IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003376

First-tier Tribunal No: PA/00823/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of November 2023

Before

UPPER TRIBUNAL JUDGE WILDING

Between
GG
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms N Quadi, Counsel
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 11 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Cary's ('the Judge') decision to dismiss his asylum claim. Permission to appeal was granted by First-tier Tribunal Judge Hughes.

Background

2. The appellant is a citizen of Albania. He entered the UK in January 2019 unlawfully in the back of a lorry. He claimed asylum on 8 July 2020 on the basis of his family being involved in a blood feud. His asylum claim was refused on the basis that there was no active feud and as such no risk on return.

3. The appellant appealed. His appeal was heard on 2 June 2023 by the Judge. The Judge dismissed his appeal giving the following reasons:

> *"41. In view of the findings of FTTJ Boyes and the position adopted by Mr Eaton at the hearing I accept that it is reasonably likely that at some stage there was an active blood feud between the [G] and [N] families. However, that does not necessarily mean that the Appellant is reasonably likely to be at risk on return as he has to establish that it is reasonably likely that he will be a potential victim on return to Albania or alternatively will be compelled to self-confine. That includes an assessment as to whether it is reasonably likely that the blood feud is still "active".*
>
> *42. There are certain material differences between the Appellant's position and that of his brother. In particular, it was part of [F']s case that he had actually been threatened by [AN] when [A] was in prison and that other threats have been made. [F] also said he had assaulted on 1 occasion by members of the [N] family and on another occasion an attempt had been made to force him off the road. The Appellant has never suggested that he was threatened or that he ever experienced any problems with the [N] family up to the time of his departure. Perhaps more importantly [F] was found to be present by FTTJ Boyes when [GN] was killed by [AG]. FTTJ Boyes clearly regarded that as "significant" when assessing the risk to him. It has never been suggested that the Appellant ever had any connection with the death of [GN]. The last alleged victim of the feud was [AG] who is said to have been responsible for [G's] death so it may well be that if the [N] family were responsible for his killing that was more to do with revenge (and that [A] was specifically targeted) than the ongoing perpetuation of a blood feud (when any male member might suffice as a potential victim).*
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> *43. The Appellant has not produced any evidence that the blood feud is still ongoing. I have nothing from any reliable source to confirm that. The letter from the mayor of the town of Rubik dated December 11 2012 is many years old and in any event should not be accepted as reliable evidence of the existence of a feud following on from EH. It makes no specific reference to the Appellant. The newspaper article relating to the killing of [GG] is some 21 years old and is therefore of even less relevance in assessing whether any blood feud there might have been is still ongoing.*
>
> *44. The Appellant's knowledge of the feud as expressed in his asylum interview was not as detailed as the account which his brother appears to have given to FTTJ Boyes. The Appellant was also prepared to return to Albania in 2011 and 2018 and did not leave Albania until he was aged 20 although according to EH it is only "children under 15 are not usually required to be killed". If that is right the Appellant was potentially at risk in*

Albania for a few years prior to his departure yet appears to have made no attempt either to leave or self-isolate. I note that in his asylum interview the Appellant said that when he went back to Albania in 2011 and 2018 he actually went to his home address which he said was "very near the police station". He then applied for a passport and then "did my fingerprints". If he was potentially at risk it would make no sense for him to return home to the same village (where the [N] family lived) even if the police station was nearby particularly in view of [F's] experiences with the police when he was assaulted by members of the [N] family.

45. The Appellant has not produced anything for any official source confirming it is reasonably likely that he is a potential victim of a blood feud. The General Prosecutor's Office ("GPO") reported in 2022 that documentation relating to blood feuds can be issued by district prosecution offices (2.1.6 2023 CPIN). The GPO in Tirana told the Respondents Fact Finding Mission in 2022 that it is only the district prosecution office that releases a document relating to a blood feud. The document would say that '…the complaint was filed and an investigation initiated.'(11.1.3) noting that there is a difference between a document saying that they have filed a complaint, to one confirming that a person is in a blood feud (11.1.4). The GPO also said that host countries should not accept documents issued by civil servants/local government and police officers. If the Prosecution office has not issued the document attesting to the existence of a blood feud then it should not be accepted (11.1.7).

46. When I look at all the evidence I conclude that the Appellant will not be at risk on return to his home area. I do not consider it reasonably likely that the blood feud is active. No attempt appears to have been made by anyone connected with the [N] family to track down [F] in the United Kingdom despite his apparent connection to the death of [G]. The last killing in Albania was in 1998 over 24 years ago and there have been no further victims in that country. Unlike [F] the Appellant was never threatened directly or assaulted by members of the [N]. I do not consider the Appellant will be at risk of harm if he is returned to Albania. He will not be compelled to enter into self-confinement."

4. The appellant appealed on four grounds:

   a. The Judge materially erred by expecting corroboratory evidence;

   b. The Judge erred when placing reliance on the timing of the appellant's departure from Albania, because it disregards a) that the background material shows that people take more risks to escape a blood feud than live in isolation and b) making plausibility findings unsupported by evidence;

   c. The judge erred by placing weight on the lapse of time since the last killing of incident of violence. This is because the Judge a) failed to have regard to the appellant's evidence that all viable targets of the feud have fled, b) failed to have regard to objective evidence of the lengthy periods a feud may lie in abeyance before being reignited and c) by relying on the appellant's brother not being pursued in the UK.

   d. When placing weight on the appellant not having witnessed a previous killing the Judge erred by a) failing to have regard to the scope of likely

victims of blood feuds and b) failing to have regard to the course of the present blood feud.

5. Permission was granted on all grounds.

The hearing

6. Ms Quadi relied on the grounds and expanded upon them. Her submissions followed the written grounds, however she highlighted that the Judge's approach not only appeared to require corroboration when none is required in law (as per MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216), but also that in this case the Judge had the appellant's brother before him who was found to be at risk due to the same feud. The Judge therefore had to find, as he did, that there was a feud, his error was not to apply the full *ratio* of EH (blood feuds) Albania CG [2012] UKUT 348 (IAC) because he failed to undertake the step-by-step approach outlined by the Upper Tribunal.

7. Mrs Nolan opposed the appeal, she submitted that the appellant's appeal boiled down to little more than a disagreement. She reminded the Tribunal as to the constraints on appellate courts, and submitted that the Judge's reasons for finding that there was not an active feud were sustainable and not infected by legal error.

Decision and reasons

8. I have carefully considered the submissions made by both representatives. In my judgment the Judge did materially err in several key respects rendering his decision as not being sustainable.

9. Firstly, it is important to recall that the Judge did not reject the existence of a feud. He was to a degree bound to find that there was a feud because the appellant's brother is a recognised refugee in the UK because of the risk to him from that feud, and he had before him his brother's appeal determination. The respondent does not quarrel with this.

10. The Judge then gives his reasons for finding that the feud is not active. I agree with Ms Quadi that the reasons for rejecting the claim that it is a live feud are found in paragraph 46:

> *46. When I look at all the evidence I conclude that the Appellant will not be at risk on return to his home area. I do not consider it reasonably likely that the blood feud is active. No attempt appears to have been made by anyone connected with the [N] family to track down [F] in the United Kingdom despite his apparent connection to the death of [G]. The last killing in Albania was in 1998 over 24 years ago and there have been no further victims in that country. Unlike [F] the Appellant was never threatened directly or assaulted by members of the [N]. I do not consider the Appellant will be at risk of harm if he is returned to Albania. He will not be compelled to enter into self-confinement."*

11. When analysing the above I distil the reasons are:

    a. No attempt has been made to track the appellant's brother in the UK.

    b. The last killing in Albania was in 1998.

c. The appellant as not directly threatened in Albania.

12. The above reasons are either perverse or contrary to the relevant country guidance. In my judgment it is perverse to hold against the appellant that no attempt has been made to track the appellant's brother in the UK. It is neither a rational reason for not accepting a live feud, but also injects into the assessment something that is, in essence, irrelevant.

13. Secondly, the fact that the last killing in Albania was in 1998 is a relevant consideration, however the Judge has not considered the appellant's own evidence that all of the likely targets have left the country. The fact therefore of a killing from so long ago does not, in and of itself, render the feud to be no longer active. The Judge had to consider whether, on his return to Albania, the feud would be active, re-activated or was in fact no longer active. The passage of time is relevant to that, but in failing to consider the background material that feuds can last for generations, then the Judge's analysis is incomplete.

14. The third reason that the appellant had not been threatened in Albania is not a relevant consideration in my view. The criteria set out in EH the relevant considerations as to whether there is a live feud:

> *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.*

15. The Judge fails to apply this criteria to his analysis, instead focussing on whether the appellant was ever personally threatened or not. The Judge's analysis therefore fell into error for failing to apply the relevant considerations set out in EH , and taking into account irrelevant factors.

16. Finally, I am also persuaded that the Judge has unlawfully expected corroboration of the active nature of the feud. At paragraph 43 the Judge noted "*The Appellant has not produced any evidence that the blood feud is still ongoing*", this can only be understood as meaning corroborating evidence because both he and his brother gave oral evidence in which they said that the feud was active, so the Judge could not possible mean "no evidence" at all, rather he must mean supporting documentary evidence.

17. At paragraph 45 the Judge said:

45. The Appellant has not produced anything for any official source confirming it is reasonably likely that he is a potential victim of a blood feud. The General Prosecutor's Office ("GPO") reported in 2022 that documentation relating to blood feuds can be issued by district prosecution offices (2.1.6 2023 CPIN). The GPO in Tirana told the Respondents Fact Finding Mission in 2022 that it is only the district prosecution office that releases a document relating to a blood feud. The document would say that '…the complaint was filed and an investigation initiated.'(11.1.3) noting that there is a difference between a document saying that they have filed a complaint, to one confirming that a person is in a blood feud (11.1.4). The GPO also said that host countries should not accept documents issued by civil servants/local government and police officers. If the Prosecution office has not issued the document attesting to the existence of a blood feud then it should not be accepted (11.1.7).

18. In many respects the Judge is falling into the error identified in MAH:

86. It was common ground before this Court that there is no requirement that the applicant must adduce corroborative evidence: see Kasolo v Secretary of State for the Home Department (13190, a decision of the then Immigration Appeal Tribunal, 1 April 1996). On the other hand, the absence of corroborative evidence can, depending on the circumstances, be of some evidential value: if, for example, it could reasonably have been obtained and there is no good reason for not obtaining it, that may be a matter to which the tribunal can give appropriate weight. This is what was meant by Green LJ in SB (Sri Lanka) at para. 46(iv).

87. I accept Mr Jones's submissions on Ground 3. Although the UT directed itself, at para. 84, that there is no legal duty on the Appellant to corroborate his claim, that was in substance the basis on which it proceeded. Each of the three perceived deficiencies in the evidence adduced on his behalf was to the effect that he could have but had not obtained corroborative evidence to support his claim. In the circumstances of this case, bearing in mind both the relatively low standard of proof and the fact that the Appellant had adduced positive evidence which supported his claim (as the UT recognised), evidence both of what he had himself witnessed and evidence of experts which was consistent with his claim, I have reached the conclusion that the UT required more of him than was necessary. It then fell into error by concluding that the failure to adduce corroborative evidence undermined his credibility with the result that his evidence was found not to be "truthful", at para. 87.

19. In this case the Judge held against the appellant that there was no evidence that the feud is ongoing, and that there was nothing from any official source confirming that he is a potential victim of a blood feud. The difficulty with this is firstly that the Judge did have evidence that there was a blood feud in relation to his brother in the form of the previous determination. Secondly, there is no explanation, in compliance with the MAH principles, why seeking corroboration is

reasonable in this case. Finally, the matters held against the appellant ignored the background evidence which was before him in so far as how blood feuds can "go to sleep" only to be reignited when a viable target is identified.

20. For all of the above reasons I conclude that the Judge materially erred in law such that his decision is set aside. I have considered whether the case can be remade in the Upper Tribunal, however no findings of fact can be preserved. The case needs to start afresh. The appropriate forum for that is the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside.

The case is remitted to the First-tier Tribunal to be heard *de novo*. It should not be listed before Judge Cary.

Judge T.S. Wilding

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 28th October 2023