Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/01163/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Sent**
On 9 October 2014	**15 October 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

LB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sellwood, Counsel
(instructed by Lawrence Lupin)
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Eshun on 6 August 2014 against the decision of First-tier Tribunal Judge Wiseman made

in a determination promulgated on 23 April 2014 dismissing the Appellant's asylum, humanitarian protection and human rights appeals.

2. The Appellant is a national of Albania, born on 15 January 1998. He had appealed under section 83 of the Nationality, Immigration and Asylum Act 2002 against the Respondent's refusal on 4 February 2014 to grant him asylum. The Appellant had claimed that he was a potential victim of a blood feud.

3. When granting permission to appeal, Upper Tribunal Judge Eshun considered that it was arguable that Judge Wiseman had erred by failing to consider the Respondent's tracing duty in respect of the Appellant's relatives: see AA (Afghanistan) [2013] EWCA Civ 1625. No findings had been made. The Appellant was permitted to raise the other grounds of appeal he had put forward.

4. The Respondent filed notice under rule 24 indicating that the appeal was opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

Submissions

5. Mr Sellwood for the Appellant relied on the two sets of grounds of onwards appeal earlier submitted, i.e., that to the First-tier Tribunal and that to the Upper Tribunal. There was a duty to trace explained in AA (Afghanistan) [2013] EWCA Civ 1625 which the judge had failed to deal with completely. The best interests of the Appellant had not been considered. The credibility findings were unsound and had failed to reflect the vulnerability of the Appellant and the fact that the screening process was exploratory only and did not oblige the Appellant to state his full case at that stage. The judge had not taken into account all of the evidence which had been placed before him in making his credibility assessment, such as the report of the Appellant's social worker.

6. Mr Bramble for the Respondent relied on the Respondent's rule 24 notice. He submitted that the determination disclosed no error of law and wished to add nothing further.

No material error of law

7. The tribunal accepts Mr Bramble's submissions. Indeed, the tribunal considers that the two sets of grounds of onwards appeal as submitted and urged in argument were meretricious and that the ultimate grant of permission to appeal was a generous one. At most the onwards grounds were simply an attempt to circumvent the experienced judge's careful and balanced findings of fact.

8. The Appellant had been granted ELR until 14 July 2015, and so was not facing removal. It was thus an "upgrade" appeal. It is not easy to see why such appeals are pursued on behalf of unaccompanied minors at substantial public expense, as the Appellant is protected from any immediate risk and will enjoy a full right of appeal if he faced with a removal decision once he has become an adult. His position can be preserved by a simple letter to the Secretary of State reserving his rights. It can hardly be in a minor's best interests to be pressed into involvement in any litigation which can avoided or at least sensibly postponed, the more so in an appeal as weak as the present one.

9. Nevertheless Judge Wiseman embarked on a full and detailed consideration of the Appellant's asylum claim, as he was obliged to do. The judge did so applying the current country guidance set out in EH (blood feuds) Albania [2012] UKUT 00348. The judge was bound to assess the Appellant's credibility, which had been placed squarely in issue by the Respondent.

10. The material available to the judge included the record of his first interview, the point at which his need for international protection if it existed ought to have been fresh. The judge set out at [51] and also at [58] relevant factors in the Appellant's favour when reaching his conclusion that the Appellant had spoken the unvarnished truth that he had come to the United Kingdom because he had nothing in Albania. The judge also examined the Appellant's later claim that he was a potential victim of a blood feud, and gave comprehensive reasons for finding that the claim was vague in the extreme and wholly implausible to the lower standard: see, e.g. [63].

11. The skeleton argument of the counsel who appeared before Judge Wiseman (see [40] of the determination)

made no specific reference to AA (Afghanistan) (above), although there was reference to regulation 6 of the 2005 Reception Regulations. At [4.iii] of the relevant skeleton argument it was submitted that "the failure of the Respondent [to attempt to trace] has denied this unaccompanied minor the benefit of evidence either supporting his claim or putting him into contact with his family."

12. The complete fallacy of that submission had already been demonstrated in [52] of AA (Afghanistan) when, in dismissing the unaccompanied minor's appeal, the Court of Appeal observed: "It is part of the Appellant's own case that his family arranged for him to leave Afghanistan and come to the UK, at no doubt considerable cost; and they are very unlikely to want him to be returned. Even if it were possible to contact any member of his family they would have had a strong incentive to support his account of persecution even if it were untrue (and also to say that they were unwilling or unable to look after him if he were retuned) and any corroboration that they would give would thus be of doubtful value."

13. That approach is fully reflected in Judge Wiseman's findings at [64]. Having noted that the Appellant was able to contact his (unharmed) brother in Albania immediately on the Appellant's safe arrival in the United Kingdom, the judge disbelieved the Appellant's claim that he could not contact his family, finding that it rather suited his case.

14. Any failure to implement the tracing obligation on the Respondent imposed by the 2005 Reception Regulations thus had no harmful impact on the Appellant's case and the failure to require it to be strictly applied cannot be said to be a material error of law, vitiating the decision to refuse asylum and to dismiss the appeal against that refusal. The judge had established that the Appellant was not at any risk on return and that the Appellant had freely admitted he had come to the United Kingdom for economic reasons. The Appellant's best interests pursuant to section 55 of Borders, Citizenship and Immigration Act 2009 has been more than met by the grant of ELR with its accompanying benefits.

15. The subsidiary argument advanced by Mr Sellwood that the judge had failed to take all relevant evidence into account was equally without substance. The brief and

uninformative reports produced on the Appellant's behalf added nothing to his case and required no specific mention in the credibility assessment.

16. Thus the tribunal finds that there was no material error of law in the determination. There is no basis for interfering with the judge's decision to dismiss the Appellant's asylum appeal, which dismissal must stand.

DECISION

The tribunal finds that there is no material error of law in the original decision, which stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell **9 October 2014**