



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002340

First-tier Tribunal No: PA/50623/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

24th October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE M SYMES

Between

LK

(No anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hossain (appearing remotely)

For the Respondent: Ms J Isherwood

Heard at Field House on 9 August 2023

DECISION AND REASONS

1. This is the appeal of LK, an Albanian national born 12 July 1970, against the decision of the First-tier Tribunal following a hearing of 9 February 2023 dismissing his appeal, itself brought against an asylum refusal of 3 February 2022.
2. The basis of his asylum claim was that in the course of 2009 he had intervened in a fight between his friend, MC, the head of the local Commune, and a member of the powerful H family, DH; seeing them fighting at close quarters, the Appellant pulled MC away from DH at which point MC, who had been stabbed in the neck in the altercation, took the opportunity to produce a gun and shot and killed DH. MC survived his injury, due to the Appellant's help. The Appellant subsequently learned from friends and his own maternal uncle (a neighbour of the paternal uncle of LH, LH being a convicted criminal recently

returned from Italy who led the H family's antagonism towards the Appellant) , sought his death as revenge (given MC's political influence put him beyond their reach); had the latter died, that might have provided sufficient satisfaction to forestall a blood feud, but the intervention which procured MC's survival made the Appellant a suitable target.

3. The Appellant's attempts to broker a peaceful solution, both himself and via the NGO Peace Missionaries, were rebuffed and he went into hiding, moving amongst the homes of trusted relatives and friends in different parts of Albania. MC subsequently attended a hearing at which he took full responsibility for DH's death; the Appellant was not called as a witness in those proceedings despite having spent several hours giving a statement to the police, making him suspect that a deal had been cut amongst the parties involved given MC's powerful political connections. He felt unable to approach the police further because of his fears of official corruption and the fact that having given a witness statement had seemingly not advanced the criminal investigation.
4. During Easter 2014 an explosive device was thrown at his family home whilst his wife and children were sleeping there, the H family being the obvious culprits, acting in the mistaken belief that he would be celebrating the seasonal festivities there. Two inspectors from the Terrorism Police took a statement from him, telling him that this was essentially because they needed something on the record rather than with a view to initiating a meaningful investigation; thus they said that he should remain in hiding given the lack of police resources to expend on his protection. He now took his wife and children with him on his itinerant lifestyle: his wife described this in her own statement, which corroborates aspects of the Appellant's account including the bombing of the family home, as "moving around from one hiding place to another like hunted animals". A few days after the bombing his cousin, who had been acting as the family's bodyguard in the Appellant's absence was murdered; he interpreted this as an act of intimidation. The Appellant feared that the H family would be able to trace him in any part of Albania given their criminal and other connections around the country. They fled the country by van and travelled to the UK via a lorry, arriving here in December 2014.
5. Supporting evidence included, as well as the witness statements of the Appellant's wife and two children, two expert reports, once from Sonya Landesman, in which she stated that the Appellant's intervention to save someone's life was "perhaps not a calculatedly sensible gesture" in the "Kanun honour led climate"; the Appellant's account was in her view generally plausible given the background country evidence. Sources including academics working in the field reported that every aspect of Albanian society was endemically corrupt: the political, commercial and criminal arenas were merged, one implication of which being that the need to register any relocation from one's home area with a state office could lead to one's detection, as could the fact that society was family and clan based making it essential to reveal one's relationships to integrate locally.
6. The First-tier Tribunal rejected the well-foundedness of the Appellant's fears because
 - (a) The police were taking action against the suspects, as shown by the fact that a witness statement was taken from the Appellant after MC's death, by the fact that MC was placed under armed guard during his convalescence, and by the enquiries recounted by the Appellant when the anti-terror police arrived and investigated the bombing of his own house.

- (b) It was implausible the Appellant would be in danger from MC's side of the family given he had actively assisted MC.
 - (c) The Appellant's attempts to clarify matters raised by the Respondent as of concern in the refusal letter were unsuccessful: asked why he needed the UK's protection if the Albanian authorities had begun an enquiry "if I knew the answer to that I would not be applying for protection" or that "I am not the only person in that situation" were not credible.
 - (d) The expert evidence did not advance the claim. One report was flawed in suggesting the Appellant was fearful of both families given his active assistance to MC.
 - (e) There were no very significant obstacles to integration in Albania given he had relatives (including an uncle who had helped him considerably) there.
7. Grounds of appeal contended that the First-tier Tribunal materially erred in law by
- (a) Concluding that the existence of a police investigation showed the Appellant would not face any real dangers in the future, and committing material errors of fact in stating that it was MC rather than DH who had died and in repeatedly reasoning that the Appellant's case was that he feared the C family as well as the H family.
 - (b) Acting unfairly in finding that there was an extant investigation which showed effective protection was available and that the Appellant had only provided vague answers as to the availability of protection – in reality the Appellant's witness statement referred to having approached two detectives of the terror squad who had told him they were questioning him only for the purposes of having something on file. Furthermore evidence had been overlooked that he had not been called as a witness at MC's trial notwithstanding he had witnessed the shooting, a fact that tended to show MC's political influence with the endemically corrupt Albanian authorities.
 - (c) Finding that the Appellant's difficulties had been investigated and that the Appellant had been found innocent (contrary to the evidence that the Appellant had been denied the opportunity to participate in any legal proceedings), and that there were family members available to support him on a return to Albania, having rejected his evidence that half his family was dead as implausible without good reason, in the face of the evidence that he had last been helped by his uncle in 2014 when preparing to flee Albania and that certain family members had died since he had left the country.
8. Judge Connall granted permission to appeal on 30 June 2023 on the basis that the third ground was arguable given the assertion that the First-tier Tribunal had been wrong to believe that the case had not only been investigated by the authorities but additionally that the Appellant had been found innocent; the first ground was less impressive but arguable; the second ground seemed unpersuasive as the asserted unfairness was

inadequately particularised and the complaint made was in truth as to reasoning rather than fairness.

9. Mr Hossain made submissions in line with the grounds of appeal. The First-tier Tribunal had overlooked material evidence as to the Appellant's ability to access state protection in Albania, and misunderstood his case in suggesting that he had been "acquitted" of any wrongdoing and that MC had died. Essentially the Appellant's case was that he had stepped in to prevent violence escalating and had never anticipated the possible consequences by way of triggering a blood feud; now significant retribution was being sought against him. Ms Isherwood contended that the First-tier Tribunal had come to sustainable conclusions and that the reference to MC's death was an obvious drafting error.

Decision and reasons

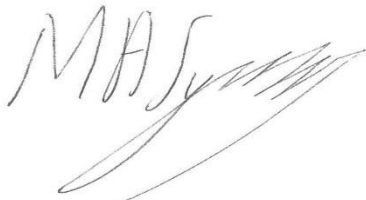
10. Having set out the key strands of evidence and the reaction of the Judge below to them, I can state my conclusions relatively shortly. The reasoning of the First-tier Tribunal is inadequate to give the issues in play here the anxious scrutiny that international protection law demands they receive. When one analyses the reasons given, they devolve into three strands: firstly that state protection was available as shown by the intervention of the police on two occasions; secondly that it was not plausible that the Appellant would be in danger from MC's family given that he had saved the latter's life; thirdly that some of his answers were vague.
11. My overarching concern, and one which to a degree transcends the rather obscurely drafted grounds of appeal, though is relevant to each of them, is that as I read the Secretary of State's refusal letter and response to the skeleton argument, aspects of the Appellant's credibility were disputed. The reasons for taking issue with particular historical facts, and as to which past events are accepted, are not especially clear, but that is how I construe the case which the Appellant had to meet. Accordingly it was incumbent on the First-tier Tribunal to itself make clear findings of fact before assessing the risks faced by the Appellant. It failed to do so. This is a particularly significant failure given that the expert evidence provided some support for the plausibility of the Appellant's account.
12. The Appellant's evidence, if taken at its highest, raised clear concerns as to the efficacy of any state protection. In two separate incidents his family home was bombed and a cousin protecting his wife and children was murdered, the bombing post-dating his provision of a witness statement to the police that went unused in a criminal trial, the murder taking place after the terrorism police had expressed the limitations of the resources available to them. Plainly there was a live issue as to whether the relevant authorities were taking "reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution" to which the Appellant had access, positing the test as in force via The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 given the Appellant's asylum claim pre-dates the Nationality and Borders Act 2022's commencement.
13. Returning to the detail of the grounds of appeal, both the first and third grounds raise veer onto the overarching issue of state protection which I have already addressed. Additionally the first ground alleges a material error of fact in that at one point the First-

tier Tribunal misstated the identity of the deceased. If that matter stood alone as a possible concern with its decision I would have discounted it as probably representing nothing more than a failure of proof-reading; however, it arises in a broader context by which the Tribunal below additionally seemed to consider the Appellant asserted being in danger from MC's family as well as from the H family. However the Appellant's statement and those of his supporting witnesses simply do not put such a case. Given the brevity of the First-tier Tribunal's reasoning, this is a significant error which clouds its conclusions generally.

14. Given the gaps in the reasoning which I have summarised above, the appeal must succeed. Unfortunately there is no alternative to remitting the matter for substantive re-hearing given the extent of the fact-finding which remains. The First-tier Tribunal controls its own case management, though I will not leave this appeal without remarking that it would be beneficial for the Secretary of State to clarify precisely which historical facts advanced by the Appellant she disputes.

Decision:

The decision of the First-tier Tribunal contained no material error of law.
The appeal is dismissed.



Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

12 October 2023