



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

Appeal Number: PA/12542/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3<sup>rd</sup> May 2017**

**Decision & Reasons Promulgated  
On 24<sup>th</sup> May 2017**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**[E K]**

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

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Iqbal, instructed by Wimbledon Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Albania born on [ ] 2000. He appeals against the decision of First-tier Tribunal Judge Lucas promulgated on 9<sup>th</sup> January 2017 dismissing his protection claim.
2. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 20<sup>th</sup> March 2017. It was arguable the judge had erred in law in failing to assess the Appellant's evidence and his return to Albania on the basis that he was a minor, and in failing to consider the medical evidence in the round.

3. In the Rule 24 response, dated 4<sup>th</sup> April 2017, the Respondent submitted that the judge did not accept that the Appellant had lost contact with his mother and father. He would not be returned as an unaccompanied minor and therefore the judge's reference to the fact that the Appellant would not be returned until he was 18 years old was irrelevant. Further, the judge assessed the medical evidence and concluded that the Appellant's PTSD was unconnected to his claim. In any event, the Appellant could internally relocate on return.

### **Submissions**

4. Ms Iqbal relied on the grounds of appeal and submitted that the judge had erred in law in his assessment of credibility and in failing to assess risk on return at the date of hearing. She submitted that the judge had not assessed the Appellant's circumstances at the date of hearing when he was 16 years old. She referred to paragraph 46 of the judge's decision in which he states:-

"In so doing, it notes that the Appellant is sixteen years old and has, in accordance with public policy, been granted leave to remain in the UK until 2008 (sic). There is therefore no prospect of him (sic) imminent removal."

and at paragraph 57:-

"In any event, the Tribunal simply does not accept that inside or outside of his local area, the Appellant could (sic) not avail himself of State or other protection. The Tribunal notes that he will be an adult when he is returned to Albania and can readjust to life there as he has done to life in the UK."

5. Ms Iqbal submitted that the judge failed to consider the Appellant's evidence as a child and instead considered the risk on return as an adult. The judge failed to consider presidential guidance on vulnerable witnesses which was referred to in the skeleton argument before him.
6. Further, it was clear from paragraph 52 of the decision that the judge had used his own perception of the situation rather than considering the Appellant's age. The Appellant was a child who would not be able to refer to every single fact. The judge was wrong to have made assumptions. In effect, the judge concluded that there was no blood feud so he did not attach weight to the medical report. However, there was no reason for rejecting the Appellant's account at paragraph 51 where the judge concluded:-

"The Tribunal does not consider that there was in fact a blood feud existing in Albania which involved the Appellant in any way. It places no weight at all upon the fact that he was 'warned' while still aged fifteen years and before his departure from Albania."

7. There were no reasons for rejecting the Appellant's account that he was attacked in August 2015 and this account was supported by the medical evidence. Accordingly, there were gaps in the judge's findings and conclusions. There had been two violent incidents in Albania which was enough to establish a blood feud and there was evidence to corroborate

the occurrence of a blood feud. Had the judge accepted the attack on the Appellant, as he should have done in light of the medical report, he would have found that the Appellant had established a blood feud.

8. Ms Iqbal submitted that the judge failed to consider relevant evidence, and had he done so, he would have come to a different conclusion. Therefore, there was a material error in law. Further, the judge should have referred to, and taken into account, the character evidence in assessing credibility rather than just referring to it in relation to the Article 8 claim.
9. Ms Isherwood submitted that there was no material error of law in the judge's decision and the points made amounted to disagreements. The Appellant had claimed asylum in May 2016 and the hearing was in December 2016. The character witness accounts were based on evidence told to them by the Appellant over a limited period of time. The witness evidence had no reflection on the events in Albania. It was not direct evidence of what had happened. It was evidence of what the Appellant had told the witnesses and was used to support his private life.
10. Ms Isherwood submitted that the judge did not have to accept the Appellant's account just because he was a minor. Throughout the judge's decision there was reference to the Appellant being 16 years old. The judge went through the documentary evidence provided by the Appellant. He was not just looking at the oral evidence and failing to take into account the Appellant's age. At paragraph 26, the judge took into account the medical evidence, which indicated that the scarring was consistent with the Appellant's account of having been attacked. At paragraphs 27 and 28 the judge took into account the letters of support from the village head, the supporting letters and the student progress report, and also a letter from a further witness dated 12<sup>th</sup> December 2016.
11. The judge assessed the Appellant's oral evidence in the light of this documentary evidence and he properly applied country guidance 7(ii) of EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) in which it states:-

"In order to establish that there is an active blood feud affecting him personally, an Appellant must produce satisfactory individual evidence of its existence in relation to him. In particular, the Appellant must establish:

  - (i) his profile as a potential target of the feud identified and which family carried out the most recent killing; and
  - (ii) whether the Appellant has been, or other members of his family have been, or are currently, in self-confinement within Albania."
12. Ms Isherwood submitted that the judge was well-aware that the Appellant was a minor and it is clear from his conclusions at paragraph 48 that there was a conflict in the evidence. This was not a matter in which the Appellant was vague or his account was lacking in detail. In this case the documentary evidence did not support the Appellant's claim.
13. The Appellant's claim was partially accepted by the Respondent. It was accepted that the Appellant's father had been arrested and detained and

therefore the court documents did not show that the authorities turned a blind eye as alleged by the Appellant. The judge's finding that there was not a blood feud involving the Appellant was one which was open to him on the evidence before him.

14. The judge found that the warning incident in 2015 was not connected to a blood feud. The medical report did not go into detail of this claimed incident. There was also evidence that the Appellant's father left Albania with the Appellant and brought him to Belgium. This was inconsistent with a blood feud. At paragraph 52 the judge looked at the evidence and made appropriate findings. The Appellant's father was not in self-imposed captivity because, on the Appellant's own evidence, he had left the country with the Appellant in 2016.
15. At paragraph 53, the judge did not accept that the Appellant lost contact with his family and this was relevant to risk on return. There was a letter from a village elder dated 6<sup>th</sup> December 2016 which supported the judge's finding that the Appellant still had contact with his family. There was no evidence from the Appellant of any attempt to contact his family. The judge's finding that the Appellant had not lost contact with his family, who were resourceful and had sent the Appellant out of Albania, was supported by the letters that the Appellant was doing well in education.
16. In summary, Ms Isherwood submitted that the judge looked at the documentary evidence and oral evidence and made appropriate findings. The judge acknowledged the medical report in his decision at paragraph 26 and he referred to it again at paragraph 55. The report did not give an alternative cause for the scarring and it did not dislodge the finding that there was no blood feud. The judge looked at risk on return at the date of hearing, given his finding that the Appellant had family to whom he could return. At paragraph 56 the judge did not accept that there was a blood feud. Further, he considered the matter in the alternative.
17. The decision was well-reasoned and took into account all the evidence (including the fact that the Appellant was a minor, the letters of support and the expert report) and the judge made sustainable findings on risk on return. The argument put forward by the Appellant was no more than a challenge to the weight that should be attached to the Appellant's evidence. The grounds fail to address the judge's findings on the documentary evidence. Accordingly, there was no error of law.
18. In response, Ms Iqbal referred to the Appellant's witness statement in which he stated that he was currently in the process of getting an up-to-date letter. The fact that he could obtain other evidence from his village did not show that he had contact with his family. In any event this was not a matter which was raised in cross-examination or at the hearing before the First-tier Tribunal.
19. It was clear, from paragraph 57, that the judge considered risk on return for the Appellant as an adult. This clearly highlighted the judge's state of

mind when considering risk and was not in accordance with current guidance. The judge had gone beyond looking at the evidence of a child and assumed that the Appellant would be in touch with his family.

20. The medical evidence was not properly considered and parts of the Appellant's evidence, which were corroborative of his account, were not properly considered. The Appellant should have been given the benefit of the doubt. There was consistency in the Appellant's oral and written evidence. The inconsistencies in the documentary evidence were not within the Appellant's control. If an error had been made, this should be weighed against the consistency of the Appellant's own account and oral evidence. This had not been done. The Appellant had not been given a margin of error.
21. I asked Ms Iqbal how her submissions and grounds were material, given the judge's finding that there was sufficiency of protection, and that this was not challenged in the grounds of appeal. She submitted that, if the judge had accepted the Appellant's account as credible, he would have accepted that the police would not protect the Appellant as he claimed.

### **Discussion and Conclusion**

22. The judge acknowledged that the Appellant was 16 years old and accepted that his father had been involved in a violent incident resulting in his father's arrest. However, the judge did not accept that the Appellant was the subject of a blood feud and he gave cogent reasons for coming to this conclusion.
23. Firstly, the letters from the village elders and the court documents were inconsistent with the Appellant's claim. Secondly, the fact that the Appellant's father had been prosecuted for assault showed that there was a functioning police force and that the police did not turn a blind eye to such disputes, contrary to the Appellant's claim. Thirdly, the Appellant claimed his father remained indoors to avoid his persecutors. However, this claim was inconsistent with the Appellant's account that he left Albania on his own passport with his father and his sister. I find that there was no error of law in the judge's rejection of the Appellant's claim to be the subject of a blood feud. The matters identified in the grounds were not material to this finding.
24. The judge did not accept that the Appellant had lost contact with his family. There was no reason for his mother to leave the family home because she would not be subjected to the blood feud. The Appellant's father had brought him to Belgium and secured his passage to the UK. The judge did not find it credible that his father would not have remained in contact with the Appellant and there was insufficient evidence from the Appellant that he had made attempts to contact his family. Accordingly, the Appellant would not be returning to Albania as an unaccompanied minor. The judge's reference to the grant of leave until 2018 and that there was no prospect of imminent removal was not material to the

judge's conclusion that the Appellant had failed to show he was the subject of a blood feud.

25. The judge considered each aspect of the Appellant's claim and assessed whether it was credible. He took into account the medical evidence as part of that assessment. The fact that he referred to the medical report at the end of his assessment does not amount to an error of law. The judge took into account that the Appellant had received a warning while he was 15 years old and (at paragraph 26) that the injury he sustained, scarring on his chest and hands, was consistent with his account. The judge however did not accept that the Appellant was involved in a blood feud. The judge's conclusion was open to him on the evidence and the medical evidence did not take the matter any further. There was no error of law in the judge's assessment of credibility.
26. In any event, the judge found that there was sufficiency of protection and the Appellant could internally relocate. This finding was open to the judge on the Appellant's own evidence and was supported by the background material. There was insufficient evidence before the judge to show to the lower standard that the rival family had the ability and resources to locate the Appellant and his family on relocation to Tirana.
27. I find that there was no error of law in the decision of 9<sup>th</sup> January 2017 and the Appellant's appeal is dismissed.

**Notice of Decision**

**Appeal dismissed.**

**No anonymity direction is made.**

J Frances

Signed  
Upper Tribunal Judge Frances

Date: 15<sup>th</sup> May 2017