



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/10624/2015

THE IMMIGRATION ACTS

Heard at Field House
On 5 July 2016

Decision and Reasons Promulgated
On 15 July 2016

Before

Deputy Upper Tribunal Judge Pickup
Between

SM
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr P Draycott, instructed by Paragon Law
For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, SM, date of birth [] 1997, is a citizen of Albania.
2. This is his appeal against the decision of First-tier Tribunal Judge Green promulgated 4.5.16, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 15.7.15, to refuse his asylum, humanitarian protection, and human rights claims.

3. First-tier Tribunal Judge Saffer granted permission to appeal on 1.6.16.
4. Thus the matter came before me on 5.7.16 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Green should be set aside.
6. The relevant background can be briefly summarised as follows. The appellant had an abusive, alcoholic father and the appellant had to work from a young age to support the family. Whilst the family was in Turkey between 2012 and 2013 the appellant and his sister were put to work in a factory. Shortly after returning to Albania, his father disappeared following an incident when two men came to the home looking for him. They returned after his father's disappearance and told the appellant's mother that the father owed them money and that they would kidnap the appellant if that money was not paid. The appellant then left Albania. He fears that if returned to Albania he would be kidnapped by his father's creditors. He is also frightened of his father because he was forced to work at a young age.
7. The appellant's account was rejected by the Secretary of State, for the various reasons set out in the refusal decision.
8. In a careful and detailed decision Judge Green set out the evidence and from §46 the findings of fact. Although then 19 years of age, the judge accepted that the appellant is a vulnerable young man who suffers from mental illness, mild depression and an adjustment disorder. The judge accepted that he had suffered domestic abuse at the hands of his father and that he fears his father. It was accepted that the father is an alcoholic who may have run up debts. In Turkey the appellant was forced into hard work at age 14, earning money to support the family. The judge accepted as plausible that after the family returned to Albania the appellant's father disappeared and creditors visited the family home. However, the judge did not accept that he had been threatened with kidnap and even if he had it had not been carried out. It was accepted that the appellant fears his father, but as his father now lives in Germany there is no reason to believe that he would come into contact with him on the appellant's return to Albania. The judge did not accept that the appellant had a justified fear of his father's creditors. Notwithstanding the expert report of Dr Senerdem, the judge found it not likely that Kanun liability for his father's debts would pass to the appellant whilst his father is living. In relation to this issue, the judge noted that the appellant's father and brother have not been threatened by the creditors.
9. In granting permission to appeal, Judge Saffer found it arguable that the First-tier Tribunal Judge materially erred by not giving adequate reasons for finding that the appellant was not at risk from the people to whom his father owed a debt.

10. The Rule 24 reply, dated 16.6.16, submits that the judge had regard to all the evidence and was entitled to find the appellant would not be at risk on return. The judge considered the expert material and the fact that none of the appellant's male paternal family members had faced any problems, despite living in close proximity to the appellant's family home. The judge also gave consideration to protection available from state authorities and background material.
11. It is also submitted that the judge had regard to the medical evidence, including the oral evidence as to the purported risk of suicide and was entitled to reach the conclusions made, considering all the evidence in the round and it was not necessary for the judge to set the evidence out again in full.
12. However, the judge's assessment of the expert evidence was that neither of the witnesses, Ms Pagett or Mr Smit considered the appellant to be at risk of suicide.
13. The first ground of appeal (A) as to whether the father's creditors threatened to kidnap the appellant is no more than a disagreement with the findings of the judge. I am satisfied that reasons were provided for the judge's conclusion, after assessing all the evidence together in the round. At §31 the judge gave reasons for doubting Dr Senerdem's report and the applicability of the information about blood feuds to debts, pointing out the expert's concession that there is no explicit clause in the Kanun code to suggest that the father's debts can be transferred to male offspring when the father is still alive, which is an accepted fact. The judge also relied on the fact that the appellant's father, uncle and brothers are still alive. The brothers had not been threatened, as the judge found at §53. The judge also referenced in this regard the case of Fornah, in which it was held that where some members of a family face persecution, but not others, the issue of causation will need to be closely scrutinised. At §53 the judge found that this issue of causation had not been overcome. In the circumstances, the conclusion was open to the judge and I find no error of law in this ground of appeal when the decision is read as a whole.
14. In my view, the second ground of appeal (B) has no merit. As stated above, the Judge accepted that in order to support the family the appellant and his sister were sent out to work in a factory whilst the family was living in Turkey, at which time he was only 14 years of age. It was also accepted that the appellant is a vulnerable young man. However, this is not the same as being trafficked for forced labour and the appellant is now 19 years of age. His father lives in Germany and the judge found that he would have nothing to fear from his father on his return to Albania. There is no reasonable evidence that because of his experiences in Turkey in being forced to work at a young age, he is at any real risk of trafficking on return to Albania. There is woefully inadequate information to demonstrate such a risk and in my view this ground of appeal is a contrivance with no real merit and even if it had been specifically addressed in the decision, it is inevitable that the judge would have had to conclude that there was no such risk.
15. The third ground of appeal (C) relates to the judge's finding at §53 that the appellant failed to make out that he is a member of a PSG. The judge, as noted above,

considered the factual claim. It was accepted that visits were made to the family home about the father's debts, but the judge did not accept that he was threatened as claimed. Mr Draycott relies on the family connection between the act of persecution by the threat and the appellant's family, suggesting that is sufficient, even if it is not the only or primary ground on which the appellant relies. I am satisfied that the judge adequately addressed this issue and that the conclusion that the appellant is not a member of a PSG is one open to the judge and for which cogent reasoning has been provided. There is no error of law in the judge's assessment of this issue.

16. The fourth ground (D) relates to sufficiency of protection on return to Albania, in reliance on EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC), which held that in areas where Kanun code predominates (particularly in Northern Albania) there is not sufficiency of protection from Kanun-related blood-taking. The judge was not satisfied, for the reasons given in the decision, that the appellant's situation equated to a blood-feud and was not satisfied that he had been threatened with kidnap. The judge did not accept that the father's debts could have transferred to the appellant when his father was alive and his whereabouts known. As stated above, the judge also pointed out that other members of the family had not been threatened and thus was not satisfied that the appellant had established causation between the debts pursued against his father and the risk to the appellant. Contrary to the suggestion of Mr Draycott, the judge did grapple with EH, and on the basis that he did not accept that there was any blood-feud on the facts of this case, no one was killed, nor that the appellant's circumstances put him at risk because of the Kanun code, went on to consider sufficiency of protection, in the alternative to the primary findings of the appeal, from the state against non-state actors, concluding that there was a sufficiency of protection in general terms. In this regard, I accept the submission of Mr Whitwell that Mr Draycott's submissions conflate two different situations in order to challenge the conclusions of the judge. In the circumstances no error of law is disclosed on this ground.
17. The final ground of appeal (E) relates to the suicide risk. On this ground Mr Draycott has attempted to undermine the judge's record of the evidence of the two oral witnesses, by adducing his own notes and purporting, in effect to give evidence as the advocate representing the appellant at the appeal. Even though there is a letter from Mr Smit confirming his recollection of what was said, this is entirely insufficient to interfere with those findings. As Mr Draycott is aware, there is a process or procedure for challenging the accuracy of what was said at the First-tier Tribunal appeal hearing, in which Mr Draycott would have to be a witness rather than the appellant's representative, and the judge should have been asked to comment on the alleged discrepancy between what the decision records was said and that version now put forward by Mr Draycott. The judge accepted that the appellant suffered from mental health issues, was vulnerable, and noted the views of the witnesses that he was 'needy' and would not be able to cope. But as things stand, the judge recorded evidence that neither witness thought that the appellant was at risk of seriously harming himself. The arguments put forward by Mr Draycott do not justify interfering with this part of the decision. It must follow that the conclusions of the judge were entirely open, on the basis of the judge's record of the evidence.

18. In effect, the details grounds and extensive submissions of Mr Draycott amount to an attempt to relitigate the decision of the First-tier Tribunal and do not disclose anything other than a piecemeal attempt to dissect what was a careful and thorough consideration of the evidence and the relevant law.

Conclusions:

19. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order. Given the circumstances, I continue that anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.

A handwritten signature in black ink, appearing to be 'J. Pickup', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup

Dated