Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14163/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 March 2018	**On 28 March 2018**

Before

UPPER TRIBUNAL JUDGE WARR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ER
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr D Mills, Presenting Officer
For the Respondent: Mr R Spurling, Counsel instructed by Barnes Harrild & Dyer Solicitors

DECISION AND REASONS

1. This is the appeal of the Secretary of State but I will refer to the original appellant, a citizen of Albania, born on 23 July 1999 as the appellant herein. The appellant at the age of 16 left Albania on 10 August 2015 accompanied by his cousin and travelled via Belgium before making his way to Calais and arriving in the UK in a lorry on 23 August 2015. He applied for asylum on 28 September 2015 but this application was refused on 29 November 2016. The appellant was given limited leave to remain as an unaccompanied asylum seeking child. He was granted leave until

23 January 2017. The appellant was advised that he would not be returned to Albania until he reached the age of 18.

2. The appellant's claim was based on a blood feud between his family and the T family which had been ongoing since 1993 when a relative had killed a member of the T family. A blood feud was declared against the appellant's family following which it was claimed that all male members of the appellant's family had stayed in confinement and efforts at reconciliation had failed. On turning 16 the appellant became a target in the blood feud and it was decided that he should leave Albania and seek refuge elsewhere.

3. The appellant has three sisters but they are not targets in a blood feud which only affects male members of the family.

4. There was no dispute in this case that there was a blood feud – however the respondent took the view that the feud was not active. While the appellant had claimed that his father had remained in confinement since the declaration of the feud the appellant had said at interview that his father had worked for the local water authority which was inconsistent with him not leaving the family home.

5. The appellant's case was supported by a statement from his aunt to the Albanian police complaining about an incident in 2011 and another in 2013 whereby the T family were alleged to have made threats on the life of the appellant's uncle. The appellant's case was that his father and other male members of the family have either fled Albania or as in the case of his father had been back in confinement since 2011. The T family were a large and financially well-off clan and had people working for the authorities and wherever he travelled within Albania the T's would find him and the police would not act to protect him.

6. The judge records the evidence before him as follows:

> "14 The appellant relied on the statements he made during his screening interview on 21 October 2015 and his substantive interview on the 6 January 2016; he also provided two narrative written statements. The appellant provided a further written statement post-decision dated 8 June 2017. In addition, he gave oral evidence and was cross-examined.
>
> 15 I have taken account of Presidential Guidance; and allowed in my analysis for the appellant's vulnerability as a 16-year-old boy in a strange country providing information and evidence other than in his first language.
>
> 16 The appellant asserts that the facts set out in Paragraphs 5 to 13 above are correct. Of course, the appellant cannot give direct evidence as to the events of 1993 – he was not then born. But the respondent's own enquiries have established that what he has stated regarding those events is accurate; the appellant's account has been found to be credible. There is an inconsistency regarding the appellant's account as to the length of his father's

self-confinement: initially he claimed that his father had remained in self-confinement since 1993 – but this is clearly incorrect because of the appellant's later statements to the effect that his father worked for the water authority. The appellant can, and did, give direct evidence as to his father's renewed self-confinement after the events of 2011: he confirmed, both in his witness statement and in oral evidence, that this was the position from 2011 until the appellant left Albania in 2015. Other male members of the family, by then, had fled Albania; but the appellant's father did not wish to leave his mother.

17 The appellant's evidence is that the T family have far-reaching influence with connections in the police and public authorities."

7. The judge was also provided with a witness statement from the appellant's older sister confirming that by the time she had left Albania in 2012 her father was again living in self-confinement. She had been told by family members that, before fleeing Albania, her uncle had attempted to come out of self-confinement but had immediately gone back in. The judge also refers to the appellant's aunt's statement.

8. The judge directed himself on the law appropriately and referred to the relevant country guidance – **EH (Blood feuds) Albania CG [2012] UKUT 00348 (IAC)** – setting out the headnote in full. He also referred to the relevant authorities on the issue of internal relocation and sufficiency of protection as well as relevant statutory provisions. The determination concludes as follows:

"40 The respondent accepts the appellant's identity and nationality; and accepts the existence of the blood feud. Applying the principles set out in ***EH***, the respondent concludes that the blood feud is not active; there has been no killing since 1989, and the respondent states in the refusal letter, that no-one has been self-confined since 2000.

41 Furthermore, the respondent notes that the Albanian Penal Code gives sentences of up to 25 years' imprisonment for blood feud killing; and concludes that the appellant has adduced no evidence that the police and the relevant authorities would not act to provide protection. No detail has been given regarding the alleged report to the police in January 2016. And save for a single telephone call the matter does not appear to have been pursued in a determined or formal way by the appellant or his family.

42 Finally, the respondent concludes that internal relocation is available to this appellant out of reach of the T family.

Discussion & Conclusions

Credibility

43 I found the appellant to be a credible witness: what he related from outside his own knowledge, but based on what his family had told him, corresponded entirely with what the respondent established in her own independent investigations. When challenged about the apparent inconsistency between his father having remained in self-confinement since 1993, and working

outside the home for the water authority, the appellant acknowledged that he had made an error; and that there were some intervening years when his father had come out. I found the appellant's direct evidence about his father going back into self-confinement to be compelling and I accept it. It was corroborated by his sister's witness statement; and by contemporaneous documents within the appellants bundle.

44 I make no adverse finding as to his credibility by reference to his failure to claim asylum in Belgium or France. He had an older sister living in the UK.

Findings of Fact

45 In my judgment, the account upon which this appeal is based is credible: it is accepted by the respondent that the blood feud exists; the issue is whether it is still active. I accept the appellant's evidence regarding the events of 2011 and 2013 and, based on that, and applying the principles set out in ***EH***, my judgement is that the blood feud remains active; and that the appellant is at risk if he returns to Albania.

Internal Relocation

46 There is a difficulty with internal relocation in Albania: the difficulty arises from the need to register with the civil service in order to access any of the public services. Once registered, details of an individual are available: and, in a country rife with corruption, those with connections within the public services could easily obtain details of an individual's whereabouts.

47 In any event, this appellant was just 16 years of age when he left Albania; he had never lived independently of his parents; he came to the UK where he was placed with foster parents; and now lives with his older sister. He is now 18, but he is still a very young and inexperienced man: to expect him to relocate within Albania to a place where he has no family and no support; whilst at the same time having to take care not to reveal his whereabouts to the T family would, in my judgement, be unduly harsh.

Sufficiency of Protection

50 Absent the possibility of safe internal relocation, ***EH*** confirms that there is not sufficient protection available in Albania to the targets of blood feuds.

Conclusion on Asylum, Humanitarian Protection and Articles 2 & 3 ECHR

51 For the reasons set out above, I find that the appellant is a refugee he is entitled to a grant of asylum and humanitarian protection; his enforced return to Albania would be a breach of his rights under Articles 2 and 3 ECHR.

Article 8 ECHR

52 The appellant clearly has no family life in the UK (his family are in Albania). Such private life as he has established here is with his sister and her husband. But, my findings regarding his asylum and humanitarian protection claims are such that there are clearly

> very significant obstacles to his reintegration into Albania. Accordingly, I find that he brings himself within the provisions of Paragraph 276ADE(vi) of the Rules. He is entitled to leave to remain in the UK on the basis of his private life under Article 8 ECHR.
>
> 53 In my judgement, the respondent has discharged her duty under Section 55 by her undertaking not to return the appellant to Albania before he attained his majority."

9. Accordingly the appeal was allowed on asylum, humanitarian protection and human rights grounds.

10. The Secretary of State sought permission to appeal. It was submitted that the judge had failed to consider relevant evidence, failed to give adequate reasons, and failed to properly resolve a conflict of fact. It was said there were only two paragraphs containing the findings in relation to the appellant's claim – reference was made to paragraphs 43 and 45 which I have set out above. It was submitted that given the brevity of the issues it was incumbent upon the judge to demonstrate however briefly why the respondent's evidence had been rejected in preference to the appellant's. Checks had been made with the authorities in Albania based on all the information provided by the appellant as to the nature of the blood feud and the judge had failed to give any analysis of this in the light of the clear conflict of evidence between the appellant and the respondent. The evidence from the respondent accepted that the blood feud existed. However since 2000 that feud was no longer active given the appellant's family were not in self-confinement. Reference was made to **AM (Afghanistan) [2017] EWCA Civ 1123** at paragraphs 21 and 22. The evidence should be considered holistically. The appellant's knowledge had been in large parts based on what he had been told by his family. It appeared that the judge had accepted his account solely on the basis that it was internally consistent without addressing the conflict in the evidence. The losing party was entitled to know why the evidence had been rejected – **MK (Duty to give reasons) Pakistan [2013] UKUT 00641** at paragraphs 8, 12 and 14. A response was filed on 21 February 2018. The grounds of appeal it was submitted were wholly without merit. The Secretary of State had acknowledged the brevity of the issues in her grounds of appeal. The appellant's father had returned to self-confinement after 2010. The judge had allowed for the appellant's vulnerability as a 16-year-old. The evidence as to the far reaching influence of the opposing family had been accepted. There had been corroborating evidence from the appellant's sister about the return to confinement of the father by 2012. There had been evidence from the aunt about the threats in 2011 and 2013. When read as a whole it was clear that the judge had been aware of the conflict in the evidence and had given it adequate consideration. The Secretary of State's investigations had supported the general credibility of the appellant's account.

11. The judge had been guided by the relevant country guidance. He had not accepted the account simply because it was internally consistent as alleged. Much of the account had been accepted by the Secretary of State. It was apparent that all the evidence had been considered holistically and the grounds were no more than an expression of disagreement. The reasons for granting permission were disputed. In any event none of the grounds were material to the outcome as the Secretary of State had not challenged the alternative basis on which the Secretary of State had made the decision in paragraph 39 in that case the Secretary of State had given consideration to the appellant's claim on the basis that it had been accepted that there might be an active blood feud. The judge had addressed the issue of sufficiency of protection and internal relocation and had made sustainable findings on those issues which had not been challenged in the grounds.

12. At the hearing before me Mr Mills relied on the grounds that had been submitted that the judge's reasoning for accepting the appellant's account had been inadequate. Mr Mills focused his attention on paragraph 10 of the determination:

> "Following investigations which the respondent has made through the British Embassy in Tirana, it is agreed in this case that a blood feud exists; and that male members of the family, including the appellant's father, were in confinement until 2000. The respondent's investigations indicate that no one has been in confinement since then. Unfortunately, it is clear on the face of the RALON report that the Embassy have not made enquiries as to events occurring more recently than 2010."

13. This letter had not been in the original bundle but it had been submitted under cover of a letter from the Home Office dated 27 June 2017. I pointed out that this did not appear to be a point explicitly raised in the grounds and Mr Mills accepted that it arose earlier in the determination.

14. Mr Mills submitted however that it was clear on the face of that document that there had been no issues since 2010 and that it dealt with matters on an up-to-date footing. For example the second page of the letter dealt with material emanating from the Albanian Border and Migration Department dealing with events such as the appellant's travels in 2015. It was accepted that what was said about checks on the third page of the document was not ideal because it was not identified who the relevant Albanian authorities were. It was however said on that page that the family had not been confined from the year 2000.

15. The judge's reasoning had been brief. He had found the appellant to be credible. He had disregarded the evidence from the Albanian authorities. While he had accepted the evidence from the appellant's sister she was an interested party. While he had referred to contemporaneous documents in paragraph 43 he had not set out what they were. They must have been a reference to the aunt's letter. There had been material from Mr Marko, chairman of the Commission for National Reconciliation. The Tribunal in

EH had found his evidence to be unimpressive. The judge had ignored relevant evidence for irrelevant reasons. The alternative point raised in the appellant's reply did not bear on the materiality of the Secretary of State's decision.

16. Mr Spurling submitted that the judge had referred to the RALON letter. He had taken into account the appellant's evidence. The father had come out of confinement but had returned to confinement. The evidence in the RALON letter was very poor it was submitted. The third page did not make matters clear at all. There was a period when the family had come out of confinement and then had returned to confinement. The judge's assessment was not perverse. He had heard live evidence and found it to be compelling. He had taken into account the age of the appellant. He had found this explained the apparent conflict. In a blood feud it would be necessary to have regard to evidence from the family – it was in the nature of a blood feud that the family would be targeted. The criticism made by Mr Mills was cynical. In relation to Mr Marko the country guidance did not say that letters from Albanian non-governmental organisations should be excluded rather that they should not in general be regarded as reliable evidence. Counsel also relied upon the alternative point referred to in the response. The judge had reached a sustainable decision and the appeal should be dismissed.

17. Mr Mills in reply submitted that the judge had not given consideration to the RALON letter and it was clear on its face that it was dealing with events more recently than 2010. Page 2 was all about 2015. Matters had been considered in 2016. There was no rational basis for the judge to find as he had done. The determination should be set aside and remitted for a fresh hearing.

18. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the judge's decision if it was materially flawed in law. It is said that the judge's credibility findings were limited to what was said in paragraphs 43 and 45 and that the judge had dealt with the matter too briefly. As Counsel observes in the response the respondent had referred to the brevity of the issues in the case and so it would not be surprising to find the reasoning of the judge set out within a small compass. The determination needs to be read as a whole. A large part of Mr Mills' argument centred on paragraph 10 of the determination and in particular the last sentence of that paragraph. The only paragraphs focused on in the grounds were paragraphs 43 and 45. It is important to note that a perversity challenge was not advanced in the respondent's grounds.

19. It is clear that the judge had regard to the RALON report. It was accepted by Mr Mills that the third page of that letter was not ideal in that the dates of the checks had not been given nor had it been specified what the relevant authorities were that had provided the result. The second page of the letter does give dates and identifies the relevant authority but the

judge was concerned with the evidence regarding confinement since 2000 and it was open to him to place limited weight on what was said on the third page of the letter. He had to balance that material with the material before him from members of the appellant's family and the appellant himself. Perversity as I have said was not raised in this case. It is an important matter that the judge was dealing with the evidence of a young person and as Mr Mills points out in a blood feud case it would be inevitable that a young person would rely on evidence from family members particularly when a blood feud had gone back in time before they were born.

20. I see no evidence that the judge did not approach matters holistically. The determination has to be read as a whole. The judge had regard to the objective evidence and directed himself in appropriate terms on legal matters. He sets out in full the headnote of the relevant country guidance. It was open to the judge to find as he did and to rule as he did on the issues of internal relocation and sufficiency of protection.

21. I do not find the judge's decision to be flawed for the reasons advanced in the grounds. I do not need to make a finding on the alternative basis put forward in the response in relation to paragraph 39 of the decision letter. In a nutshell the judge was not satisfied with the respondent's evidence and did accept the appellant's explanation.

22. The appeal of the Secretary of State is dismissed and the decision of the First-tier Judge shall stand.

23. The First-tier Judge made an anonymity direction and it is appropriate in my view that that should continue.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

TO THE RESPONDENT
FEE AWARD

The judge made no fee award and I make none.

Signed Date 27 March 2018

G Warr, Judge of the Upper Tribunal