



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

Appeal Number: PA/10912/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 13th May 2019**

**Decision & Reasons Promulgated
On 10th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**FH
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Diwnycz, Home Office Presenting Officer

For the Respondent: Miss Khan of Counsel, instructed by Andrew Williams
Solicitors

DECISION AND REASONS

This is the Secretary of State's appeal against the decision of Judge O'Neill made following a hearing at Bradford on 7th December 2018.

Background

The claimant is a citizen of Albania born on 30th March 1980. He left Albania on 1st October 2014 and travelled to Greece and then on to the UK via the Netherlands and France. He arrived in the UK on 10th December 2014, but did not bring himself to the attention of the authorities until 1st June 2015 when he

claimed asylum on the basis that he would be at risk on return to Albania as a consequence of a blood feud which existed between his family and the family of a man whom he had murdered in 2004.

When he was 18, the claimant committed the murder in his home village when he became embroiled in a barroom fight with members of the S family during which he stabbed and killed DS in front of the victim's father. He asserted that he was acting in self-defence but this was rejected by the Albanian court. The court, however, accepted that he had shown deep repentance for his actions and had pleaded guilty. He was sentenced to twelve years in prison but was released on 19th July 2013 for good behaviour.

The claimant said that during his imprisonment his family moved away from their home village to a town 60 kilometres away. The judge accepted that they did so because of their fear of a blood feud with the S family.

The claimant's brother gave evidence that he visited his parents in April 2015, about six months after the claimant had left the country, and about three days after his arrival three men burst into his house, looking for his brother. They made threats to him that they would harm him. The claimant's brother threatened to call the police if they did not leave and eventually they did so, having caused a disturbance but without harming anyone. He went to the house of a relative, where he remained for the rest of his stay.

The judge accepted that the incident had taken place as described and that threats had been made to kill the claimant.

The claimant himself also received threats after his release from the S family by telephone and says that in April 2014 he was attacked on the street by three men whom he did not know. Whilst in hospital, he received a visit from the police and he expected that they had come to take details of the attack to enable him to press charges. However, the police dismissed his complaint but presented him with an arrest warrant accusing him of having been caught in the act of burglary and stealing two mobile phones.

The judge did not accept that the S family or their agents had been lying in wait for the claimant and concluded that he had failed to show that there was a reasonable possibility that the attack was perpetuated as part of a feud with the S family. Neither did he accept that there was a realistic possibility that the police were acting in a conspiracy with them to frame the claimant although that was his genuine belief. The judge said that the police may well have been predisposed against him because of his criminal record. The judge was unable to reach any conclusion as to who had attacked him or why.

The judge did not consider that the claimant had established that there was a blood feud under the Kanun code because they were now rare, occurred mostly in the northern part of the country and the village of the victim's family was not in the north, this was not a longstanding feud running from generation to generation and the threats seem only to have been targeted at the claimant.

There had been no other killings connected to the feud and whilst the family had moved they did not feel obliged to go into hiding.

The judge wrote as follows:

“In the circumstances even if the threat of revenge falls short of a blood feud as defined in EH (Albania) I nevertheless find that the appellant is at risk of serious harm by way of revenge by the S family and as such is entitled to humanitarian protection and it would be a breach of the ECHR were he to be removed to Albania in the circumstances.

I accept the evidence of Mr LH that the S family had tracked him down in the parents’ home in a distant town and I infer were informed somehow of his arrival. I conclude that they would be able to track down the appellant were he to return and cause him a serious degree of harm as they have threatened. I conclude from the background material that the police would not be able to prevent such an attack and could not offer him protection and given his record as an ex-convict and the disregard the police paid to his complaints about the attack in April 2014, I find it likely that they would not be inclined to assist him.”

The judge concluded as follows:

“Given the findings above I conclude that the appellant’s appeal under the Refugee Convention fails as he has failed to show the existence of a traditional blood feud within the guidance framework of EH (Albania). Although the matter falls short of such a blood feud I find that the S family were still seeking revenge in 2015 and would be likely to continue to seek revenge should the appellant return to Albania. The experience of Mr LH indicates that they appear to have the family under effective surveillance. In the circumstances the appellant is at risk of serious harm unless he can avoid it by relocation. The appellant’s family have tried to escape the S family by moving to a relatively distant town but this has failed and I find that there is a realistic possibility that were they and the appellant to move again that they would be tracked down again. I also find that the police are unlikely to protect the appellant given that they dismissed his complaint in 2015. In the circumstances I conclude that the appellant is entitled to humanitarian protection and that for the reasons given above he should not be excluded therefrom because of his own crime and conviction.”

The Grounds of Application

The Secretary of State sought permission to appeal on the grounds that the judge had failed to provide adequate reasons on a material matter. It was incumbent on her to make findings on the extent of the threat faced by the claimant which would subsequently feed into any assessment of sufficiency of protection by the State against S, whom the claimant fears. At paragraph 61

the judge said that she had concluded from the background material that the police would not be able to prevent such an attack but had not identified what background material she was relying upon. Nor did she identify the evidence in relation to her finding that the police would not assist him. Finally, she did not refer to the material outlined in the reasons for refusal letter which concluded that in general a person fearing non-state actors is likely to be able to obtain effective State protection although each case must be determined on its own facts.

Permission to appeal was granted by Judge Baker on 22nd February 2019 for the reasons stated in the grounds.

Mr Diwnycz relied on his grounds and submitted that the decision should be set aside and remade.

Miss Khan submitted that the decision was adequately reasoned and relied on the decision in EH (blood feuds) Albania CG [2012] UKUT 00348, arguing that the claimant had already attempted to relocate and had been tracked down.

Consideration as to whether there is a Material Error of Law

I am satisfied that the judge has erred.

The judge specifically found that there was no blood feud under the Kanun code, the issues specifically addressed in the decision in EH, and indeed found that the claimant had not established that he himself had ever been attacked by the S family. It was therefore incumbent on her to set out in detail why she considered that the claimant would be at risk on return. After all, his family, although they moved away from their home village, did not go very far away.

The judge rejected the claim that the police had conspired to frame the claimant for burglary. She therefore ought to have addressed the material submitted by the Secretary of State as set out in the reasons for refusal letter, which she did not do. Furthermore, she failed to identify the background material upon which she relied at paragraph 61 of the determination, quoted above.

Accordingly, she erred in law and the decision is set aside.

It was agreed between all parties that the decision could be remade on the basis of further submissions.

Further Submissions

Mr Diwnycz relied on the reasons for refusal letter and the Country Information and Guidance Report on Albania dated 6th July 2016. In his submission, the claimant could expect the police to protect him, for example if he moved to the capital, Tirana, even if the local police were unwilling to do so. In any event, time had moved on and there was no evidence of any further interest in him following the incident in 2014.

Miss Khan submitted that the grounds of challenge had only addressed the issue of protection and not the issue of relocation. There were a number of positive findings made by the judge, including the fact that the police were predisposed against him. In any event, Albania was a small country and it had been accepted by the judge that the S family had a continuing interest in the claimant. At paragraph 53 of the determination she had said that it was likely that he would not only have to relocate but would have to go into self-confinement or hiding.

Even if in general terms protection was available, the individual circumstances had to be addressed. At paragraph 8.1.1 of the CIG Report, citing the U.S. State Department Report for 2015 in Albania, stated that the ombudsman reported that authorities' efforts to protect families or prevent blood feud killings were insufficient, although the government increased efforts to prosecute such crimes. The UN Special Rapporteur had similarly suggested that the criminal justice system was inefficient and corrupt. The U.S. State Department Report dated 27th April 2018 said that the police did not always enforce the law equitably. It was likely that the claimant could be tracked down and the same logic ought to be applied to him as to persons who were subject to a blood feud.

Findings and Conclusions

Although the grounds of application address the issue of protection, in order to succeed in this appeal the claimant has to establish that that protection would not be available to him throughout Albania. I conclude that the evidence does not do so.

First, the judge rejected the claim that the police did not intervene following the 2014 attack because of their association with the S family or indeed for any other reason.

Second, in relation to the events in 2015, the claimant's brother said that he did not actually call the police because the men left of their own accord but he was clearly willing to do so which does not indicate a belief that they would be unwilling to assist him.

Third, the claimant's family remained in the same general area, only moving to another town some 60 kilometres away, and if they felt that they or indeed the claimant following his release from prison were in danger, then they would have relocated much further away.

The general position is that effective State protection is available to persons fearing non-state actors. There is no evidence that the S family have any present interest in the claimant but even if they had, he has not established that he would be unable to obtain effective State protection either if he returned to live with his family or if he decided to live in another city further away.

For this reason, the claimant's appeal must be dismissed.

Decision

The original judge erred in law. Her decision is set aside. It is remade as follows. The claimant's appeal against the decision to refuse him protection in the UK is dismissed.

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 his 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.

Deborah Taylor

Signed

Date 8 June 2019

Deputy Upper Tribunal Judge Taylor