



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

Appeal Number: PA/02758/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 03 May 2017**

**Decision & Reasons Promulgated  
On 10 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**[I P]**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Wass, Counsel, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Housego (Ftj), promulgated on 08 August 2016, dismissing the appellant's appeal against the respondent's decision of 03 November 2015 to refuse his protection and human rights claims.

**Factual Background**

2. The appellant is a national of Albania, date of birth [ ] 1993. He claims to have left Albania on 17 April 2014. He travelled by air to Paris and remained in France until mid-2015 when he arrived in the United Kingdom concealed in a lorry. He made an protection claim on 13 August 2015 which can be summarised as follows.
3. The appellant was a member of the Democratic Party in Albania and, as a result of his membership and support for the Party, was targeted by the police and other individuals, eventually forcing him to flee the country. The appellant's father, a long-time member of the Democratic Party, was sacked from his employment with the Post Office as a result of his political affiliations following the defeat of the Democratic Party in general elections held on 23 June 2013. The appellant was arrested in the early part of 2014 due to his proximity to a demonstration outside the Greek embassy in Tirana. He was recognised as being a member of the Democratic Party and was assaulted by a police officer using a truncheon causing an injury to his right ear. The appellant had suffered hearing problems in his left ear for some years prior to this incident. He claims that the assault led to hearing problems in his right ear. The appellant was arrested at the protest and detained at a police station. He only obtained his release after Democratic Party MPs and/or Deputies came to the police station and secured his release. His release on the same day received media coverage and he gave a statement to the media outside the police station. Following his release the appellant returned to his home area of Kukes. He was then approached by well-dressed individuals who threatened him. As a result of these threats the appellant left Albania. Subsequent to his leaving his family encountered problems as a result of their political affiliation and his brother was arrested in February 2015. The appellant's family have now left Albania.

### **The Reasons For Refusal Letter**

4. The respondent accepted the appellant's nationality and that he had been a member of the Democratic Party since 20 June 2013 (in reliance on a membership card provided by the appellant). The respondent did not however accept that the appellant was an active member of the party and rejected his account of being detained and threatened. This was based, *inter alia*, on the appellant's lack of knowledge of previous Democratic Party leaders, his identification of the wrong individual as the current leader of the Party, his lack of awareness of the Party's policies and aims, inconsistencies in his account relating to the number of people canvassing during election campaigns, the implausible description of his arrest and mistakes by him in relation to the dates upon which he was arrested and threatened. The respondent did not accept the appellant was of any interest to the authorities given that he was able to leave the country without any difficulty, and there was said to be no specific documents supporting his claim that his brother had been arrested. The

respondent additionally drew an adverse inference under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 based on the appellant's delay in claiming asylum and his failure to claim asylum in France.

### **The decision of the First-tier Tribunal**

5. The appellant produced two bundles of documents for his First-tier Tribunal appeal. He brought with him a DVD said to contain film of his assault. No request was however made to view this film. It appears that reference was first made to the film by the appellant's representative during her closing submissions. In his decision the FtJ set out, at length, the relevant provisions and authorities governing the burden and standard of proof before detailing the questions asked and answers given by the appellant at the appeal hearing. After setting out the submissions made by the party's representatives the FtJ considered, at [74] to [84], the credibility of appellant's account.

6. At [74] the judge stated,

"I note that although the video was said to be critical to the case of the appellant in proving an assault on him by police such as to damage his hearing, and a DVD said to contain a YouTube clip of it produced at the hearing, no still from that clip was produced to me, nor were any arrangements requested for me to see it. I do not consider it appropriate for me to try to find or to view such a YouTube clip after the hearing and in the absence of the Home Office Presenting Officer."

7. The FtJ noted the absence of any evidence as to the nature of the appellant's hearing problems in his left ear or whether these were specific to one ear or likely to be bilateral (and so likely to have a cause other than that claimed by the appellant). The FtJ found that the appellant had given different explanations in respect of events following his release from police custody ([76]). The FtJ was not satisfied that the explanation advanced by the appellant's legal representative adequately dealt with these inconsistencies. The FtJ noted further inconsistencies in the appellant's evidence relating to his possession of a Democratic Party ID card [78]. The FtJ found the appellant's evidence relating to the contact he had with his family after they left Albania, and the reluctance by his family to disclose their whereabouts and circumstances, to be completely implausible [79]. The FtJ rejected the explanation proffered by the appellant as to why his father, on leaving Albania, did not take his party membership card [80]. The judge did not find that a document purportedly issued by the Democratic Party in February 2016 was convincing or reliable because the Democratic Party always had a blue logo whilst the document provided was a photocopy on which text had been inserted [81]. There was said to be an absence of evidence from anyone else confirming the appellant's claim, not even a short report from a doctor who, according to the appellant's evidence, had been called out at 5

AM to treat his injuries [82]. No credible reason was advanced as to the absence of evidence from the appellant's parents, or from a friend of his who allegedly forwarded documents from Albania, or from his aunt [83]. There was said to be no evidence of systematic persecution of Democratic Party members in Albania by the authorities, which made it less likely that the appellant was persecuted as, on his own account, he was of only minor importance in the party [84]. Whilst the FtJ accepted that the appellant's father was a member of the Democratic Party, and that he had lost his job in a reorganisation following the general election, the FtJ was unable to conclude whether this was for economic or political reasons [85]. The FtJ found that the appellant was involved with the Democratic Party as a result of his father's activities within the party. At [86] the FtJ stated,

"If the appellant was hit by police in a demonstration it was not a targeted attack, but simply as he was there as a demonstrator. Even to the lower standard, I do not find that he was so attacked. There are so many credibility problems with the account of the appellant and inconsistencies in his evidence that he has not shown this. Without some medical evidence that his right ear hearing problems may have been caused by a blow I do not accept that it was so (and I bear in mind the lower standard applicable)."

8. The FtJ found that the appellant's family continued to reside in Albania and that the appellant was an economic migrant who sought to use his father's membership of the Democratic Party to stay in the UK [88]. The FtJ dismissed the appeal on asylum and humanitarian protection grounds. The FtJ additionally dismissed the appeal on article 8 human rights grounds. No challenge has been made to the FtJ's article 8 assessment.

### **The grounds of appeal**

9. The grounds firstly contend that the FtJ failed to properly consider evidence going to the issue of credibility. The FtJ did not consider the DVD evidence which, it was claimed, showed the attack by the police. It was submitted that the evidence had already been provided to the Home Office in the form of a USB stick. The failure to view the DVD was said to amount to a material legal error. The 2<sup>nd</sup> ground contends that the FtJ failed to make any findings at all in respect to the appellant's claim to have been arrested and detained by the Albanian police. The 3<sup>rd</sup> ground contends that the FtJ made contradictory findings in relation to the letter purportedly issued by the Democratic Party in February 2016. On the one hand the FtJ did not find this document to be reliable, but on the other hand he accepted that the appellant was a member of the Democratic Party.

10. Permission was granted on all grounds.

### **Submissions at the error of law hearing**

11. Whilst accepting that she had not asked for the DVD to be shown at the First-tier Tribunal hearing Ms Wass submitted that it was nevertheless a material error of law for the FtJ to have failed to have considered the DVD. The FtJ had been invited to do so in retirement. The DVD had been served on the respondent prior to the hearing and the respondent therefore had an opportunity to raise issues in relation to the contents of the DVD. No issues were raised. It was submitted that the absence of any finding relating to the appellant's arrest and detention was material as this was a crucial incident demonstrating that he had been targeted. The FtJ was not entitled to doubt the reliability of the Democratic Party letter issued in February 2016, especially in light of the FtJ's acceptance that the appellant was indeed a member of the Party. The FtJ relied on the concerns he had with the letter in rejecting the appellant's credibility. The principal issue before the Tribunal was whether the appellant was an active member of the Democratic Party. If he was an active member then, as a result of his activities, he had been targeted. His activeness within the Party was key to his claim.
  
12. Mr Jarvis submitted that the issue whether the appellant was an active member of the party was a 'red herring'. The real issue to be determined was whether the appellant had been, and would continue to be, targeted by the authorities or other agents of persecution. The fact that the respondent had not seen the DVD did not amount to a concession that the assertions relating to its content were accepted. The fact remained that the appellant's representative failed to apply to the First-tier Tribunal for the DVD to be shown. The failure to consider the DVD was not, in any event, material given that the FtJ made a lawful finding in respect of the purpose for which the DVD had been advanced. Even if the appellant had been hit on the right ear there was no medical evidence establishing that this assault caused any damage to the hearing in his right ear. In any event, the FtJ found [86] that the appellant had not been directly targeted by the police in relation to this incident. It was clear from a full reading of the decision that the FtJ did not accept the events that were said to have occurred after the appellant's release from detention. Nor was there any evidence from the appellant's family and no evidence from the Party concerning the alleged detention. In the First-tier Tribunal (at [44]) the appellant claimed that there was another Democratic Party letter referring to his detention but this had not been provided to the First-tier Tribunal. Even if the reasons given by the FtJ in placing no reliance on the Democratic Party letter issued in February 2016 were poor, the appellant had failed to produce evidence relating to the core of his claim. There were said to be an abundance of findings supporting the FtJ's rejection of the appellant's claim to have come to the adverse attention of the authorities.

13. In response Ms Wass noted that some medical evidence had been provided relating to the appellant's hearing and that the conclusions reached by the FtJ were sufficiently uncertain such as to render the decision unsafe. The question whether the appellant was an active member of the Democratic Party was not a 'red herring' but a logical first step in assessing whether he was somebody at risk.

## **Discussion**

14. The first ground contends that the judge should have viewed a DVD relating to the appellant's assault by a police officer despite no request having been made to arrange a viewing during the actual hearing. Having considered the hearing notes maintained by the FtJ it appears that no reference was made to the DVD prior to Ms Wass' closing submissions. Ms Wass accepted as much at the error of law hearing. The judge was only invited to consider the DVD in his retirement. As the FtJ properly explained [74], this would have provided no opportunity for the respondent, represented by the Presenting Officer, to ask questions or make submissions in relation to the DVD, and it would also have prevented the FtJ himself from asking questions or making relevant enquiries based on what he viewed. The burden of proof rests on the appellant, albeit to the lower standard of proof, and it is for the appellant or his representatives to adduce all relevant evidence for fair consideration by both parties at the hearing. The FtJ was fully entitled to conclude that it was not appropriate for him to view the clip after the hearing and in the absence of one of the parties, and without the opportunity to raise any issues that might flow from viewing the film.
15. I observe in passing that although arrangements were made to view the relevant clip at the Upper Tribunal error of law hearing Ms Wass did not at any stage invite me to consider the film. If the appellant's legal representatives believed the film of the alleged assault to be relevant to the fair determination of the appeal they should have arranged with the First-tier Tribunal to view the film before the FtJ and both parties. This was not done.
16. Miss Wass submitted that the respondent had possession of a USB stick containing the film and could have watched the film prior to the hearing. During the appellant's asylum interview he did seek to serve a USB stick on the respondent but was informed, quite rationally, that the respondent would be unable to view the film in the medium offered given the strictures of the Home Office computer system. In any event, the fact that the respondent did not view the film prior to the hearing cannot, on any rational view, be regarded as a concession that the content of the film were as claimed by the appellant. Nor does the respondent's failure to view the film prior to the hearing render the judge's refusal to view the film after the close of the hearing even arguably unlawful. In any event the FtJ found, in the

alternative, that if the appellant was hit by police at a demonstration it was not a targeted attack but simply because he was there was a demonstrator (see the beginning of [86]). Thus the failure to view the film would not have amounted to a material error.

17. In relation to the 2<sup>nd</sup> ground, I accept that the Ftj did not explicitly refer to any finding in respect of the appellant's alleged arrest and detention. It would have been advisable for the Ftj to have made express reference to all material findings. However, having considered the decision as a whole, and in particular the Ftj's findings from [74] to [84], it is irresistibly implicit in the decision that the Ftj rejected the appellant's claim to have been detained. The Ftj comprehensively rejected the events that were alleged to have occurred following the appellant's release from custody. No challenge has been made to these adverse credibility findings. They were findings the Ftj was rationally entitled to reach. The Ftj noted the absence of any supporting evidence relating to the alleged assault and found there was no credible reason for the absence of evidence from the appellant's parents and, in particular, the Democratic Party of Albania in respect of his alleged detention. This is particularly relevant as the appellant claimed his release was facilitated by pressure from Democratic Party MPs or Deputies, and that there was media attention outside the police station following his release. Although there is no requirement for corroborated evidence in this jurisdiction the Ftj was fully entitled to have drawn an adverse inference from the failure to provide evidence that could reasonably be expected to have been provided. There was however no evidence from anyone in the Democratic Party relating to the appellant's detention, despite the intervention by the Democratic Party in obtaining the appellant's release. The Ftj was rationally entitled to draw an adverse inference in these circumstances (I note, in any event, that no challenge has been made to this aspect of the decision). Having regard to the decision read as a whole I am satisfied that, despite no express reference to the appellant's detention, the nature and extent of the adverse credibility findings lead irresistibly to the conclusion that the appellant was not detained. I therefore find that any failure by the judge to expressly refer to his findings in respect of the detention does not amount to a material legal error.

18. The Ftj's conclusion that the appellant was a member of the Democratic Party is not inconsistent with his rejection of the reliability of the letter purportedly issued by the Democratic Party in February 2016. The Ftj was entitled to express his concern that the letter was a photo copy onto which text had been inserted. The original was produced before me at the error of law hearing and conforms to the Ftj's description of the letter. The logo on the letter was not in blue, although I accept that my attention was not drawn to any evidence indicating that such logos would always appear in blue. To this extent

the Ftj may be criticised for making an assertion that had little evidential basis.

19. The fact remains however that even if the Ftj was wrong in rejecting the reliability of the letter, and therefore wrong in finding this undermined the appellant's credibility, he gave other significant reasons for concluding that the appellant was an incredible witness. Taken at its highest the letter indicated that the appellant was an active member of the Democratic Party. Ms Wass submitted that this was highly relevant and that everything flowed from an acceptance that the appellant was actively involved in the party. The issue that the Ftj ultimately had to determine however was whether the appellant had been targeted by the Albanian authorities, and whether there was a real risk that he would be targeted if returned to Albania. The Ftj gave otherwise comprehensive and unchallenged reasons for rejecting this core feature of the appellant's claim. I am not persuaded that the Ftj's rejection of this particular letter undermined his otherwise detailed assessment and his rejection of the appellant's claim to have been targeted by the authorities. I am not therefore satisfied that any error was material.

### **Notice of Decision**

#### **The First-tier Tribunal did not make an error of law**

I make no anonymity direction.



09 May 2017

Signed

Date

Upper Tribunal Ftj Blum