Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00402/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 February 2018	**On 28 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR S L
(ANONYMITY DIRECTION MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. S. Knight, counsel instructed by J D Spicer Zeb solicitors
For the Respondent: Mr. T. Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appeal first came before me for an error of law hearing on 12 October 2017. In a decision and reasons which, for unforeseen reasons although it was written on 18 October 2017 was not promulgated until 22 February 2018, I found an error of law and announced my decision at the hearing. A copy of the error of law decision is appended.

2. The resumed appeal came before me for determination on the basis of submissions only in respect of (i) whether the Appellant had a well-founded

fear of persecution in Albania; (ii) whether he meets the requirements of paragraph 276ADE (vi) of the Immigration Rules and (iii) whether his removal would be contrary to Articles 2, 3 and 8 of ECHR on account of his mental health and the risk of suicide.

3. At the outset Mr Wilding sought clarification as to whether or not Mr Knight was seeking to rely on the judgment of the Grand Chamber in *Paposhvili v Belgium* [2017] Imm AR 867 which Mr Knight confirmed he was. Mr Wilding summarised his position as being that he accepts what the Appellant says and the medical evidence but would argue that his case does not reach the Article 3 threshold. Mr Knight invited me to make findings in line with the findings in AM (Zimbabwe) [2018] EWCA Civ 64.

4. Mr Knight sought to rely upon his skeleton argument prepared for the First tier Tribunal hearing dated 10.4.17. He drew my attention to [12] and the report from Sheila Melzak of the Baobab Centre as to the reason she considered that the Appellant was unable to give evidence because he would not be able to recall or give an account of his experiences in an adversarial environment. Her subsequent report dated 7.12.17 deals with lack of progress. He submitted that because of the manner in which the Asylum Policy Instruction on medico-legal reports is drafted, the Respondent is not entitled to go behind those reports and nor is the Tribunal: 1.4. page 4, 3.1 page 11.

5. In respect of the substantive asylum claim, Mr Knight drew my attention to page 5 onwards of the skeleton argument. In respect of the apparent inconsistency arising from the asylum interview as to the date the Appellant state's that he was assaulted by E's brother. If there is any confusion then Mr Knight submitted that it could be explained by the medical evidence, but that there was no meaningful inconsistency in any event and it had been clarified by the Appellant's statements. He was a child asylum seeker with PTSD, which clearly impacted on his ability to communicate and it is an extremely minor inconsistency if it can be considered as one at all.

6. In respect of the purported letter from the British Embassy in Tirana attesting to the absence of the Appellant's family's involvement in a blood feud, which is addressed at [17] of the skeleton argument, the Appellant has never seen such a letter and it has not been placed before the Upper Tribunal, thus he invited me to place no weight on it and even if it was produced it would not undermine his case.

7. Mr Knight submitted that it was obvious that the Appellant is a member of a particular social group and drew my attention to AB 2 and the Home Office guidance in respect of blood feuds where at 1.3.8 the Home Office accept that those constitute involved in a blood feud constitute a particular social group. He further submitted that the Appellant would be at risk in his home area and it would be unreasonable and unduly harsh to expect him to relocate. In this respect he drew my attention to the supplementary bundle A4 and the report at 76 and the Country Information & Guidance at 103 and that it was clear that if you move you have to transfer your residence in order to access public

services in the new location so would have to register with the local government.

8. Mr Knight further submitted that it was clear that there was an insufficiency of protection as is summarised at [29]-[30] of his skeleton argument and bundle 4, which is the background evidence. He drew my attention to the Albania 2016 Human Rights report at page 5 through to 8 and 17, 39 and 2.5.3. and 2.6. onwards; page 55 at 8.2.1. and pages 86-87 and 103. Mr Knight submitted that the Albanian police are corrupt; that there may have been improvements but as the Respondent rightly concedes in the refusal decision, there are still challenges and the police are open to bribery. He submitted that it was easy to bribe State representatives to find a person registered in the civil registration system and that the police are not actors of protection but actors that undermine efficacy of relocation.

9. In respect of Article 2 and the risk of suicide, Mr Knight relied upon his skeleton argument at [32]-[43]. In respect of Article 3 on the basis of the Appellant's medical condition, he submitted that the guidance set out in *AM (Zimbabwe)* was *obiter dicta* and the domestic law had been wrongly decided in light of *Paposhvili* however, the Supreme Court needs to make the change. He submitted that even if the appeal must fail under existing domestic law, it was open to the Upper Tribunal to go on to consider if the test were different the appeal would succeed (in the alternative). He sought to rely on [44]-[50] of his skeleton argument in this respect.

10. Mr Knight lastly addressed Article 8 and the issue of whether the Appellant had established a private life in the United Kingdom, both in respect of paragraph 276ADE(vi) of the Immigration Rules or alternatively outside the Immigration Rules. He drew my attention to [51]-[56] of his skeleton argument. He submitted that in respect of the public interest considerations set out at section 117B of the NIAA 2002 that these did not outweigh the fact that the Appellant is now embedded in the culture of the UK. He submitted that it should be concluded that the Appellant's account is accurate and that the appeal should succeed.

11. In his submissions, Mr Wilding drew my attention to the country guidance decision in respect of blood feuds: EH [2012] UKUT 00348 (IAC). He submitted that the Appellant had failed to establish a credible case. Whilst it is easy to say after the event that a discrepancy is minor it should not be forgotten that it is central to the Appellant's case yet the Appellant contradicted himself in that regard. In respect of the timeline, he was asked in interview in July 2015 not long after the incident happened and therefore, that informs whether greater weight should be attached to the discrepancy. It is also material whether he was assaulted in November or December. Nothing happened to him in the 4 month period following the supposed assault. The Appellant did not leave until March 2015 and was the only member of his family to leave, but in terms of how blood feuds operate through generations of family members, it is extraordinary and not credible that his family would make arrangements for him to leave but did not do anything to protect themselves. Mr Wilding submitted that this was a critical and important point, because of what we

know and how blood feuds operate and that the Appellant's account is contrary to the background material.

12. In respect of the medical evidence Mr Wilding acknowledged what was said in the Asylum Policy Instruction regarding Helen Bamber Foundation and Medical Foundation reports, however, one cannot second guess a diagnosis which must be assessed in the round on all of the evidence and was not determinative of credibility. He submitted that there are many cases where what is said to the expert does not chime with what is said to the Respondent or, equally it might chime completely but there are other good reasons why it cannot be truthful. The doctor's responsibility is not to assess credibility but to assess a medical condition and it is not right to say that the Tribunal cannot go behind a medical report.

13. Mr Wilding submitted that the Appellant has not established a credible account as to why he left Albania and he disputed that there is a blood feud at all given that it is only the Appellant who left the country. He submitted that even if I were to find the Appellant has given a credible account he can internally relocate and there was nothing in the evidence to establish that the family he says he fears are so well-connected or have the ability to know where he will be. Mr Wilding submitted that the Appellant's medical condition would not prevent him relocating albeit there was some confusion in terms of the treatment the Appellant is receiving. Mr Knight helpfully clarified through instructions that his drug treatment regime is ongoing as is set out at [39] of Sheila Melzak's report, but the Appellant has disengaged from the talking therapy. Mr Wilding submitted that there was nothing to suggest that anti-depressant medication would not be available in Albania and that this was not a case where there was a support network that was being uprooted. It would not be unduly harsh for him to go to live in Tirana *cf. EH* at [69] and [70] and the Appellant is not a refugee for the purposes of the Convention.

14. In respect of Articles 2 and 3, Mr Wilding invited me to consider the *J* threshold as illuminated by *Y & Z* but this was a foreign risk case and the Appellant has not made out that he is at imminent risk, given that the Appellant's ideation amounts to no more than that. Since he expressed his ideation there has been an intervention in terms of medication and it may well be driven by an undiagnosed mental health issue rather than fear. He submitted that the medical evidence does not establish there is a real likelihood of the Appellant prosecuting a suicidal ideation.

15. In respect of Article 3 and the application of the judgment in *Paposhvili*, irrespective of the judgment in *AM (Zimbabwe)* the Upper Tribunal is bound by *N* and *D* and it is clear that it is a high threshold, which has to be applied. Mr Wilding further submitted that *Paposhvili* does not reduce the threshold and the findings are *obiter dicta*. He submitted that the Appellant is simply unable to establish a risk of Article 3 on return to Albania, because he would be returning to the bosom of his family. Even if there was a real risk in his home area it is difficult to see how it would lead to an article 3 breach, in the absence of evidence that, if left undiagnosed, his PTSD would lead to something else. In respect of Article 8, he submitted that it was difficult to see if the Appellant

loses on all other grounds that he can succeed on this basis, bearing in mind insurmountable obstacles test at paragraph 276DE(vi) of the Rules was not met.

16. In reply, Mr Knight submitted that, with regard to the nature of blood feuds and the question of credibility that blood feuds are slow burning and could result in death in the future but no one else has as yet been targeted. He reason that nothing happened to him personally is because he self-confined. In respect of internal relocation, the Respondent's position is premised on a hope and a prayer that the family he fears do not have the reach. As to the medical reports he invited the Upper Tribunal to consider the up to date reports of Sheila Melzak and Isaac Oluyade and no alternative reason for how PTSD caused has been put forward. Mr Knight concluded by submitting that *Paposhvili* does reduce the threshold modestly *cf.* see *AM (Zimbabwe)* at [37].

Findings

17. Firstly, I accept the medical and other evidence in support of the contention that the Appellant is not fit to give evidence as a consequence of what has been described by Dr Ronder as "*extreme incapacitating distress in relation to his PTSD symptoms.*" I further bear in mind that the Appellant was a child at the time of his asylum application and decision and remained so until 2 July 2016. He is currently 19 years of age and is thus a young adult.

18. The first issue to be determined is whether the Appellant has a well-founded fear of persecution on account of a blood feud, which arose out of his (sexual) relationship with his then girlfriend, E S, which was discovered in October 2014 following which E's brother assaulted him and told him to stay away from his sister or he would kill him. In December 2014, the Appellant's parents were approached by E's parents, who said that he had to marry her otherwise they would declare a blood feud. The Appellant's parents decided that he was too young and informed E's parents of their decision in the New Year of 2015. Thereafter the Appellant remained in self-confinement until he fled Albania on 28 March 2015. An attempt was made to mediate between the two families in the interim, in February 2015, by an elder of the village, which is in the Dodes region of Albania, but this did not work.

19. The Respondent's position as set out in the refusal decision dated 4 January 2016 is that she did not accept that there was a blood feud with the family of ES; that following checks with the British Embassy in Tirana and other relevant Albanian authorities, these revealed that the Appellant's father and other family members did not have any blood feud conflicts with the family of ES or any other family in their village and are not confined, which was considered to undermine his claim [36].

20. Mr Knight strongly submitted that no weight should be attached to this assertion, given that no evidence has been produced by the Respondent by way of substantiation. Whilst I am concerned by the lack of substantiation and that the reference to "other Albanian authorities" is unhelpfully vague this is not a case of a confidentiality breach given that the Appellant's fear of

persecution is from non-State agents and thus I attach some, albeit limited weight to this evidence.

21. The only other issue raised in relation to the asylum claim is an inconsistency in the Appellant's account in his asylum interview in respect of when the Appellant was assaulted by E's brother: the end of November or in October 2014. In light of the Appellant's age at that time and the substantial evidence concerning his mental health, I attach only limited weight to this inconsistency.

22. It is necessary to consider the credibility of the Appellant's account in light of all the evidence, both expert and background *cf.* Mibanga [2005] EWCA Civ 367. The psychiatric report of Dr Ronder dated 13 June 2016 diagnosed the Appellant as suffering from PTSD with dissociative symptoms and Major Depressive disorder [AB 15]. She further states at 4.10:

> "*I genuinely believe that if Mr L has to be deported back to Albania that he will choose to end his own life. This has been reported to myself, to Dr Hepper and to his LINK counsellor in a consistent manner.*"

In respect of the causes, Dr Ronder states at 4.13:

> "*In forming my clinical impression (Istanbul protocol paragraph 287) I find that Mr L's diagnoses of PTSD and depression are consistent with his alleged report of death threats from his girlfriend's family, and their consequences. The threat of being killed has deeply traumatised Mr L.*" [AB17]

I have considered this evidence in the round with the other supporting evidence, including: the witness statement of Isaac Oloyede, the Appellant's social worker, dated 6 April 2017; the report of Sheila Melzak of the Baobab Centre dated 3 April 2017 and the undated letters from his LINK counsellor, Martyn Walsh and the letters from Dr Hepper, Child & Adolescent Psychiatrist.

23. As is clear from the medical and other evidence set out at above from the Appellant's psychiatrists, social worker, counsellor and psychotherapist, he has been diagnosed with PTSD and has been assessed as being at a serious or "very high" risk of suicide. I have taken into account in particular the most recent report from Sheila Melzak dated 7 December 2017, having seen the Appellant on 20 November and 1 December 2017, in addition to a number of previous appointments, in which she states:

> *"50. SL suffers chronically from complex symptoms that have persisted during the time I have known him. He cannot at this time cope with many of the ordinary demands of life or care adequately for himself …*
>
> *53. He does however seem resolved that should he be forced to return to Albania he would rather kill himself in the UK, as for him, waiting for the S family to carry out their promise … would be unbearable and he feels he might go mad. So he would rather assert himself and his dignity. It is for these reasons that in my clinical opinion he is highly likely to make a serious suicide attempt which may be successful."*

24. I have given careful consideration to whether the clear and reasoned concerns set out by Dr Hepper and Dr Ronder, both consultant psychiatrists and Sheila Melzak, who has had the benefit of meeting with the Appellant on a number of occasions for psychotherapy, that the Appellant would attempt to commit suicide if it is attempted to remove him to Albania. I have had regard to the relevant jurisprudence *viz J* [2005] EWCA Civ 629 per Dyson LJ (as he then was) at [26]-[31] and *Y & Z* [2009] EWCA Civ 362 per Sedley LJ at [15]-[16], [46], [47], [61] and [63]. Following the principles set out therein, I find that there is a causal link between the threatened act of removal and the feared treatment and I find, in light of the evidence, that the Appellant has a subjective fear of persecution if returned to Albania and that he genuinely believes that he will be killed by his former girlfriend's family, as a consequence of which he would attempt to take his own life instead.

25. The question is, therefore, whether the Appellant's fear is objectively well-founded. The Respondent has asserted, absent any substantiating evidence, but apparently based on investigations by the British Embassy in Tirana, that there is no blood feud between the Appellant's family and the family of ES.

26. I have given careful consideration to the country guidance decision of the Upper Tribunal in EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC). I set out the pertinent parts of the headnote:

> *"1. While there remain a number of active blood feuds in Albania, they are few and declining. There are 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 exist but very few children are involved in them.*
>
> *2. The existence of a 'modern blood feud' is not established: Kanun blood feuds have always allowed for the possibility of pre-emptive killing by a dominant clan.*
>
> *3. The Albanian state has taken steps to improve state protection, but in areas where Kanun law predominates (particularly in northern Albania) those steps do not yet provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant. Internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan.*
>
> *4. International protection under the Refugee Convention, Qualification Directive or Articles 2 and 3 ECHR is not available to an appellant who is willing and intends to commit a revenge killing on return to his country of origin, by reference to that intention.*
>
> *5. Where there is an active feud affecting an individual and self-confinement is the only option, that person will normally qualify for Refugee status.*

6. In determining whether an active blood feud exists, the fact-finding Tribunal should consider:

(i) the history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud;

(ii) the length of time since the last death and the relationship of the last person killed to the appellant;

(iii) the ability of members of the aggressor clan to locate the appellant if returned to another part of Albania; and

(iv) the past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek protection from the Albanian authorities.

7. 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 …

11. Whether the feud continues and what the attitude of the aggressor clan to its pursuit may be will remain questions of fact to be determined by the fact-finding Tribunal."

27. It is clear from the country guidance that blood feuds still exist but are "few and declining"; there is a presumption that those that do exist have a history and involve more than one person: [6] refers and that an appellant must produce satisfactory individual evidence of its existence in relation to him [7]. There is also a presumption of prior killings and self-confinement.

28. I find on the evidence put forward, which does not include the Appellant's oral evidence as he has been found not to be fit to give oral evidence, that he has not discharged the burden of proof in relation to the existence of a blood feud in the manner set out in *EH.* This is because there is no evidence that there have been any killings to date and there is no evidence that his family have had to self-confine or have had any difficulties with the family of ES.

29. I do, however, accept that the Appellant has a genuine subjective fear of persecution from his former girlfriend's family on account of having had a sexual relationship with her outside marriage and thus, according to the code of Kanun, dishonouring her. I find that he is not a member of a particular social group but rather fears serious harm or revenge killing, contrary to Articles 2 or

3 on account of his actions as an individual, which does not constitute a Convention reason.

30. The Appellant's home area of Dodes is in the north east of the country and thus it is plausible that kanun law is still applied there. The background evidence submitted is not entirely up to date but the United States State Department report for 2016 provides at page 25: "*Incidents of societal killings, including both "blood feud" and revenge killings, occurred during the year … the ombudsman reported that authorities' efforts to protect families and prevent blood feud deaths were insufficient, although the government increased efforts to prosecute such crimes."* This evidence post dates that considered by the Upper Tribunal in *EH* but I do not find that it materially changes the conclusions reached in respect of country guidance.

31. In light of the evidence I find, applying the lower standard of proof, that there is a serious possibility that the Appellant would be subjected to a revenge killing contrary to Article 2 or violence contrary to Article 3 of ECHR on the part of members of the family of ES if he were to be returned to his home area. I find it would not be reasonable to expect him to self-confine in his home area indefinitely and that, based on the country guidance decision in *EH* despite increased efforts to prosecute crimes as referred to in the United States State Department report cited above, the authorities or police would be unable to provide sufficient protection for him.

32. I have considered whether it would be reasonable to expect the Appellant to internally relocate to e.g. Tirana and I have applied the test established by Lord Bingham of Cornhill, in Januzi and others v Secretary of State for the Home Department [2006] UKHL 5, [2006] 2 AC 426, at [21]:

> "*The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so.*"

33. I have also had regard to the CIG in respect of Albania, dated August 2015 at 2.2.2 which provides: "*in general where the threat is from non-state agents internal relocation to another area of Albania is likely to be a viable option but will depend on the nature and origin of the threat as well as the personal circumstances of the person."*

34. The Appellant would be returning to Albania as a young adult, aged 19. Whilst he has attended college at various times since he arrived in the United Kingdom he does not have any qualifications nor has he had the opportunity to work to attain skills which he could utilise on return. I find that, whilst the Appellant would have to register in a new location in order to access government or public services, given my finding that the Appellant's fear is of a revenge killing rather than due to an extant blood feud, there is no evidence to support a contention that the family of ES would either seek him or be able to find him through e.g. corruption of the police as they would not be aware of his return to Albania. However, without family to support him in the proposed place of relocation and with a limited ability to support himself there is a

serious possibility that he is likely to be destitute. There is limited evidence before me as to the provision of medical treatment in Albania but the Refugee Documentation Centre report dated 27 May 2016 at pages 132-135 of the supplementary bundle describes the secondary health service, which included mental hospitals, as problematic and it is clear from the 2016 US Overseas Advisory Council report that healthcare is a serious problem and medical care beyond first aid is limited.

35. I have concluded that, in light of the evidence, which I accept, that the Appellant is at a serious risk of suicide and given the absence of medical treatment in Albania, let alone any support from social workers or a community mental health team, the provision which appears to be entirely absent in Albania, it would be unduly harsh to expect the Appellant to internally relocate due to the risk that he would take his own life, due to his subjective fear of being located and killed or seriously harmed by members of the family of ES.

36. I find that removal of the Appellant to Albania would be contrary to the United Kingdom's obligations pursuant to Articles 2 and 3 of ECHR.

37. For the avoidance of doubt, I do not find on the particular circumstances of this case that Article 3 of ECHR is engaged on account of the Appellant's mental health condition, even with the very modest relaxation of the Article 3 threshold as found by the Court of Appeal per Lord Justice Sales in AM (Zimbabwe) [2018] EWCA Civ 64 at [37] as a consequence of the Grand Chamber judgment in Paposhvili v Belgium [2017] Imm AR 867.

38. Whilst it is not strictly speaking necessary for me to determine whether there would be very significant obstacles to the Appellant's integration into Albania pursuant to paragraph 276ADE (vi) of the Immigration Rules in light of my findings above, it follows in light of those findings, for the reasons set out at [34] and [35] that the Appellant's fragile mental health in particular along with the absence of appropriate support for him in Tirana, or indeed, anywhere else in Albania, would meet the very significant obstacles test. In these circumstances, whilst the public interest considerations set out at section 117B of the NIAA 2002 would otherwise indicate that removal of the Appellant would be proportionate, I find that his appeal also falls to be allowed under Article 8 of ECHR on the basis that he meets the requirements of paragraph 276ADE(vi) of the Immigration Rules.

Decision

39. The appeal is allowed on human rights grounds *viz* Articles 2, 3 and 8 of ECHR.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman 23 March 2018