



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05308/2013

THE IMMIGRATION ACTS

Heard at : Field House
On : 1 November 2013

Determination Promulgated

.....

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ARLIND REXHAJ
(NO ANONYMITY ORDER)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Loughran, instructed by J D Spicer Zeb Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This case comes before me following the grant of permission to the appellant to appeal against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to remove him from the United Kingdom.

2. The appellant is a national of Albania, born on 1 December 1995. He arrived in the United Kingdom on 29 August 2012, concealed in the back of a lorry, having left Albania on 11 June 2012 and travelled to Greece, Germany, Belgium, Kosovo, back to Belgium and then on to the United Kingdom. He claimed asylum the same day. Following an interview on 30 April 2013, his claim was refused on 16 May 2013 and a decision was made on 17 May 2013 to remove him from the United Kingdom. He appealed against that decision and his appeal was heard by First-tier Tribunal Judge Meadows on 3 July 2013. The appeal was dismissed. Permission to appeal to the Upper Tribunal was granted to the appellant on 2 August 2013.

The Appellant's Case

3. The appellant's claim, in summary, is that he fears persecution on the basis of a blood feud declared against his family by a neighbour, Sahit, arising out of a land dispute. His father was a farmer and owned land near their home. In April 2012 their neighbour Sahit told his father that he would be taking some of the land, as the land documents were wrong. In June 2012 he entered the land and began building a fence on it. There followed a confrontation between his father and Sahit. Sahit hit his father in the face and a fight broke out between his father, his brother and Sahit and his two sons, after which Sahit's family left their land. His father and brother then decided to leave their home and went into hiding in the mountains. The police came to the house and took the appellant to the station and interrogated him about the incident. When he could not state where his father and brother had gone, the police beat him and then released him after holding him at the station for a few hours. When he returned home his mother told him that Sahit had called her and declared a blood feud against all the male members of the family. Attempts by his mother to reach a reconciliation failed and she decided that he should leave the country. He left on 11 June 2012 with the help of an agent.

4. The respondent, in refusing the appellant's claim, did not accept that there had been a land dispute and accordingly did not accept that there was a blood feud. It was considered, in any event, that the appellant's claim regarding the blood feud was inconsistent with a telephone conversation held on 16 May 2013 between the Home Office and his brother and mother confirming that they still resided at their home and was inconsistent with background information about blood feuds. It was not accepted that the appellant would be at risk on return to Albania.

5. The appellant's appeal was heard by First-tier Tribunal Judge Meadows on 3 July 2013. The judge heard from the appellant and his uncle, his mother's sister, Pelumb Shugi, and recorded the appellant's evidence that his father and brother were still living in the mountains as a result of the blood feud and that his mother remained living in the family home. The judge relied on the country guidance in EH (blood feuds) Albania CG [2012] UKUT 348 in which he considered the key element to be that there had been a "killing". He did not accept that there was a blood feud in the appellant's case since no one had been killed. He found the credibility of the appellant's claim to be undermined by the fact that his father and brother had not taken him with them when they went into hiding. He found, on the basis of the evidence of the telephone call made by the Home Office, that the

appellant's father and brother remained living in the family home and thus did not believe the appellant's account. He considered that if there had been a genuine land dispute the appellant's father could have referred the dispute to a lawyer. He found that even if the account were true, the appellant would be able to relocate to another part of the country, where his uncle's wife's family lived and where his uncle had visited recently to attend a family wedding. He found that there would in any event be a sufficiency of protection available to the appellant. He considered that it would be in the appellant's best interests to be with his family in Albania and that it was safe for him to return to his home. He accordingly dismissed the appeal on asylum, humanitarian protection and human rights grounds.

6. Permission to appeal was sought on behalf of the appellant on the following grounds: that the judge had materially misdirected himself in regard to the country guidance since there was no requirement for there to have been a "killing" in order for there to be a blood feud; that he had failed to have regard to the appellant's explanation as to why his father and brother had not taken him with them when they went into hiding; that there was nothing inherently implausible about the appellant's uncle going to Albania and not seeing his sister and about his account of his father not having gone to a lawyer; that the judge had made a mistake of fact in regard to his reading of the minutes of the telephone conversation with the appellant's mother; that he had erred by making findings on internal relocation without first putting to the appellant the matter of going to live with his uncle's wife's family; that he had erred in his findings of sufficiency of protection; and that he had erred in his approach to the respondent's policy on unaccompanied minors.

7. Permission to appeal to the Upper Tribunal was granted on 2 August 2013 on all grounds, but with particular reference to the first two grounds.

Appeal Hearing

8. The appeal came before me on 1 November 2013. I heard submissions from both parties.

9. Ms Loughran expanded upon the grounds of appeal. She submitted that the judge had misdirected himself in law by wrongly considering that the country guidance in EH required there to have been a killing in order for there to be a blood feud, but in any event he had failed to consider whether the appellant would be at risk as a result of the fight between his family and his neighbour. The judge had also failed to consider the appellant's explanation for his brother and father having gone into hiding without him. She submitted that the judge had erred by considering matters to be implausible on the basis of his own experiences when they were not in fact inherently implausible and he had erred in his interpretation of the minute taken of the telephone conversation between the Home Officer caseworker and his brother and mother. He had also erred by relying on a matter not previously raised, in considering that the appellant could go to live with his uncle's wife, he had failed to have regard to the country guidance in relation to sufficiency of protection and he had erred in his consideration of adequate reception arrangements for the appellant on return to Albania.

10. Mr Tufan submitted that EH was premised on there having been a killing giving rise to the blood feud, but in any event the judge had not believed the appellant's account of being at risk. There was no reason for him to be at risk, given that his family's neighbours had got what they wanted, namely a small strip of land. The judge had made a valid point about the appellant's father not having taken him with him. It was clear from the minute of the telephone conversation that the appellant's brother was in the family house with his mother. The judge was entitled to make the findings he did on internal relocation and had properly considered the country guidance when making his findings on sufficiency of protection. He made no error in regard to considering the adequacy of reception arrangements for the appellant.

11. Ms Loughran, in response, reiterated and clarified some of the points she had made previously.

Consideration and Findings

12. It is asserted, in the first ground of appeal, that the judge misdirected himself in law by wrongly reading into the country guidance in EH that there had to be a killing in order for a blood feud to arise. I have had regard to the head-note to that case setting out the considerations which should be followed by the Tribunal in assessing a blood feud case, which states as follows:

"6. In determining whether an active blood feud exists, the fact-finding Tribunal should consider:

(i) the history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud;

(ii) the length of time since the last death and the relationship of the last person killed to the appellant;

(iii) the ability of members of the aggressor clan to locate the appellant if returned to another part of Albania; and

(iv) the past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek protection from the Albanian authorities.

"7. In order to establish that there is an active blood feud affecting him personally, an appellant must produce satisfactory individual evidence of its existence in relation to him. In particular, the appellant must establish:

(ii) his profile as a potential target of the feud identified and which family carried out the most recent killing..".

13. I would agree with Mr Tufan's submission that that guidance appears to be premised on the basis that a killing or killings have taken place and, as such, it seems to me that the judge was entitled to take the approach that he did.

14. However, even if he was in error in that regard, that was clearly not material, since he did not in any event believe the appellant's account of his brother and father having had to go into hiding because of a dispute. Whilst he stated at paragraph 9.3 that he accepted that it was reasonable to believe that there was a land dispute and it was possible that there was physical violence as a result, he plainly did not believe the claim that that led to the problems stated by the appellant and that his family were at risk. Ms Loughran submitted that the judge failed to consider the question of risk on return arising from the dispute, but plainly that was a matter that he did consider and, for the reasons given at paragraphs 9.3 to 9.6, that he rejected. The grounds assert that those reasons were not properly given and were not open to the judge, but I do not accept that submission. The judge was entitled to have concerns about the appellant's account of his father and brother going into hiding but leaving him behind following a physical conflict between the families, whether or not the case was, as the appellant claimed, that the blood feud was only declared after their departure. Although he was not involved in the fight himself, he was, according to his own evidence, present at the time the incident occurred and the judge was entitled to consider that in such circumstances it was reasonable to expect his father and brother to have taken him with them. Likewise, I consider that the judge was also entitled to place weight on the appellant's uncle's failure to visit his sister, the appellant's mother, during his visit to Albania, as undermining the truthfulness of the account of the problems faced by the family.

15. With regard to the minute taken of the telephone conversation between the Home Office caseworker and the appellant's mother and brother, it is asserted that the judge was wrong to consider that that was evidence of his father and brother remaining in the family home. The explanation now offered by the appellant is that his mother had in fact gone to meet his father and brother in their hiding place at the time of the telephone call which was made to a mobile telephone and not to a land-line at the family home. However, given that the appellant's evidence at the time he made his claim had been that his father and brother were in hiding in a mountainous area inaccessible by car and that their whereabouts were unknown (referring to the SEF at page B6 of the respondent's appeal bundle and the appellant's statement at page B32), and considering the wording of the telephone call minute, the judge was perfectly entitled to reject the explanation he offered in his statement and to find that his mother and brother were in fact at the family home at the time.

16. Taking the judge's findings as a whole, I consider that he gave full and cogent reasons for rejecting the appellant's account of the problems faced by his family as a result of a conflict with neighbours. He was entitled to conclude as he did and the grounds of appeal amount, in essence, to little more than a disagreement with his findings. In such circumstances, and on the basis that the appellant's account of his reasons for having left Albania was rejected, the judge's findings on internal relocation and sufficiency of protection are inconsequential and immaterial. However, having considered the assertions made in the grounds in regard to those matters, I find that the judge, when considering the case at its highest, was entitled to conclude as he did in both respects. He was entitled to conclude that there was another part of Albania to which the appellant could safely and reasonably relocate, and where he had family on his uncle's side. Ms Loughran submitted

that the judge materially misdirected himself in making such a finding as that had not been raised previously and the appellant had had no opportunity to make any comments. However it is clear, from the evidence recorded at paragraph 6.13 of the determination, that the question was put to the appellant and it was then open to the judge to make his own findings on the matter. His findings on sufficiency of protection were made with regard to the background information and were open to him on the basis of that evidence.

17. The final issue raised in the grounds was that of the judge's findings on the adequacy of reception arrangements for the appellant on return to Albania. Ms Loughran's submission was that the judge's findings in that regard were not properly reasoned. However I do not agree. The judge gave careful consideration to the matter at paragraphs 9.15 to 9.17 of his determination. He took account of the appellant's age, maturity and family contacts in Albania in the context of the respondent's policy. He had the benefit of hearing from the appellant and had no evidence before him to suggest that he was particularly vulnerable or immature. He was accordingly entitled to conclude as he did.

18. For all of these reasons I find that the judge did not make any material errors of law in his determination. His decision contains adequately reasoned and sustainable findings of fact on all relevant and material issues. He was entitled to reach the conclusions that he did.

DECISION

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appellant's appeal therefore stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. However I find no reason to continue that order and accordingly I lift the order, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Upper Tribunal Judge Kebede