of appeal assert that the judge failed to have regard to “objective evidence” as to the variation in spellings in the Albanian language. When asked as to what this evidence had consisted of, Mr Clarke referred me to paragraphs 79 and 80 of Mr Kosumi’s report, acknowledging, correctly, that the expert had not in fact said anything

about a difference in spelling of the family name. I do not accept that there was relevant “objective evidence” before the judge as to the question of variations in spelling of the appellant’s family name, or indeed any other name.

48. The appellant himself had not addressed the difference in spelling in his own witness statement. Mr Clarke was unable to assist as to what, if any, oral evidence had been given at the hearing before the judge.
49. Mr Clarke sought to suggest that there had been procedural unfairness on the judge’s part by not apparently raising any concern at the hearing. I reject that contention. Firstly, there is in fact no evidence of what was or was not said at the hearing. Secondly, the difference in spelling was apparent from the face of the documentary evidence. It fell to the appellant to establish the reliability of documents, including the Book. The issue could and should have been addressed either in the witness statement, in oral evidence, or by Mr Kosumi in his report. Thirdly, procedural unfairness was not pleaded in the grounds and, in the circumstances of this case, it is not appropriate to regard that basis of challenge as falling under the umbrella of perversity.
50. I acknowledge the judge’s reference at [33] to an individual called “Bashkim Laci” and her apparent acceptance that he was the appellant’s uncle (i.e. the appellant’s father’s brother). That factor weighs in favour of this particular aspect of the appellant’s challenge.
51. Taking all of the above into account and applying the appropriately high threshold, I conclude that it was not irrational for the judge to “note” at the beginning of [31] that there was a difference in spelling. Ground 2 fails on that narrow basis.
52. Beyond that, it is quite apparent from the judge’s decision as a whole that: (a) her noting of the difference in spelling was only one of a number of reasons set out at [31] for the conclusion that the Book did not relate to the appellant’s father; (b) the Book did not in fact support the appellant’s claim; and (c) the judge in fact took multiple other considerations into account before concluding that the appellant’s

account was untruthful and that this exercise was in large part undertaken on the implicit premise that the father had been in the KLA.

53. In respect of (a), there are, as I read the paragraph, four additional points relied on by the judge at [31].

54. In respect of (b), the four additional points set out at [31] in fact undermined the appellant's essential claim that his father had been a commander in the KLA and that this was the reason why they (the appellant and his father) had been targeted. There has been no challenge to those points and the judge was entitled to take them into account.

55. As to (c), the judge expressly stated at the end of [31] that she considered the difference in detail in the context of the evidence "in the round" before reaching the finding that the Book did not relate to the appellant's father. That context involved the detailed analysis of various aspects of the evidence set out at [32]-[50], which included, by way of example:

(a) the Book made no mention of the father being a commander in the KLA;

(b) there were several material inconsistencies between the extracts of the Book and what the appellant had said elsewhere;

(c) the publishing of the Book in 2010 did not explain a very significant delay in alleged adverse interest in the appellant's family;

(d) despite being referred to in the Book, the appellant's uncle had not received threats (subsequently, the judge took proper account of the appellant's age the material time in respect of knowledge relating to other family members. This, however, had to be seen in the context that Judge Hamilton had found that the appellant had been untruthful about lack of contact with family in Albania since arriving in United Kingdom);

(e) there was an absence of expert evidence relating to relevant aspects of the claim;

(f) it was implausible that the appellant's father had been able to go out and work unmolested. There had been ample opportunity for the other individuals to have threatened or harmed the father, but nothing had occurred;

(g) it was implausible that no action would have been taken against the father or uncle if there had been any adverse interest;

(h) there were "substantial inconsistencies" in the appellant's account, based on the evidence before the judge, as there had been in respect of the evidence before Judge Hamilton in 2016;

(i) there had been no report to the police, as there could have been if problems had in fact existed;

(j) taking proper account of the appellant's age at material times, the judge concluded that this did not explain the significant evidential problems in his case;

(k) the appellant had continued to be untruthful in respect of contact with his family in Albania;

(l) the other two individuals who had provided witness statements did not attend the hearing and no weight was placed on their evidence.

56. On this more detailed basis, ground 2 fails because the judge's finding on the Book was not perverse.

57. In any event, if I were to assume that the judge had erred in respect of the Book and to then consider her decision on the basis that it did in fact relate to the appellant's father, any error relating to the extremely narrow issue of the spelling was in my judgment immaterial to the outcome. I say this for the following reasons.

58. Firstly, one only has to read the majority of what is said at [31] and then all of [32]-[49] to appreciate that the judge considered the Book to be unsupportive of, and indeed inconsistent with, the account given by the appellant as to past events. I have set out number of examples at paragraph 55, above.

59. It is plain that the judge conducted a demonstrably careful analysis of the evidence as a whole and that this involved, at least in part, taking the Book at face value in the sense that it related to the appellant's father. In my view, it is difficult to see how a more thorough undertaking of the evidential analysis could have been displayed.
60. Secondly, whilst Mr Clarke submitted that the claimed error on the spelling undermined all other aspects of the judge's analysis, that was, with respect, simply untenable. Without wanting to unnecessarily repeat myself, the overall analysis and findings speak for themselves. As I have already said, aspects of the analysis was on the implicit premise that the Book did apparently relate to the father.
61. Thirdly, I do not accept that the judge in some way misunderstood the appellant's claim and saw it as relating to "revenge" rather than simply a determined effort to obtain information from the appellant's father. The core issue put forward was that there was a risk of persecution/serious harm to at least the appellant arising from what was said in the First-tier Tribunal skeleton argument itself as being a "blood feud" and that issue is what the judge dealt with as a matter of substance.
62. In light of the above, if any error had been committed by the judge, it was immaterial to the outcome of the credibility assessment: as with ground 1, there is no realistic prospect that it "might" have made any difference.
63. Turning to the peripheral argument set out in ground 2, Mr Clarke did not pursue the issue of the appellant's home village with any vigour at the hearing. In my judgment, he was right to take that position. There was in fact a discrepancy in the evidence relating to the appellant's home village, as opposed to the wider region which he lived. The judge was entitled to find as such at [25].

***The alternative conclusions on state protection and internal relocation***

64. In some cases a judge may reject the credibility of an account, conclude that there was no risk on return at all, and end their consideration of the appeal at that point. In the present case, the judge went on to state “in any event” conclusions on sufficiency of state protection and internal relocation. Neither conclusion was challenged in the grounds of appeal.
65. Mr Clarke submitted that he was entitled to challenge the conclusions because they went to the materiality of grounds 1 and/or 2. I would agree with him if this appeal was concerned with the first scenario set out in the preceding paragraph. However, where a judge has gone on to state alternative conclusions, in my judgment it is incumbent on the losing party to expressly challenge them.
66. The absence of any challenge is fatal to the appellant’s appeal.
67. In any event, I conclude that whilst the alternative conclusions were stated in brief terms, the judge was entitled to find that internal relocation at least would have been a viable option for the appellant.
68. In respect of state protection, the judge had specifically found at [45] that there had been no approach to the authorities, that the alleged perpetrators were not persons of influence, and that the police would have provided sufficient protection. Even assuming that appropriate state protection could not have been afforded in the home area in the north of Albania, the country guidance decision in EH does not preclude the availability of appropriate internal relocation, depending on the facts of the case. Here, the individuals concerned did not have reach or influence. On the judge’s findings, they had not attempted to harm the appellant’s father or uncle over the course of a number of years. The findings in relation to family contact and other considerations under paragraph 276ADE(1)(vi) were all relevant to the reasonableness of relocation. If the appellant had to register himself in the place of relocation, this could not, on the judge’s overall analysis, have made any material difference. Taking the judge’s decision as a whole, and with regard to the reasons set



out at the end of [51], there is no error in the conclusion that internal relocation was a viable option.

### **Anonymity**

69. The judge declined to make an anonymity direction notwithstanding the fact that this case concerned issues of international protection. In all the circumstances, I make an anonymity direction. The proceedings in the Upper Tribunal continue to involve protection issues and, as matters stand, the relevant considerations outweigh important principle of open justice.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of any errors on a point of law which might have had a material impact on the outcome of that decision.**

**In the exercise of my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007, I do not set aside the decision of the First-tier Tribunal.**

**The decision of the First-tier Tribunal stands and the appeal to the Upper Tribunal is accordingly dismissed.**

**H Norton-Taylor**  
**Judge of the Upper Tribunal**  
**Immigration and Asylum Chamber**  
**Dated: 5 July 2023**

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