



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11925/2017

THE IMMIGRATION ACTS

Heard at FIELD HOUSE
On 11 July 2018

Determination Promulgated
On 18 July 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK

Between

ABEDIN [F]
NO ANONYMITY ORDER MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins (Counsel)

For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First-tier Tribunal (Judge Hosie) ("FtT") promulgated on 1.2.2018 in which the appellant's protection claim by way of asylum was dismissed.

Background

2. The appellant is a citizen of Albania. He entered the UK in June 2015 and in November 2015 he claimed asylum on the grounds that he was a victim of a blood feud in Albania commenced in 2012 following the refusal of his sister to agree to an arranged marriage [15]. His sister left Albania and his two brothers had fled from Albania in 2012 and the family remained confined. He also claimed that he was a victim of violence from his father who he feared would assault or kill him because he had not agreed with his sister's proposed marriage. The man who was proposed to marry the sister left Albania and went to live in Greece. The family man returned to Albania in 2014. On a day when the appellant was in the garden heard two gun shots and saw that shot had been fired into his garden gate. This incident resulted in the appellant and his father arguing and fighting after which the appellant left home and travelled to the UK. The respondent refused the application on 10.5.2016 and certified as unfounded under section 94(1) nationality, Immigration & Asylum Act 2002 as amended. There were Judicial review proceedings taken resulting in the respondent making a fresh decision.
3. The FtT considered all of the relevant issues, made findings of fact and gave reasons in support. The FtT did not accept that the appellant was a victim of a blood feud, and further concluded in the alternative that there was a sufficiency of protection available in Albania and/or relocation was a viable option.

Grounds for permission to appeal

4. In grounds of appeal the appellant argued that the FtT erred by making a series of errors rendering the decision unsustainable. The FtT gave inadequate reasons for its decision. The FtT was factually confused as to the number of brothers that the appellant had and which was material. The FtT concluded that the appellant's evidence was not consistent as to the number of brothers and which was a "material flaw" [] which infected the remainder of the decision.
5. The FtT failed to properly apply the country guidance case of **EH** (Blood feuds) (Albania [2012] UKUT 00348 (IAC)) by failing to consider that there was external consistency for some of the facts relied on by the appellant as to the format of a blood feud and the kanun law.

Permission to appeal

6. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ O'Brien on 10.5.2018. In granting permission, the FTJ found it arguable that this manifest error by the Judge tainted his other findings to the extent that, but for the error, he would have accepted the appellant's account to the lower standard of proof. "

Submissions

7. At the hearing before me Mr Collins relied on the factual matrix as set out in the grounds of appeal at paragraph 4. He argued that the decision was poor and the FtT failed to properly understand the blood feud in the context of the appellant's background from the north and factual matrix. The FtT made a crass error as to the

appellant's evidence of how many brothers he had and recorded this as "a material flaw" [55]. This was not simply a factual error but material to the appeal given that the younger brother (aged 12) would not have been a target in the feud.

8. In response Mr Tarlow contended that the application was simply a disagreement with the FtT decision and reasons. The FtT found that there was no retaliation over a period of 5 years [56] and no further acts of aggression [57]. The FtT had taken into account the COIR which referred to the existence of active police and prosecution services in Albania. The FtT found that there was no identification of the person who had fired the gun shot. The decision was sustainable on the evidence before the FtT.

Discussion and conclusion

9. This was a decision and reasons that was well written and thorough, and the oral and written evidence, cross examination and submissions were set out in some detail [23-47]. The FtT considered the claim in terms of its internal and external consistency. The FtT gave the appellant the benefit of the doubt because of his young age at the time of the claimed events in Albania [66]. The FtT set out its findings [48-57] which included the finding of inconsistency in the appellant's evidence as to the number of brothers that he had. The FtT found other inconsistencies and implausibility in the evidence including that contained in his sister's witness statement [57] & [66 - 72]. The FtT set out and took into account the guidance in EH [53]. The FtT found that the only incident was the gun fire shot in 2014 [54] and otherwise the claim of past and current threats was unsubstantiated.
10. The FtT's determinative findings focused on the absence of any retaliation, acts of aggression or attempts to kill the appellant or his father over the three years that he remained living in Albania [57]. The FtT also placed weight on the lack of retaliation by the feuding family who the appellant claimed were influential and would be able to trace him anywhere and which the FtT found to be implausible. The FtT further found inconsistencies as between the appellant's account and that in his sister's witness statement [66-72].
11. The FtT referred to a "material flaw" at [55] as between the appellant's sister's witness statement in which it was stated that she had 4 brothers. The FtT inferred that the appellant's evidence was that he had two brothers, whereas the appellant's evidence was that the two older brothers had left Albania. The appellant stated in interview that he had three brothers, the youngest was aged 12. The FtT placed weight on this inconsistency by finding that "if there is a remaining brother he too would have a profile as a potential target yet there is no evidence from the appellant regarding the whereabouts of any of his brothers". Whilst accepting that the FtT made a factual error and referred to it as a "material flaw", I am not satisfied that the error is capable of undermining the decision as a whole which was founded on a clear and full analysis of the evidence. I take the view that the findings were sustainable and the decision would remain unaltered even if it had found no inconsistency and taken into account that the appellant had a younger brother who would not have been a potential target because of his age.

12. The FtT went on to consider sufficiency of protection and relocation [58-72] and also considered the appellant's position in the event that there was a blood feud [80 - 82]. Having regard to the decision as a whole, it cannot be concluded that but for the mistake by the FtT it would have accepted the appellant's account to the lower standard of proof.

Decision

13. There is no material error of law disclosed in the decision which shall stand.

Signed

Date 17.7.2018

GA Black
Deputy Judge of the Upper Tribunal