Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00774/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 26th August 2015	**On 15th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Master ORGEST PEROSHI
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Mr Kanola, Senior Home Office Presenting Officer.
For the Respondent: Mr Ahluwalia, instructed by Luqmani Thompson and Partners

DECISION AND REASONS

1 This is an appeal brought by the Secretary of State for the Home Department against the decision of the First tier Tribunal (Judge Archer) dated 23rd of June 2015. In this decision, I shall refer to the parties as they were in the First tier, i.e. that Master Orgest Peroshi is the Appellant, and the Secretary of State for the Home Department is the Respondent.

2 Judge Archer allowed the appeal brought by the Appellant against the Respondent's decision of 19 December 2014 to refuse asylum and to

make a decision under s.10 Immigration and Asylum Act 1999 to remove him administratively from the United Kingdom to Albania, his country of nationality.

Background

3 The background to this matter is that the Appellant was born on 14 November 1997 and who is therefore still a minor. He entered the United Kingdom in or around May 2012 and claimed asylum. In a witness statement dated 9th July 2012, made in support of his initial claim, the Appellant recounted that he had converted from Islam to Christianity in Albania. He was from the Durres area which is in the coastal, western area of Albania. He describes befriending someone named Armando Simoni, a Catholic, and becoming interested in the Christian faith.

4 The account given in the statement is that his interest and conversion to Christianity became known to schoolmates and the wider community, resulting in his experiencing discrimination, and receiving beatings. He decided to leave Albania, and travelled to the UK.

5 The Appellant underwent a SEF interview on 11th July 2012, and a further interview on 22 July 2013. In these interviews, the Appellant gave a similar account to that in his original witness statement.

6 However, on 31st July 2013, the Appellant's representatives Luqmani Thompson and Partners provided further representations to the Respondent in support of the Appellant's application for protection. This included a letter from the Appellant's Social Worker dated 25 July 2013. In this letter the Social Worker recounted information which was said to have been given to her by the Appellant. The letter described additional problems that the Appellant had experienced in Albania prior to his departure, from another young man at school called Xhema Berisha. It was said that the Appellant had been bullied by Xhema, resulting in a fight between the two in which the Appellant, being trained in boxing, defeated Xhema.

7 This had in turn resulted in the Appellant's father being kidnapped, and serious death threats being made against the Appellant's life by members of Xhema's family. Also included with these representations were a series of Facebook messages, said to have been received by the Appellant from various people connected with Xhema, making threats against the Appellant using extremely violent language.

8 The Respondent refused the application for protection in a letter dated 14th December 2014, and on 19th December 2014 made the decision to remove the Appellant to Albania.

9 The Appellant appealed against this decision, the appeal coming before Judge Archer at Columbus House, Newport on 11th June 2015. The Appellant gave oral evidence, as did the Appellant's Social Worker, and a

boxing coach with whom the Appellant had trained in the UK. Other evidence contained a statement from the Appellant's father in Albania, and a letter from the Principal of the Appellant's school, describing the altercation that passed between the Appellant and Xhema Berisha, and its consequences.

10 In fact no Presenting Officer had attended the hearing of 11th June. On the Tribunal file is a letter from the Respondent to the First tier Tribunal dated 10th June 2015 which states that the court list for that week had been scrutinised, checked and carefully considered, and that exceptionally in the light of the finite resources available to the Respondent it had been decided that there would not be a Home Office Presenting Officer at the hearing. The Respondent's subsequent grounds of appeal raise no issue as any procedural unfairness, and in my view the Judge dealt fairly with the issues before him and the Appellant did not receive any unfair advantage by reason of the absence of a representative for the Respondent.

11 The Judge accepted the credibility of the Appellant, giving reasons at pars 30-32 for doing so. The Judge therefore accepted the Appellant's account set out at para 17 that Xhema's father was the cousin of one Sali Berisha who was a very powerful man in Albania and was the Prime Minister at the time, that the family had killed a number of people, owned many buildings and had plenty of money.

12 The Judge held at paragraph 33 of the determination that he was satisfied that the problems with the Berisha family could be categorised as a blood feud, and that the Appellant forms part of a particular social group. The Appellant had suffered persecution for around seven months before he left because of his self confinement. The Berisha family were powerful, and internal relocation was not an option, given the reach of the aggressor clan and the size of the country. If the Appellant returned to Albania he would be forced into self-confinement again, and the Police had not helped so far. The family had moved 150 km from their house (to an area where there were no schools for the Appellant's younger brother to attend - see para 27) and there was plainly no sufficiency of State protection.

The appeal to the Upper Tribunal

13 The Respondent sought permission to appeal against the Judge's decision for the reasons set out in grounds of appeal dated 26 June 2015. In summary, they argue that the Judge had materially misdirected himself in law in his application of the Country Guidance case of EH (Blood Feuds) Albania CG [2012] UKUT 00348 (IAC), in finding the Appellant to be the subject of a blood feud at all. The Respondent argued that the situation that the Appellant found himself and had not resulted in the killing of any individual and it was therefore submitted that the main requirement listed in EH to demonstrate the existence of a blood feud had not been satisfied. The Respondent referred to paragraph 70(f)-(g) of EH, as follows:

> "(f) 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;

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

(vi) 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.]

(g) 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:

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

(ii) whether the appellant has been, or other members of his family have been, or are currently, in self-confinement within Albania."

14 The Respondent argued that given that there had been no killing the judge erred in finding the existence of a blood feud. Further, "the one overriding principle of establishing whether a blood feud existed or indeed continues is specifically related to whether there has been a killing of a clan member and which clan suffered the last killing". The Respondent pointed out that the father had been released, and not killed; in the absence of a blood feud, the treatment that the Appellant had described did not reach the level required to establish persecution. There was effective protection available.

15 Permission to appeal was granted by Judge of the First tier Tribunal Shimmin in a decision dated 7th July 2015 on the grounds that it was arguable that the Judge had erred in his application of the case law on blood feuds in Albania because there had been no killing.

The hearing before the Upper Tribunal

16 At the commencement of the hearing Mr Ahluwalia provided me with a copy of a Rule 24 Response which he had prepared the previous day. He informed me that it had been faxed the day before, but it had not come to my attention. It is undesirable that a lengthy document such as this should be provided on the date of hearing, but I formed the view that the document was of assistance to both parties, having the effect of clarifying the Appellant's position in the appeal. Mr Kandola had no objection to considering it. Mr Kandola and I took time to consider the document.

17 Mr Kandola made submissions on behalf of the Respondent. He adopted the grounds, asserting that the country guidance contained at paragraph 74 of EH requires the occurrence of a killing in order for any blood feud to exist. In the absence of any such killing, the Respondent argued that there could be no blood feud, and the immigration judge had proceeded on an incorrect basis.

18 I did not require Mr Ahluwalia to address me in this appeal.

Discussion

19 I find that there was no material error of law in the First tier Tribunal's decision.

20 My reasons for finding that there is no material error of law include the following.

21 It was plain that the Judge had considered the determination of EH and made reference to it at a number of points within his determination. The judge was also plainly aware that there had been no killing (see para 24).

22 It was open to the judge, in considering the evidence before him, to reach the conclusion that the Appellant's circumstances fell within the definition of a blood feud, as defined by EH. In my view, EH itself does not require that a killing had already taken place before a blood feud could be said to exist.

23 At paragraph 5 of the determination in EH, the Upper Tribunal set out a number of definitions and concepts which had been extracted from the evidence before it. These definitions including a reference to (emphasis added):

> "(v) Gjakmarrja ('Blood-taking'). A vendetta, or blood feud, which may have lasted for decades, or **may be recent** in origin. It is closely linked to collectivist notions of family, or clan solidarity and reliability. A blood debt carries a **related loss of honour** which can only be restored by the taking of blood from the other family. It is generally borne by the males of the nuclear family, parents, grandparents, children and grandchildren.
>
> **Typically**, a feud **begins with** a killing **or offence** by an individual from Clan A, which must be **revenged** by a senior male figure from Clan B. When revenge has been carried out by Clan B, Clan A is required to retaliate by killing a Clan B member, and so on, potentially to the extinction of all male members of both clans. Children under 15 and women are not usually required either to kill or be killed, except perhaps where a woman is the cause of the feud, or the last surviving member of the target clan."

24 A blood feud may therefore typically, but not explicitly, begin with a killing or an offence by an individual from one clan to another. There is no logical reason why the beating to the ground of one young man by another would not be capable of causing 'offence' to the Berisha clan, which apparently

holds a position of some power in Albania and would no doubt be keen not to be seen as being put in a weak position by one of its members being publicly humiliated. Proportionate responses and respect for the rule of law are not necessarily to be expected in Albania, where evidence clearly establishes that the phenomenon of murderous blood feuds persists. In that regard, the Respondent's description of the conflict as 'a fight between two schoolboys' wholly fails to put the issue into its proper country-specific context.

25 In EH the Upper Tribunal considered evidence of expert witnesses including Dr Schwander-Sievers, whose evidence, discussed at paras 37, 54, and 59 was of assistance to the Tribunal and was accepted by it. She had given evidence that the concept of a blood feud bore a close relationship with social honour, akin to the Italian approach to family honour (see EH App C para 20); the real issue in such disputes always concerned local politics, status, and which families could impose their superiority (EH App C para 21). Another expert Dr Allston had given evidence that blood feuds did occur, often over property or personal insults (EH App C para 26).

26 Para 74(f)(i)-(iv) of EH sets out various matters deemed to be relevant to the assessment as to whether an active blood feud exists. This in my view is distinct from the issue of whether a given set of circumstances meets the definition of a blood feud at all. Alternatives to an active blood feud existing include, for example, that (i) no blood feud has ever existed; (ii) a blood feud may have existed historically, but no longer, or (iii) recent events might potentially appear to meet the definition of a blood feud, but it is clear that a feud is not being actively pursued by any aggressor clan. Although some of the factors set out at paragraph 74(f) raise the question of what killings have already taken place, such issues are relevant to the whether a feud may be deemed to be currently active. Further, I note that such matters are identified as being matters to that the fact-finding Tribunal should consider, but none is identified as being determinative as to the existence of an active blood feud. In my view the absence of an initial killing would not prevent the circumstances faced by the Appellant from meeting the definition of a blood feud set out at paragraph 5 of EH. The Judge did not misapply the guidance in EH.

27 In any event the Judge took into account the factors at para 74(f). In particular the Judge had clearly taken into account the history of the conflict; the notoriety of the aggressor family and its commitment towards the prosecution of the feud. The Judge noted evidence (which was credible - para 30-32) that even after the initial kidnapping and beating of the Appellant's father, the father was threatened and beaten up on several further occasions (para 18) and the Appellant had received threats via Facebook (para 19). The Appellant's brother had moved school because of the problems but was attacked there by friends of Xhema, resulting in his teeth being broken, and the father had been kicked and threatened when standing near the front door (para 20).

28 In conclusion I am of the view that the key submission advance by the Respondent, that 'the one overriding principle of establishing whether a blood feud exists or continues is specially related to whether there has been an initial killing', is not a proposition which can be found within the country guidance case of the EH, and the Respondent's case is not made out.

29 I am of the view that having made sustainable findings of fact, which are not challenged by the Secretary of State in her grounds of appeal, the Judge made a proper and sustainable assessment that the situation experienced by the Appellant and his family amounted to a blood feud; that a real risk of serious harm existed for the Appellant upon return to Albania; and that there would be no effective protection available to the family.

30 I also note that in oral submissions, Mr Kandola suggested that the Judge had erred in law by failing to consider internal flight properly, it being part of the Appellant's evidence that his family had, two weeks prior to the hearing of 11th June 2015, moved home to a place 150 km away from the original location.

31 I note that such a ground of appeal is not contained within the Respondent's grounds of appeal, is not Robinson obvious, and permission has not been granted to argue that point. For those reasons, this Tribunal is not obliged to entertain the submission.

32 If I am wrong in that finding, I would in any event find that the Judge had not materially erred in law in relation to the availability of internal relocation. The Judge had noted that there were no educational opportunities for the Appellant's brother in that place of internal relocation (para 27); the family lived in an old house in a village (para 28); and held that the Berisha family are powerful, and internal relocation was not an option, given the reach of the aggressor family and the size of the country - if the Appellant returned to Albania he would be forced into self-confinement again (para 33).

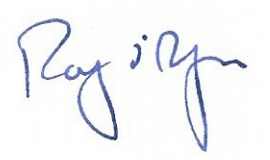
Decision

33 I find that the making of the decision of 23.6.15 did not involve the making of any material error of law.

34 I do not set aside the First tier decision.

35 I dismiss the Respondent Secretary of State's appeal.

Signed:



Deputy Upper Tribunal Judge O’Ryan

Date: 14.9.15