



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

Appeal Number: AA/05951/2012

THE IMMIGRATION ACTS

**Heard at Field House, Newport
On 3 September 2013**

**Date Sent
On 15 October 2013**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**BV
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Ms M C Benitez instructed by Howe & Co., Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Background

2. The appellant is a citizen of Albania who was born on 31 July 1994. He arrived in the United Kingdom on 23 January 2012 and claimed asylum. On 2 June 2012, the Secretary of State refused to grant the appellant asylum under para 336 of Statement of Changes in Immigration Rules (HC 395 as amended) and on 8 June 2012 made a decision to remove him to Albania as an illegal entrant by way of directions under paras 8-10 of Schedule 2 to the Immigration Act 1971.
3. The appellant appealed to the First-tier Tribunal and, following a hearing on 10 December 2012 Judge Sharp dismissed the appellant's appeal on asylum and humanitarian protection grounds and under Arts 2, 3 and 8 of the ECHR. On 26 February 2013 the First-tier Tribunal (Judge Sommerville) granted the appellant permission to appeal to the Upper Tribunal.
4. The appeal first came before me on 17 April 2013. In a decision dated 26 April 2013, The judge had accepted the appellant's account that he was the subject of a blood feud as the result of a land dispute in his home area and I concluded that that decision should stand. However, the judge had erred in law in finding that the appellant could internally relocate to Tirana where the Albanian authorities would provide a sufficiency of protection. My reasons are fully set out in my written decision and I do not repeat them here.
5. The appeal was adjourned to be relisted for a resumed hearing to remake the decision in respect of internal relocation. Thus, the appeal came before me on 3 September 2013.

The Resumed Appeal Hearing

6. At the hearing, the appellant gave evidence in which he adopted his statement signed at the hearing on 3 September 2013. In addition, Ms Benitez, who represented the appellant, relied upon an expert report prepared by Antonia Young dated 31 July 2012 (at pages 9-34 of the appellant's bundle). Ms Benitez also referred me to a *Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions report on Albania* dated 23 April 2013 and an extract from the *US Department of State 2012 Country Report on Human Rights Practices: Albania* (19 April 2013). Both Ms Benitez and Ms Everett (who represented the respondent) referred me to the country guidance case of EH (Blood feuds) Albania CG [2012] UKUT 00348 (IAC).

1. The Claim

7. The basis of the appellant's claim was summarised in paragraph 2 of my decision dated 26 April 2013 as follows (I have anonymised the appellant and other potentially identifying information):

"The appellant's claim for asylum is based upon a blood feud between his family and a neighbouring family (the N family) in his village in [] District in Albania. The appellant and his mother lived with his uncle and family. The appellant's father had died shortly after the appellant was born. The appellant

claimed that a dispute had arisen between his family and the N family who had bought land next to theirs at the end of 2009. In 2010 the N family had built a house on the land and wanted to build more. The appellant's family claimed that the land was theirs and the appellant's family confronted members of the N family. In a confrontation the appellant's uncle stabbed and killed one of the N family. A few days later the N family announced a blood feud and that the appellant was a target. Attempts were made to exclude the appellant from the feud involving a reconciliation organisation and offers of land. These were, unsuccessful and the appellant was required to stay indoors at all times. The family continued to receive threats and his uncle's wife decided at the beginning of 2011 to return to her parents' home with her daughter. At the end of 2011, they decided to leave and the appellant was taken to his maternal uncle's home in Tirana. He stayed there for about a month when his uncle told him that he had seen a member of the N family near the house. His uncle said that the appellant should leave Albania and on 20 January 2012, he travelled by van and car to France. He arrived in the UK on 23 January 2012 and claimed asylum."

8. In his most recent statement, the appellant repeated his fear that his life would be at risk in Tirana. As regards the continuing claimed threat from the N family, the appellant says this at paras 3-5 of his statement as follows:

- “3. With regard to the question of commitment and determination and reach of the N family, I confirm that I have recently spoken to my mother and she advises me that she has heard from her neighbours that the N family are still determined to seek out my whereabouts if I am returned and indeed that of my uncle. My mother has assured me that my life remains in danger if I am returned to Albania.
4. With regards to the final point as to whether my uncle saw a member of the N family near his home, I can only confirm what I have been told. My mother informed me that my uncle had seen a member of the N family near his home and that he went to the police on this matter and was advised by the police that the N family member was entitled to drive where he chose in Albania. He was breaking no law. That may well be the case but my opinion is that the whole purpose of the member of the N family driving close to my uncle's home was clearly to intimidate.
5. I just wish to maintain that as a young man I fear that if I am returned to my country of origin that my life will be cut short and I simply ask that the Court recognise my fear of persecution and grant me status accordingly.”

9. In his oral evidence-in-chief the appellant said that the N family were very rich people with lots of money who controlled a lot of businesses and had shops and beautiful homes. He said that the family had contacts with people in the state. He said that his mother had seen them drinking and having meals and lunches in restaurants with people from the police and from the local municipality. He confirmed that no one knows where his uncle now is.

10. In cross-examination, he said that his mother had seen the N family drinking in restaurants with others two or one month ago. He was asked why he had not mentioned this earlier and he said that he had not been asked specifically about the contacts. It was put to him that in his asylum

interview at questions 153 and 154 he was asked whether he knew anything else about the N family and had said, "I do not know a lot", why had he not referred to their contacts? The appellant replied that maybe he had not understood the question. He said that the N family bought and sold food. They bought food from abroad and sold it in Albania. He said that his mother had told him this and their businesses were in a place which was about twenty minutes by car from his family home.

11. The appellant confirmed that his uncle had seen members of the N family in Tirana. He had not seen them because he was inside his uncle's house. His uncle had seen them "wandering about in the car". He said there were two people. The appellant said that his uncle knew they were members of the N family because his uncle knew them very well because they were neighbours with that family. He said that the N family were still "wandering about" and that the last time he knew about was two weeks ago. When asked whether the N family knew he was in the UK, the appellant doubted whether they knew that otherwise they would not be wandering about outside his uncle's home. He said there was nowhere else in Albania he could go where they would not find him.
12. In re-examination, the appellant said he was not sure how many people his uncle had seen - two or three - he was not sure but his uncle had seen them.

2. The Law

13. The burden of proof in this appeal is upon the appellant to establish that there is a real risk of persecution for a Convention reason or serious ill-treatment falling within Art 3 of the ECHR or a death prohibited by Art 2 of the ECHR if he is returned to Albania.
14. In relation to internal relocation the burden of proof is also upon the appellant. Internal relocation is only an option if the appellant would not be at risk of being persecuted or at real risk of suffering serious harm (or death) in another part of Albania and it would be reasonable (or not unduly harsh) for him to live there. In this appeal, the Secretary of State proposes that the appellant should relocate to the capital of Albania, namely Tirana.
15. Here, the risk, if any, to the appellant in Tirana arises as a result of non-state actors, namely the N family. In that regard, the appellant must establish that the Albanian state would not be able or willing to provide protection against any persecution or serious harm. Article 7 of the Qualification Directive (Council Directive 2004/83-EC) states that:

"7(2). Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection."

3. The Submissions

16. I turn first to my assessment of the evidence and my factual findings.
17. On behalf of the respondent, it was submitted that the only evidence concerning the N family pursuing the appellant was his own. Ms Everett submitted that the trend in his evidence was for it to become increasingly exaggerated. Whilst she accepted that the questions in the asylum interview had not expressly pursued the issue of the contacts of the N family, the appellant's evidence was now that they were connected with the police and that was not credible. She submitted that at best, I should accept that the families were neighbours and that the N family bought and sold goods. There was no reason to believe that their reach extended to Tirana and that internal relocation was not an option. She relied upon EH at [70].
18. As regards the appellant's evidence that the N family had been seen near his uncle's home, Ms Everett submitted that that evidence was not plausible. It was not plausible that they would continue to visit his uncle's home and not realise that he had left Albania. She submitted that I should not rely upon the expert report of Antonia Young (at pages 29 and 30 of the bundle) who had given no reasons for stating that the ability of the N family to locate the appellant within Albania was "high".
19. As regards the Albanian state providing a "sufficiency of protection" Ms Everett accepted that this was a somewhat trickier issue. She accepted that there was a tension in EH between what was said at [70] and [74(c)] of the determination.
20. Ms Benitez on behalf of the appellant submitted that the appellant's evidence should be accepted in respect of the contacts and reach of the N family. She reminded me that the appellant's credibility had been accepted by Judge Sharp and the finding that there was a blood feud preserved. She also reminded me that the appellant was a minor at the time he claimed asylum and was interviewed and that his evidence had to be seen in that light. She submitted that it was perfectly possible that a trading, wealthy family such as the N family would have connections in local government given that corruption in Albania was pervasive. She referred me to the *US Department of State Report 2013* at page 2 to support that submission. She also relied upon the report of Antonia Young at page 33 of the bundle where it was stated that "everyone knows everyone". She referred me to the report of the Special Rapporteur at paras 12, 13, 18 and 22 on the continued existence of blood feuds and killings as a result.
21. In relation to sufficiency of protection, Ms Benitez relied upon the Special Rapporteur's report and also EH at [70] and [74(c)]. She submitted that if the N family's reach extended to Tirana then on the basis of EH, the state would not provide a sufficiency of protection.

4. Discussion and Findings

22. In reaching my findings in this appeal, I have taken into account all the evidence to which I have been referred, both documentary and given orally at the hearing. I have also taken into account the background material to which I was referred and the expert report of Antonia Young. These are my findings.
23. First, the appellant has already been found generally to be credible in that his account of the blood feud and his flight to Tirana to avoid the N family has been accepted.
24. Secondly, in assessing the appellant's evidence I bear in mind that when he claimed asylum and was interviewed in March 2012 he was 17 years of age. Ms Everett did not identify any or any significant inconsistencies in the appellant's account given since his arrival in the UK. Put at its highest, in relation to the appellant's evidence, her submission was that it has become increasingly exaggerated in particular, in relation to the connection that the N family are claimed to have with the police and local officials. Throughout, the appellant has claimed that the N family are "businessmen doing a lot of trading in goods" (see question 153 of his asylum interview). In his statement dated 4 July 2012 he states that:
- "The N family are quite wealthy and have contacts in a number of places; as I said in my statement, they are dealers in goods, and it would therefore be easy for them to trace me." (para 9).
25. As I say, that has been the core of his claim in relation to the N family's position throughout. As the *US Department of State Report* notes at page 2:
- "Pervasive corruption in all branches of government, and particularly within the judicial system, remained a serious problem."
26. The Report goes on:
- "Government efforts to prosecute officials who committed abuses were sporadic and inconsistent. Many government officials and politicians in general, as well as judges, enjoyed immunity from prosecution, and *those with powerful business interests often were able to avoid prosecution.*" (my emphasis).
27. I accept Ms Benitez's submission that this supports the appellant's evidence concerning the claimed contacts between the N family and local officials if the N family are, as the appellant claims, local businesspeople buying internationally and selling in Albania.
28. Thirdly, the appellant's evidence throughout has been that his uncle saw members of the N family near his home whilst the appellant was living there in Tirana. No inconsistencies were suggested by Ms Everett to detract from the reliability of the appellant's evidence and I do not consider it to be so implausible that the N Family would continue to look for the appellant in Tirana without apparently being aware he has left the country.

29. The possible reach of the N family to Tirana is discussed by Antonia Young in her report. At page 22 of her report, she states that: "I believe that the ability of N family members to locate [the appellant] is high within Albania." I do not accept Ms Everett's submission that Antonia Young offers no reasons for this conclusion. At page 25 of her report she deals with the ability of the accusers in a blood feud to locate members of the other family in Albania given its size and the nature of its society as follows:

"Although legally there is freedom of movement around Albania, it is a very small country with a total population of less than half that of London. The size of the country is approximately only that of Wales. With such a sparse population, it is not surprising that identities are hard to hide. It is extremely hard for anyone to find a home and work without family support, and virtually impossible for anyone living a 'closed' life. Therefore, should [the appellant] manage to live elsewhere he would be in constant fear that he would be found by N family members. [The appellant] was only safe while he remained 'closed', a situation which would not be satisfactory for a lifetime. If [the appellant] were to return there it is highly likely that N family members would find him. Word would quickly spread that he was back in the country.

In Albania, both the rural and the urban populations are based on networks of kin and neighbours, in which literally 'everyone knows everyone'. In a society which is only just emerging from being clan-based, all affiliations and support come only through extended family membership. Outside that, as an Albanian, it is hard to find moral support. Because of a high reliance on personal networks of support, any Albanian person would be generally highly visible if dislocated from his local home area. People are socially positioned through inquiries and additionally, there are strong dialectical differences throughout Albania making it easy to locate anyone. Within all towns, such information is easily transmitted by word of mouth, making it easier for a bloodfeud target to be located. Such networks are now further facilitated by the very extensive use of mobile phones. Furthermore on relocating to any other area of Albania, there is the requirement that an individual registers with their municipality of last habitation. Thus [the appellant] could easily be found. I would consider that were [the appellant] returned to his home, or that of any relative, he would feel forced, from fear, to live a 'closed' life. From this point of view, he could be considered to be a member of that part of Albanian society who live 'closed'. I suggest that bloodfeud targets who are forced to live 'closed' lives in Albania, form a very significant social group. There are even sections of some towns in which many such families live in close proximity (as mentioned in Section 3, p.16)."

30. Fourthly, at page 30 of her report, Antonia Young deals with the sustainability of such blood feuds, bearing in mind that the appellant left his home village at the end of 2011 and lived in Tirana until the end of January 2012 when he claims family members of N were seen. At page 22 she says this:

"The feud has been ongoing for two years, since the murder of N. It is very common for low level conflict between two families to last for decades before escalation to further murder. I personally have spent time with a family living 'closed' under threat from retaliation of a murder 17 years previously; I saw their fear, I felt their impoverished lives. Although the original killer had died over 10 years before, the avenging family were still able to have such a grip on the family that the eldest son had fled the country and the other children were prevented from attending school. In the recent notorious bloodfeud

killing of the priest, DP on 8th October, 2010 (described above, p.15), it was 5 years since the previous murder was committed (by a relative of the priest).”

31. That evidence is, therefore, consistent with the N family pursuing the blood feud to Tirana in early 2012 and indeed the evidence that they continue to pursue that blood feud to the present.
32. Taking all the evidence into account, including the background material, I find that the N family is engaged in buying and selling in the appellant’s home area. I accept that as local businessmen they maintain contacts with local officials including the police. I accept that a member or members of the N family were seen close to the home of the appellant’s uncle where the appellant was living in Tirana in January 2011. They were searching for the appellant as part of the blood feud which it is accepted exists. I also accept that they continue to pursue the appellant and continue to search for him in and around the area of his uncle’s home. I accept on the basis of the evidence before me that there is a real risk that the N family would, if the appellant returned to Tirana, discover him and carry out retribution for the death of their family member pursuant to their blood feud.
33. For these reasons, I am satisfied that there is a real risk to the appellant of being persecuted as a member of a particular social group (namely a family subject to a blood feud) or of being subject to serious ill-treatment contrary to Art 3 of the ECHR or of being killed contrary to Art 2 of the ECHR.
34. The sole remaining issue is, therefore, whether the Albanian authorities would provide a sufficiency of protection.
35. In EH, the Upper Tribunal stated at [70]:

“Internal relocation will be effective to protect an appellant only where the risk does not extend beyond the appellant’s local area and he is unlikely to be traced in the rest of Albania by the aggressor clan. A crucial factor in establishing whether internal relocation is a real possibility is the geographical and political reach of the aggressor clan; where the clan has government connections, locally or more widely, the requirement to transfer civil registration to a new area ... would appear to obviate the possibility of ‘disappearing’ in another part of the country, and would be likely to drive the male members of a victim clan to self-confinement in the home area as an alternative. Whether internal relocation is reasonable in any particular appeal will always be a question of fact for the fact-finding Tribunal.”

36. Before me, there was some discussion as to the proper meaning of the first sentence of [70]. On the face of it, the Upper Tribunal would appear to have concluded that an individual may only safely relocate where
 - (1) the risk does not extend beyond the applicant’s local area; and
 - (2) he is unlikely to be traced in the rest of Albania by the aggressor clan.

37. In truth, requirement (1) appears to follow from requirement (2). They are, in effect, opposite sides of the same coin. The risk beyond the appellant's local area will not exist if it is unlikely that he will be traced. The latter requirement is simply one factual basis why there would be no risk beyond the applicant's local area. It may well be that the word "and" should (at least in many instances) be understood as "because" so that the crucial issue becomes whether the risk extends beyond the local area because it is unlikely that the individual will be traced elsewhere in Albania. There must, however, be other situations where the risk would not exist beyond the home area for other reasons besides the absence of the feuding family's reach.

38. That slight grammatical amendment fits well with what the Tribunal said at [74(c)] that:

"The Albanian state has taken steps to improve state protection, but in areas where Kanun law predominates (particularly in northern Albania) those steps do not yet provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant. *Internal relocation to an area of Albania less dependent on the Kanun may provide sufficiency of protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan.*" (my emphasis)

39. In my judgment, the reach of the N family extends to Tirana. They are pursuing the blood feud with the appellant's family directed against the appellant himself. Ms Everett did not direct my attention to any background material which suggests that the Albanian state provided in general or in particular to this appellant a sufficiency of protection. Clearly, in EH, the Upper Tribunal took the view that despite steps to improve state protection in areas where Kanun law predominates, those steps did not amount to a sufficiency of protection for international protection purposes. Of course, Tirana does not fall within that description. It is the capital of Albania and is not a northern Albanian town or village. The *US State Department Report* notes that for 2012 the "incidents of societal killings ... appeared to increase". That report continues that:

"The ombudsman reported some cases in which authorities refused to protect families or prevent blood feud killings."

40. In her report, Antonia Young deals with the "attitude of the police and others" to the feud as follows:

"The police reportedly responded immediately following both the attack, by [the appellant's] uncle and again following the death of his victim, Mr N, but to very little effect. Aside from whether or not they were corrupt, they would not make any effort at protection without first there being a serious attack (or even attempted or successful murder). Such protection would be too late for [the appellant]. The police are already overstretched with straightforward crime. They are very cautious to avoid the complications involved in bloodfeud cases. Although there have been several national conferences at which there has been police discussion concerning how to deal with bloodfeuds, this has not resulted in helpful action on the part of the police. The measures currently being undertaken to address the situation of

bloodfeuds are insufficient concerning the protection of potential retaliation targets. See also Section 4 above. I should mention that institutions of the state do not function in Albania as they do in the UK. It can be extremely difficult even to obtain records or receipts, especially from the police.

[The appellant] would be fearful of approaching the police or any other authority figure to request such protection, in any area of Albania, for several reasons:

- i) He knows how little regard anyone would have of him and his claims
- ii) He knows that such approaches on his behalf have achieved nothing
- iii) His word would count for nothing, in face of others older and more powerful
- iv) He would not wish to draw further attention to himself or his situation for fear of further reprisal."

41. In this case, the appellant is the subject of a blood feud by a family which, on my findings, has connections with local officials including the police. I have already noted the level of corruption said to exist in Albania. There is a specific risk directed against the appellant in Tirana. There is a risk that if the appellant contacted the police in Tirana that word might get back (through corrupt officials) to the N family as to his whereabouts. Likewise, there is a risk that the police will not be willing to provide him with protection against a family with such connections.
42. On the basis of all the evidence, and having regard to what is said in EH set out above, I am satisfied that the police would not be willing or able to provide a sufficiency of protection against the real risk that the appellant would face in Tirana from the N family as a result of the blood feud. For these reasons, the appellant has established that there is no internal relocation option for him to Tirana.
43. Consequently, I am satisfied that the appellant is a refugee and that his return to Albania would breach the Refugee Convention and Arts 2 and 3 of the ECHR.

Decision

44. The decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and humanitarian protection grounds and under Arts 2 and 3 of the ECHR involved the making of an error of law. The decision is set aside.
45. I remake the decision allowing the appellant's appeal on asylum grounds and under Arts 2 and 3 of the ECHR.

Signed

A Grubb
Judge of the Upper Tribunal