IAC-HW-AM-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03414/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th January 2016	**On 17th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR NDERIM VISHA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A. Heller of Counsel
For the Respondent: Mr I. Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania born on 5th March 1996. He appeals against the decision of Judge of the First-tier Tribunal Abebrese sitting at Taylor House on 30th October 2015 who dismissed the Appellant's appeal against the decision of the Respondent dated 12th May 2014. That decision was to refuse to grant further leave to remain and to refuse to vary leave and to remove the Appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality 2006.

2. The Appellant attended the Asylum Screening Unit on 27th March 2013 where he stated he had entered the United Kingdom concealed in a lorry. He was served with a document as an illegal entrant and claimed asylum on the same day. His application was refused in a letter dated 15th May 2013 without a right of appeal. However due to his age, he was 17 at the time, he was granted discretionary leave until 5th September 2013 by which time he would be 17½. On 5th September 2013 he submitted an in-time application for further leave to remain which was refused on 12th May 2014 giving rise to the present proceedings.

The Appellant's Case

3. The Appellant claimed that he was a member of a particular social group as someone involved in a blood feud. His family had been in a blood feud with the Dara family since 1996 when a man called Arben who was the cousin of the Appellant's father together with a man called Agim Visha had killed one Fitim Dara. The Appellant's father had fled to Greece. In 2002 Agim and Arben's father (whose name was Hamdi) were wounded by a member of the Dara family Mentor Dara. Mentor was arrested, charged and sent to prison. In 2009 Arben Visha was killed by Bajram Dara who then handed himself in and was charged with the crime and also sent to prison. In October 2012 the Daras came to the Appellant's house and threatened the Appellant's mother and the Appellant demanding to know the whereabouts of the Appellant's father, brother and Agim Visha. The Appellant was told that he was now a target in the blood feud. The Appellant feared to return in case he too was harmed.

Explanation for Refusal

4. The Respondent rejected the credibility of the Appellant but even if the account was correct there was a sufficiency of protection available to the **Horvath** standard in Albania. The Respondent relied on the country guidance case of **EH [2012] UKUT 00348** that while there remained a number of active blood feuds in Albania they were few in number and declining. There were a small number of deaths annually arising from those feuds and a small number of adults and children living in self-confinement for protection. Government programmes to educate self-confined children existed but very few children were involved in them. The existence of a "modern blood feud" was not established. Kanun blood feuds had always allowed for the possibility of pre-emptive killing by a dominant clan.

The Decision at First Instance

5. After hearing evidence from the Appellant the Judge found the Appellant not to be a credible witness. The Judge set out his credibility findings at paragraphs 10 to 16 of the determination. At paragraph 10 the Judge dealt with the Appellant's claim that after receiving the threat from the Dara family in 2012 the Appellant did not go out and thus did not attend school. The Judge did not find it credible that the Appellant's school would not have sought to make contact with the Appellant in such a situation with just the Appellant's friends being asked by the school to make enquiries for the school.

6. At paragraph 11 the Judge noted the Appellant's evidence that the Appellant's father and three brothers who resided in Greece and Italy still visited Albania "during the course of the night so as not to be seen by the members of the Dara family". The Judge did not find it credible that the Appellant's family would continue to visit Albania while there was an ongoing feud. They would only do so if there was no threat to their lives. In any event the claim that the visits only occurred at night was somewhat incredible, the Judge writing:

> "It is unlikely that [the Appellant's family] would stay within the confines of their house during the day time and also at night. The visits of the Appellant's family do not appear to be for a particularly short period of time and in the case of the Appellant's sister he gave evidence that she and her family tend to stay in Tirana in their own property for a period of three months".

7. At paragraph 12 it was taken against the Appellant that he did not know the name of the reconciliation union in Albania when he had also claimed in evidence that the Dara family were not willing to agree to reconciliation "after numerous communications had been made in order for there to be an agreement reached". If that were the case the Judge found that the Appellant would have been able to give much more specific details in relation to who was actually involved in the reconciliation but he had failed to provide such details.

8. At paragraph 13 the Judge found it incredible that members of the Appellant's family could not assist him to relocate to Tirana or elsewhere in Albania. The Appellant's family still had strong links with Albania. The Appellant's mother was living there and it would be reasonable for the Appellant to reside with her. The Appellant was vague in relation to where the Dara family were at present so he could not give any further information beyond claiming that they were in Tirana. He had not asked his mother the whereabouts of the Dara family. The Appellant had managed to reside in Albania for a significant period of time before deciding to flee the country which added further substance to the view that the threat he claimed did not exist.

9. The Appellant had not reported the threat to the police because he did not trust them. However the police were capable of providing the family with protection. On the Appellant's own case members of the Dara family had been convicted and sentenced to prison. The feud itself had taken place when the Appellant was extremely young and his knowledge about it would have been minimal. It was not credible the Appellant would have self-confined himself given that he had not approached the police. It was not sufficient evidence even on the lower standard of proof to bring what the Appellant described within the definition of a blood feud as per **EH**. The Appellant had not shown he was the target of a blood feud. The names of the Appellant's father and brothers had appeared on the registry. That was not as a result of a rolling programme. There were no submissions in relation to Article 8 and the Judge dismissed the appeal.

The Onward Appeal

10. In lengthy grounds of onward appeal Counsel who had appeared before the Judge argued that the Judge had made a number of errors. It was pure supposition that the school would not have behaved in the way that the Appellant described. The arrival

of the Appellant's family at night when they visited Albania "denotes stealth and an intention not to be seen". The negative inference drawn from the evidence of the Appellant's sister ignored the fact that the Kanun designated the male members of the victim in direct line as potential victims of the blood feud. It did not encompass women or their husbands. The Appellant was able to reside in Albania for a period of time before leaving the country because he was self-isolated and thus the aggressor family could not harm him according to the dictates of the Kanun. The Appellant did not know the name of the reconciliation union because he was not personally involved in the attempts at reconciliation it was the adults of the family.

11. It was not reasonable for the Appellant to go and live with his mother as she would surely be the first port of call for the aggressor family. The Judge's finding that it would be reasonable for him to reside there because there was no feud was an example of the Judge putting the cart before the horse. The vagueness of the Appellant as to the whereabouts of the Dara family was feasibly the answer of a young man currently living safely in the United Kingdom and hoping he would not be returned to Albania. It was enough for him to know that the Dara family was still there. It was the Appellant's case that the authorities were unable rather than unwilling to offer protection to him. "Background evidence" (not cited in the grounds) showed that corruption within the authorities resulted in indictments for blood feud murders being categorised as "something different" and also in reduced sentences. Police at local level were unwilling to become involved in case they got sucked into the blood feud.

12. The Judge had failed to address any of the **EH** categories save for the ability of the members of the aggressor clan to locate the Appellant. The Judge had failed to address any of the country materials contained in the Appellant's bundle or referred to in the Respondent's refusal. The Appellant had produced not only newspaper reports but also a court decision. These were not referred to by the Judge. It was an error for the Judge to dismiss the Appellant's documents or evidence as self-serving. The Judge's finding that the Appellant's father and brother were still on the registry due to the fact that they have kept in touch with Albania and were regular visitors was equally valid to Counsel's submission that it might be the result of a rolling programme and therefore where matters were evenly balanced the Appellant should be given the benefit of the doubt. In relation to Article 8, although the Judge had not heard submissions from the Appellant's Counsel his treatment of Article 8 was itself flawed.

13. The application for permission to appeal came on the papers before First-tier Tribunal Judge Andrew on 1st May 2015. In granting permission to appeal she wrote:

> "The grounds are lengthy but in essence they complain that the Judge failed to apply correctly the country guidance case or to properly consider the documentary evidence. I do not have anything before me other than the grounds and the decision. I have not had the opportunity to consider the bundle submitted. However on the face of it it would appear that the Judge has not considered any country information and has not considered all of the documentary evidence. Further there is a lack of reasoning for the findings made by him. Accordingly I am satisfied that there is an arguable error of law in the decision."

14. The Respondent replied to the grant of permission by letter dated 18th May 2005 stating that the Judge had carried out a comprehensive review of the Appellant's claim and reached clear findings why he rejected the Appellant's credibility. The Tribunal rejected the existence of the feud and threat to the Appellant. It was not accepted that members of the family would visit Albania without incident if there was an ongoing feud. No material errors in law were identified by the application for permission.

The Hearing before Me

15. In opening Counsel who had appeared for the Appellant below argued that she intended to stay clear of the attacks on the credibility findings and instead concentrate on omissions from the determination. There had only been one reference made by the Judge to the authority of **EH**. There was a failure to refer to background materials for example the documents in the Appellant's two bundles. There were no findings on the documentary evidence despite being dismissed by the Judge as self-serving. The documents included a decision of the Criminal Chamber of the Supreme Court of Albania. The Judge had displayed a lack of understanding of the principles of Kanun and that the victims self-isolate.

16. In reply the Presenting Officer stated that the Judge had rejected the credibility of the Appellant and therefore the guidance in **EH** did not arise. In any event the Judge had dealt with **EH** see for example paragraph 15 of the determination where the Judge had noted the proposition in **EH** that blood feuds were few and far between. The Appellant was vague about the whereabouts of the Dara family who could not be so influential as to be able to exercise power across Albania given their history of arrests and imprisonment. Although there had been a blood feud the Judge had found that the Appellant was not involved in it. There was nothing in the court documents which undermined the Judge's core findings on credibility.

17. The Judge was making a broader point why should the family escalate matters by returning to Albania at all. Women could be subject to violence under a blood feud, see the expert evidence preferred in **EH**. It was not perverse for the Judge to conclude that if the Appellant knew about the reconciliation he ought to have known more than he was saying about who arranged it. Even if the findings in the determination were said to be jumbled that did not undermine the core finding that the Appellant was not credible.

18. In reply Counsel stated the Appellant had only been in the United Kingdom for a year and therefore was not arguing private life. There was no claim that he had established a family life. The Judge was factually inaccurate about the visits to Albania. The targeting of women was the exception rather than the rule.

Findings

19. For the Appellant to be able to establish that he was at risk upon return to Albania from an ongoing blood feud, he had to show to the lower standard both that there was a blood feud and that he was or would be involved in some way in it. The Judge did not believe the Appellant. He found the Appellant's evidence to be lacking in

credibility and whatever had happened in the past, did not accept that the Appellant would be at risk in the future.

20. In a detailed assessment of the evidence the Judge made a number of telling findings against the Appellant. The Appellant claimed to have been self-isolated but could give no reasonable explanation why in those circumstances (e was still of school age) the school would not have made some form of direct enquiry to see where the Appellant was. I do not agree with Counsel for the Appellant's characterisation of this as a peripheral point. What it demonstrated was that there were gaps in the Appellant's account which he was unable to adequately deal with when pointed out.

21. Similarly the Appellant's claim that members of his family were returning to Albania but by night bears no scrutiny at all. As the Judge pointed out even if the Appellant's family had travelled by night from Italy to Greece (which would either involve air or sea travel for some hours) or across the border from Greece into Albania they would have to stay in Albania during the day time at some point. The Judge was entitled to express a sceptical view that having travelled back to Albania in this way the Appellant's family would then self-isolate themselves for lengthy periods of time before returning to Italy or Greece as the case may be. The concept was so implausible that it was certainly open to the Judge to reject it.

22. The Appellant was vague on a number of important matters which the Judge was entitled to say it was reasonable to expect the Appellant to have more knowledge than he in fact showed. If the Appellant was to claim that attempts at reconciliation had taken place it was reasonable to expect him to provide rather more detail of what those efforts were even if they involved adult members of the family.

23. The grant of permission to appeal appears to have been on the basis that the Judge had not considered the country information or considered all of the documentary evidence. That however assumes that the country background material contained within it some point of importance for the Appellant's case or that the documentary evidence itself would make a difference to the decision of the Judge. Certainly the Judge granting permission to appeal stated that she had not seen the documentary evidence she had merely read the claim in the grounds that the Judge had not considered that documentary evidence. In fact as was pointed out to me in submissions by the Respondent the documentation did not assist the Appellant's case since what it showed was that the Albanian police were quite active in arresting and sending for trial people involved in crimes of violence. That also contradicted the claim made in the grounds of appeal that the local police were not willing to be involved in blood feuds in case they were sucked into the feuds themselves. If that was the case then members of the Dara family would not have been sent to prison as they in fact were.

24. Further the Judge was well aware of the country guidance case of **EH** and was quite entitled to rely on the conclusions made in that case relating to blood feuds. On the facts as found by the Judge this case did not get to the stage where the Appellant could show that he was involved in a blood feud and would be at risk as a result. The issue was not whether there had been a blood feud and therefore whether the circumstances of the quarrel between the Appellant's family and the Dara family

came within the requirements set out in **EH**. The issue was whether the Appellant had been involved in it or would be in the future. The Judge rejected the Appellant's evidence on both points. There was no risk to the Appellant. The grounds of appeal for all their length are a mere disagreement with cogent findings made by the Judge open to him on the evidence. It was not an error for the Judge to fail to refer to material that was irrelevant. The Appellant's family were continuing to return to Albania and it was open to the Judge to draw an inference from that that they did not consider themselves to be at risk. The Appellant's attempts to explain this development by claiming that his family only returned to Albania at night merely served to produce more implausibilities in the Appellant's account not fewer. I do not find there was any error of law in the Judge's dismissal of this appeal and I therefore dismiss the Appellant's onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal.

Appellant's appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 12th day of February 2016

…….
Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As no fee has been payable and the appeal has been dismissed there can be no fee award.

Signed this 12th day of February 2016

…….
Deputy Upper Tribunal Judge Woodcraft