Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04784/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 20 November 2015	**On 25 November 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MR XHULJAN CANI
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr D Sellwood of Counsel
For the respondent: Mr K Kandola, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Albania born on 23 March 1999. He appeals to the Upper Tribunal against the determination of First-tier Tribunal Judge N.M Paul dated 9 September 2015 against the decision of the respondent dated refusing him asylum and humanitarian protection in the United Kingdom.

2. Permission to appeal was granted by First-tier Tribunal Judge Garratt who found it was arguable that the Judge applied a muddled and erroneous burden and standard of proof and did not follow the guidelines for the child vulnerable appellants.

The First-tier Tribunal's findings

3. The Judge in his determination made the following findings which I summarise. The appellant's claim is that he belonged to a particular social group, namely that he is part of a blood feud. The starting point of the analysis of the case is a consideration the case of **EH (blood feuds) Albania CG UKUT 348 (IAC) ("EH")**. The guidance shows that the number of active blood feuds are declining. It was accepted that under Kanun blood feud, there was always a risk of pre-emptive killing by a dominant clan. The Albanian state has taken steps to improve State protection, but is perhaps not that effective in Northern Albania. The guidance provides for internal relocation which may be sufficient, depending on factors such as the nature of the aggression and its extent.

4. Further guidance was given to the Tribunal, as part of a fact finding exercise, in considering whether the blood feud exists. This involved a consideration of a number of factors related to the background to the feud; length of time the last death; the ability of the members of the aggressive clan to locate the appellant and the likely future attitude of the police at other authorities. In particular, there had to be regard to producing satisfactory individual evidence in existence. This would relate to the appellant's profile as a potential target and whether or not any other members of his family had been attacked.

5. Upon these considerations, in this case, a number of factors give me rise for concern about the substance of the appellant's case. The first relates to the production of a letter from the headman which post –dates the departure of the appellant by 4 to 5 months, and the actual coming into existence of the blood feud by nearly a year. Secondly, it was not produced in any formal way, so that it is impossible to conduct an audit exercise. Thirdly, it was submitted to the Tribunal under the cover of a letter dated 10 August 2015 and not served to the Secretary of State in the intervening five month period.

6. The evidence in relation to the uncle who carried out the alleged killing is also very much unsatisfactory. It seems inconceivable that this uncle had left the country and not had any further contact with his family.

7. Furthermore, it is also inconceivable that there would not be evidence obtainable from some source - whether it be police records or press reports – of the actual killing itself. Particularly, if this was the large and powerful family with influence, that would be the kind of incident that would attract attention, both from the press and the authorities.

8. Inadequate evidence was given in relation to the attempt to seek support from the police. The formulaic answer that the police were not interested does not strengthen the case.

9. No evidence has been adduced as to why it is not the case with other members of the appellant's family, who are related to the uncle, that they themselves have not been placed at risk.

10. It is also taken into account that it is highly relevant the appellant left the country shortly after completing his secondary education.

11. Applying all these factors as set out at the case of **EH**, "I am not satisfied that there is any real substance to this case. In reaching this conclusion, I had regard to the appellant's evidence as a young man and it has to be considered carefully. However I am satisfied the core aspect of this story simply lacks credibility".

12. The background evidence does not add anything to support the appellant's case. It also adds nothing to the substantial issue of the appellant's credibility. Taking as a whole, therefore, I am not satisfied that the appellant's case is one that I could accept been credible.

13. The Judge refused the appellant's appeal on "human rights grounds on asylum grounds".

The grounds of appeal

14. The appellant grounds of appeals are as follows which are set out in summary. Judge Paul's findings are fundamentally flawed. He erred in his approach to the documentary objective information evidence. He failed to consider and properly addressed the objective information in the COIS Report. The Judge has applied a rigorous standard of proof to examine the evidence of the appellant, who is a minor.

15. The determination is based on speculation and is unreasonable. It is biased and prejudiced. The Judge has drawn a wrong conclusion that there is not any real substance to the appellant's case. The determination is against the objective evidence. The Judge failed to consider the present situation in Albania in relation to the blood feud of the appellant's father's family with the Sulaj family. The Judge wrongly concluded that there is no problem for the appellant on the basis of the country of information guidance report that Karun problems relate to the areas in the north of the country and the appellant is from Tirana. The appellant comes from Burrel area in Albania which is in the North areas of the country. Thus the risk upon return was not properly addressed.

16. The Judge did not give proper consideration to the appellant's submission that the lack of a police response was entirely consistent with the objective evidence and that the letter from the headman was compelling and independent corroboration of the appellant's account and as a result of this, he was clearly a risk. The Judge did not have regard to the country

information and guidance of Albania which is very clear on the issue of sufficiency of protection.

17. The Judge failed to give appropriate consideration to s55 and the best interests of children. He failed take into account that in making the proportionality assessment under Article 8, the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations. In this case the countervailing considerations were the need to maintain firm in the immigration control, coupled with the appellant's mother's appalling immigration history in the precariousness of a position when family life was created. But as the Tribunal rightly pointed out, the children were not to be blamed for that. The inevitable result of removing the child's primary carer would be that they had to leave with her. On the facts, it is at least as strong as **Edore v Secretary of State for the home Department [2003] one WLR 2979** where Simon Brown LJ held at paragraph 26 that "there is only room for one view". In those circumstances, the Secretary of State was clearly right to concede that they could only be one answer.

18. The respondent and the Judge have challenged the credibility of the appellant on the basis of minor discrepancies found in the Asylum interview record in evidence at the hearing. The appellant will argue that the Judge has misled himself from the clarifications. Even if there are some discrepancies they are of a minor nature and cannot damage the credibility of the appellant. The Judge has failed to give detailed reasons that he found that the core aspects of the appellant story simply lack credibility and was wrong to assert that the background material does nothing to support the appellant's case. The Judge did not give proper consideration to the country background information in support of the appellant's claim. The appellant gave reasonable explanations about his case and any lack of evidence should not be taken that his account is not credible. The appellant's case has no inconsistencies and his account corresponds with the country information background. The findings of the Judge are flawed.

The hearing

19. At the hearing and on behalf of the appellant, Mr Sellwood submitted the following which I summarise. He first stated that the solicitors have recently been instructed to represent the appellant and they the appellant's and the respondent's bundle of documents. He also said the ground under s55 is not being pursued because the appellant has been granted discretionary leave.

20. The Judge did not take the proper approach on key issues in the appeal. He did not have the right approach to the background evidence on Albania. He made improper adverse credibility findings against the appellant. He did not take into account that the appellant was a vulnerable minor. He was aged 15 1/2 at the time of the First-tier Tribunal hearing.

21. The burden of proof as set out by the Judge in the determination is muddled and erroneous. The Judge said that it was to a relatively low standard but did not say against what it was relative to. He did not set out the full burden of proof as he should have done. The guidance for minor asylum seekers makes clear that adverse credibility findings should not be made on any omissions in evidence. It is also not reasonable to expect the appellant to know everything is a minor. The only nod that the Judge knew that the appellant was a minor was at paragraph 35 when he said that the appellant is a young man.

22. The Judge made adverse credibility findings at paragraph 27 when he said that the letter from the headmen post-dated the refusal letter. It was only when the appellant received the refusal letter did he attempt to corroborate his claim and therefore no adverse inference should have been drawn. The appellant was too young to know the details of the blood feud. There was an adverse inference drawn when the Judge said that it is inconceivable that the appellant's uncle did not communicate with the family and why should a 16-year-old boy know why. The Judge had an expectation of documentary evidence.

23. It is unclear what inference the Judge drew at paragraph 34 when he stated that he came to this country shortly after completing his high school education. The Judge should have put questions to the appellant and given him an opportunity to address this issue. He has been informed by the appellant that the Judge did not ask the appellant any questions at the hearing. The appellant's evidence was consistent with the background evidence. There has been no anxious scrutiny in the Judge's five-page determination. There is lack of proper reasoning.

24. Mr Kandola on behalf of the respondent made the following submissions which I summarise. The Judge gave adequate reasons and he had at the back of his mind that the appellant is a minor and at paragraph 35 he states the appellant is a young man. The Judge had regard to the case of **EH**. He found that there is improved protection for victims of blood feuds. He also said that blood feuds are normally in the north of the country and the appellant lives in Tirana. There has been no misdirection of the country guidance case.

25. This is a relatively simple case because the appellant claims that his uncle shot a man and the nephews want to kill the appellant. He also took into account that in **EH** it stated that letter from NGOs and the unreliability of documents from Albania should not be considered credible evidence of about a blood feud. There was no evidence that the appellant's uncle killed anyone. The Judge stated that if the family was so powerful and high-profile there would definitely have been evidence of a killing either in the press or from the authorities. In respect of the burden of proof there is nothing wrong with the direction the Judge gave to himself. He may have made himself clearer but it does not amount to a misdirection in law.

26. In reply Mr Sellwood stated that the latest reports say that there are 200 families in self-confinement in Tirana. The appellant came in to the country at the age of 15 any did not know what evidence was required. It was only after refusal that he attempted to gain further evidence. As a minor he should be given the benefit of the doubt.

Decision as to whether there is a material error of law

27. I have given anxious scrutiny to the determination of first-tier Tribunal Judge, NM Paul and have taken into account the grounds of appeal, the country guidance case and the background evidence on Albania. The ground of appeal state that the Judge did not take into account that the appellant is a minor and cannot be expected to know all the details of the blood feud. The grounds of appeal also assert that the Judge has not taken into account background evidence on Albania in respect of blood feuds and has made adverse credibility findings against the appellant without giving good reasons for doing so. He has also applied a muddled and erroneous burden and standard of proof.

28. It is clear from paragraph 35 of the determination that the Judge took into account that the appellant is a minor. He stated "in reaching this conclusion, I had regard to the appellant's evidence as a young man and it has to be considered carefully. However, I am satisfied that the core aspects to this story simply lacks credibility". The appellant was 15 1/2 at the date of the hearing. The Judge took into account that he is a young man and his evidence has to be considered carefully. The Judge therefore fully took into account and was aware that the appellant is a minor and his evidence has to be carefully considered.

29. The only evidence before the Judge that he was a victim of a blood feud on which the appellant relied was his own evidence and a letter from a headman. At paragraph 27, the Judge stated that this letter from the Headman "post-dates the departure of the appellant by four or five months, and the actual coming into existence of the blood feud by nearly a year". The Judge found that it was not produced in any formal way, so that it would be possible to conduct an audit exercise and it was not served on the respondent but sent to the Tribunal under the cover of a letter dated 10 August 2015. This demonstrated to the Judge that the letter had not been sent to the respondent for them to do attempt to verify it. In any event the Judge found that it could not be audited not having come from an official source. These are perfectly sustainable findings.

30. The Judge found that other than this evidence there was no other evidence in relation to the appellant's claim that his uncle carried out the alleged killing of a powerful and large family which was the catalyst for the beginning of the claimed blood feud. The Judge rightly asked himself the question why there was no other evidence other than the appellant's evidence and one letter about this blood feud. He stated that it was inconceivable that the appellant could not have obtained evidence from some other source such as press reports and the authority as to the actual

killing itself. He found that given the evidence that it was a large and powerful family with influence that would be the kind of incident that would attract attention, both from the press and the authorities. The Judge was entitled to so find given that the appellant came here at the age of 15 and is in contact with his parents who he claims sent him the headman's letter from Albania. The Judge was entitled to take into account that other evidence which could have been produced from Albania was not provided.

31. The Judge found at paragraph 32 that the appellant's explanation was adequate and formalistic for that the police said that they not interested in blood feuds when the matter was reported to them. The Judge took into account the background evidence and stated at paragraph 24 that the Albanian state, though, has taken steps to improve the protection for victims of blood feuds, but they are perhaps not that effective in Northern Albania. He took into account the case the guidance given in **EH** and found that the guidance provides for internal relocation to an area less dependent on the Karun such as Tirana. The Judge was entitled to find that the appellant lives in Tirana and not in northern Albania which considerably lowers the risk for the appellant to be a victim of a blood feud.

32. At paragraph 25 the Judge took into account the guidance in **EH** and said that as part of a fact-finding exercise, the first question to answer is whether the blood feud exists. He also found that this involved the consideration of a number of factors relating to the background to the feud such as length of time since the last death, the ability of the members of the aggressive plan to locate the appellant and likely future attitude of the police and other authorities.

33. The Tribunal found in **EH** that the following matters will be relevant in determining the nature of the risk on return in cases where a claim is based on the existence of a 'blood feud' in Albania:

    (a) whether the dispute can be characterised as a 'blood feud' at all;

    (b) even if it can, the extent to which its origins and development (if any) are to be regarded by Albanian society as falling within the classic principles of the Kanun;

    (c) the history of the feud, including the notoriety of the original killings and numbers killed;

    (d) the past and likely future attitude of the police and other authorities towards the feud;

    (e) the degree of commitment shown by the opposing family towards prosecuting the feud;

    (f) the time that has elapsed since the last killing;

    (g) the ability of the opposing family to locate the alleged potential victim anywhere in Albania;

    (h) that person's profile as a potential target for the blood feud; and

(i) the prospects for eliminating the feud, whether by recourse to the payment of money, a reconciliation organisation or otherwise.

34. Given that the only piece of evidence, other than the appellant's evidence, that the appellant provided to prove he is a victim of a blood feud, was the headman's letter. I note here that it was argued that because the appellant was a minor he could not be expected to have that much knowledge of the blood feud. Therefore the only independent evidence provided, to prove he is a victim of a blood feud was the headman's letter. The Judge was entitled not to place any weight on this letter as he took into account the general unreliability of documents coming from Albania set out in the guidance in **EH.** The appellant was not able to provide answers or give information on the various other factors which need to be considered by the Judge as outlined in **EH,** set out above as an *indicia* of a continuing blood feud. There was no credible evidence provided by the appellant of the existence of a blood feud or that the appellant was a victim of it.

35. The Judge also found that at paragraph 33 that no evidence has been adduced as to why other members of the appellant's family, who are also related to the uncle, have not been put at risk themselves. The appellant's evidence is that his father and other family members are in Albania. The Judge was entitled to find that the absence of any credible explanation for why other members of the appellant's family would also not at risk and but only the appellant would be at risk, was not credible. There is no perversity of reasoning in this conclusion.

36. The Judge at paragraph 21 stated "the burden is on the appellant, to a relatively low standard, to show that he is at risk of persecution". It has been argued that this is an erroneous and muddled burden and standard of proof as stated by the permission Judge. While I accept that the Judge could have put it better and set it out in more detail, I do not find that this amounts to a material error of law. I did not find that the Judge applied the wrong burden and standard of proof in his analysis of the evidence and the conclusions that he reached. No differently constituted Tribunal would come to a different conclusion.

37. I find that the Judge was entitled and required to reach his conclusion that he did based on his consideration and evaluation of the evidence as a whole. I find there is nothing unreasonable or perverse in the Judge's conclusions and nor was his conclusions perverse. The Judge was fully aware that the appellant was a minor. He took into account the background evidence and the country guidance case of **EH** and found that the appellant's claim is not credible. I find that the Immigration Judge's reasoning is understandable, and not perverse.

38. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982** Brooke LJ commented on that analysis as follows:

> 15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have

> used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original Judge's thought processes when he/she was making material findings.

39. I find that I have no difficulty in understanding the reasoning in the Judge's determination for why he reached his conclusions. I find that the grounds of appeal and no more than a disagreement with the Judges findings of fact and the conclusions that she drew from such findings. The Judge noted at paragraph 34 that he finds it highly relevant that the appellant left the country shortly after completing his secondary education, correctly infers that the appellant came to this country for further education and not because he fears anyone in Albania.

40. I find that no error of law has been established in Judge Paul's determination. I find that he was entitled to conclude that the appellant is not entitled to be recognised as a refugee or to be granted humanitarian protection in this country. I uphold his decision.

DECISION

Appeal dismissed

Dated this 21st day of November 2015

Signed by

A Deputy Judge of the Upper Tribunal
.....
Mrs S Chana