



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/08479/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 5 April 2016**

**Decision & Reasons Promulgated
On 14 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**AB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss F Ireson, Sentinel Solicitors

For the Respondent: Miss A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania, born on [] 1999. He appealed against the respondent's decision dated 4 June 2015 and First-tier Tribunal Judge N Amin in a determination promulgated on 3 December 2015 dismissed the appellant's appeal.
2. Permission to appeal was at first refused by First-tier Tribunal Judge Astle on 2 January 2016 and subsequently allowed by Upper Tribunal Judge Bruce stating that all grounds are arguable, in particular that the First-tier Tribunal Judge failed to give due weight to the appellant's young age and in misconstruing the evidence about the extent of his father's involvement in the incident which is said to have sparked a blood feud, and that the RALON report was capable of lending support to the appellant's account.

3. The First-tier Tribunal Judge in his determination made the following findings which I set out in summary. He starts off with stating that in assessing the appellant's claim for asylum, he had given consideration to the UNHCR Guidelines and policies and procedures in dealing with unaccompanied children seeking asylum. He has given great attention to the appellant's claim understanding that the appellant is a minor and that the problem of proof is compounded in the case of children. He also had regard to Section 55 of the Borders, Citizenship and Immigration Act 2009 and the UN Convention on the Rights of the Child 1990.
4. The Judge relied on the country guidance case of **EH (Blood feuds) Albania CG [2012] UKUT 00348** and accepted that a family member involved in a blood feud constitutes a particular social group. He stated at paragraph 45 that the appellant relied on an attack on him in March 2014 and stated that even if the attack occurred, which he does not believe, that it was from the [D] family. The appellant was not able to identify the perpetrators and he merely speculated that they were from that particular family. Therefore, his evidence that the [D] family attacked him because of a blood feud, is based on speculation.
5. More importantly, the Judge said that the appellant gave an inconsistent account of the weapon that was used in the attack. In his evidence form he claimed that during this attack one of the attackers took out a gun which he pointed at him. At his asylum interview, however, the appellant claimed that the man attempted to harm him with a weapon but he did not know what he pulled out and he was unsure if it was a knife or a gun. The Judge opined that this was a significant event and one that the appellant feared and therefore the appellant should have known whether it was a gun or some other kind of weapon.
6. The Judge said that when this inconsistency of the weapon was put to him, the appellant tried to blame the discrepancy on the solicitors and did not accept it. The Judge totally rejected the explanation for the material inconsistencies on this issue and said that the solicitors have no real role to play in the answers that the appellant gives. At paragraph 14 the Judge stated having the opportunity of hearing and observing the appellant he finds at the outset that he does not believe that there is a blood feud against this appellant from the [D] family.
7. The appellant claimed, the Judge said, that his father is the cousin of [XM] (the opposing blood feud family) and due to that relationship and because it is perceived that his father assisted the [M] family with a land dispute, the appellant's family became involved in the blood feud. There was no evidence to show the relationship of the appellant's father or the appellant with the [M] family. The Judge found that he considered the report by the British Embassy in Tirana where it confirmed that there was a murder on 17 February 2014 of [BD] and the perpetrator of this murder was identified as [XSM] who has been arrested and charged with the premeditated murder and the illegal possession of fire arms and a criminal investigation has started.

8. The Judge noted that none of these names of the persons who have been charged with the murder include the appellant's father. The embassy response makes it clear that there is no mention of the appellant's father [XB] in the murder. The Judge found that there is a blood feud following the murder on 18 February 2014 but the appellant or his family have no involvement in this blood feud. He then considered the case of **EH** and stated that applying the guidance in the case there has only been one killing in the claimed blood feud which was in February 2014. There have been no further killings and the perpetrator, a member of the [M] family, had been arrested by the police and is in detention. He then concludes that he does not find that one incident is enough to conclude there is an active blood feud. He stated that the appellant has not provided evidence of his family's relationship to [XM] and the evidence provided does not support this assertion.
9. The Judge did not accept that the appellant has provided evidence to demonstrate the existence of an active blood feud against [D] family and therefore he rejected the appellant's claim that the appellant was in any way involved in any blood feud. He further found that there is a sufficiency of protection from the appellant on his return to Albania and cited the COI Report on Albania which states that the authorities are now tackling the crimes committed by blood feuds. The Judge also considered that the appellant can relocate within Albania on his return.
10. Specifically the Judge notes, in this regard is that the appellant was returned to Albania once before after he had left the country and re-settled with his maternal uncle in Albania. The appellant managed to leave again and come to the United Kingdom. The Judge then said he can return and relocate anywhere in Albania because he speaks the language. He said that the appellant has shown considerable resilience and ability by travelling on his own as a minor on two occasions in an attempt to come to the United Kingdom and the appellant can resettle in any surroundings with ease. The Judge dismissed the appeal on asylum grounds, humanitarian protection grounds and human rights grounds.
11. The renewed grounds of appeal state that there are material errors within the determination, which individually and collectively demonstrate that the Judge's decision is unsustainable.
12. A former response dated 9 January 2015, the RALON response, is a crucial document which supports the core of the appellant's account of a murder having taken place in Albania, in the appellant's home area. It states that one of the protagonist, the murderer, is in prison and thus not an achievable blood feud target. It is clear from paragraph 53 of the determination that the Judge accepts that a blood feud exists. The Judge does not accept that the appellant's family are involved in the blood feud but with all due respect, the reasons provided, by the Judge for that conclusion, does not stand up to proper scrutiny.

13. The discrepancy as to the type of weapon that was used on the attack on the appellant can be explained because the appellant at the date of the incident was 14 years of age and is currently 16. The Judge did not make proper allowance for the age of the appellant when making his decision. The Judge's finding that RALON response does not support the appellant's account irrational. The appellant's evidence was that his father had left the family home and although he had spoken to his wife on a couple of occasions neither she nor the appellant knew where he was. The response given by the appellant was that the appellant's father was coming and going out of Albania, not that he was at the family home.
14. The Judge does not accept that the appellant or his family is the target of a blood feud and dismissed the appellant's appeal.
15. At the hearing I heard submissions from both parties as to whether there is an error of law in the determination of the First-tier Tribunal. Miss Ireson on behalf of the appellant said that the Judge accepted that there is a blood feud, at paragraph 53. The Judge's treatment of the RALON response was not safe. The Judge has not made express findings and the approach has been flawed and the evidence has been misconstrued.
16. The father was involved in the blood dispute because it was a land dispute between the two families. The appellant's father was involved in the land dispute, in that he helped the opposing family with the land dispute, and not the murder. The appellant's case was that his father went into hiding. He never said that he left the country, and that is a material error. The appellant's age was not properly considered. The Judge does not actively engage with the fact that the appellant is a child. The inconsistent evidence as to whether there a gun or a knife is down to the appellant's age because in his statement he said there has been a weapon which was used. The appellant was in a very stressful situation at the time and this was not taken into account by the Judge.
17. Miss Fijiwala submitted that the Judge has made it very clear in his determination that he is dealing with a minor. At the determination at paragraph 1, she referred to the fact that he is dealing with a minor. She also referred to the UNHCR Guidelines and properly directed herself. The Judge made adverse credibility findings against the appellant which were open to her and clear reasons were given.
18. The appellant had knowledge of this murder because the newspaper in which this was reported was produced by the appellant. It must be noted that there was no mention of the appellant's father or the appellant's father's family at all in this newspapers article. There is no evidence that the appellant's father is a cousin, as claimed.
19. In reply, Miss Ireson said that the findings by the Judge are perfunctory which she made in the alternative. She referred to her skeleton argument which I have taken into account.

Is there a material error of law in the determination of the First-tier Tribunal

20. I have take into account the determination, the arguments of the parties, the skeleton argument and I find that the Judge has made no material error of law in the determination. The Judge was very clear in her determination that he appreciated that the appellant is a child of 16 years of age and his appeal must be heard according to UNCHR guidelines. There is absolutely no merit to the argument that the Judge did not consider the appellant's appeal on the basis that he is a child. The Judge gave anxious scrutiny to the evidence because the appellant was a child. The Judge did not only not believe the appellant's claim that he was attacked but gave other good reasons for not finding the appellant credible taking into account that he was a child.
21. The Judge stated that the inconsistency about the weapon that he claims to have been attacked with, as to whether it was a gun or a knife is not something that the appellant should have been inconsistent about. The appellant even at the age of 14 must know the difference between a knife and a gun. The appellant, the Judge noted, is someone who has a great deal of initiative because he previously travelled abroad and had to be returned to Albania. The Judge noted that this is the second time he has left [Albania] and came to the United Kingdom. This demonstrated to the Judge that the appellant was a person of maturity and was entitled to find that it is not credible that this appellant would know the difference between a gun or a knife or would not remember whether it was a gun or a knife. The more credible explanation for this is that as the newspaper report about the killing mentions a gun and not a knife, the appellant subsequently has tried to be consistent with the evidence in the newspaper about the killing.
22. The Judge found that the RALON report states that a murder did take place and that [SM] was arrested and charged with premeditated murder and illegal possession of a fire arm, and a criminal investigation has started which shows that the murderer is now in jail. This information is in the public domain. He however found that there is no evidence that connects the appellant or his father to this information which was in the newspaper. This also demonstrates that the authorities in Albania are investigating and prosecuting murders due to blood feuds.
23. The Judge found this is the case there is no link with a report in the public domain of a murder that took place in the appellant's home area and the appellant's claim that his father is somehow related to the parties even though his name has not been mentioned in the report. The appellant claims that the role of his father in the blood feud is that he has been perceived by the opposing family to have helped the other family in the land dispute between them. There was no credible evidence produced by the appellant that his father was even in a position to influence or assist a party when it came to the title of lands. A blood feud of necessity must have the spilling of blood and there is no evidence that any blood was

spilled by the appellant's father such as the appellant's father to be involved in a blood feud.

24. The Judge took into account the indicia which must be taken into account as set out in the case of **EH** where it states that first what must be decided is whether the dispute can be characterised as a blood feud at all. The Judge was entitled to find on the evidence that there is no blood feud in which the appellant's father or the appellant is involved in.
25. The Judge makes an error when he found that there is a blood feud between the [M] family and the [D] family. It was not his place to make such a finding because whether or not there is an ongoing blood feud between the [M]s and the [D]s is of no relevance in this appeal because he found that the appellant and his father have not demonstrated that they have any connection with these two families, at all. There is no credible evidence that they are related to any one of these families. However, I find that this error is not material and it does not go to any of the issues which would make the determination not safe.
26. Furthermore, the Judge found that the appellant was a child and children are not targeted in blood feuds. The appellant's explanation was rejected by the Judge that he was targeted because even though he was a child "he looked old enough". The Judge was entitled to find that given the appellant's father's name is not in the press report of this particular blood feud, the appellant who was a child of 14 could hardly be a target. The Judge also found in the alternative that the appellant can be returned to Albania and there is a sufficiency of protection as background evidence states that Albania is now protecting victims of blood feuds.
27. I find there has been no error of law in the determination in respect of the findings made by the Judge on the evidence before her. I also find that the Judge's conclusion that the appellant can return to Albania because when he was previously returned once before he settled in with his uncle and he could do this again because there is no blood feud against him. The Judge was also entitled to find that even though the appellant is a child, he has proved to be of considerable resilience, adaptability and fortitude by travelling as a minor on two occasions to come to the United Kingdom. The Judge was entitled to find that he can now go back to Albania and resettle into his surroundings with ease as he did before. There is no material error of law and I uphold the First-tier Tribunal's decision. I also find that no differently constituted Tribunal would come to a different conclusion on the evidence.

Notice of Decision

28. I therefore uphold the decision of the First-tier Tribunal Judge and I dismiss this appeal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11th day of April 2016

Deputy Upper Tribunal Judge Chana

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 11th day of April 2016

Deputy Upper Tribunal Judge Chana