Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06435/2011

THE IMMIGRATION ACTS

Heard at Field House	**Determination Sent**
On 30 August 2013	**On 27 September 2013**

Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

DG
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms A Heller, Counsel, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent:	Mr T Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. I make an order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant.

Introduction

2. On 15 May 2013, the Court of Appeal remitted the appellant's appeal to the Upper Tribunal for re-determination. The accompanying Statement of Reasons usefully summarises the matter:

> "1. The appellant is a citizen of Albania who entered the United Kingdom on 13 March 2011 and claimed asylum on 15 March 2011. The respondent refused the appellant's claim on 11 May 2011. The appellant appealed and his appeal was dismissed by Immigration Judge Sharp in the First-tier Tribunal on 7 November 2011. Permission to appeal that decision was granted and the determination of the First-tier Tribunal was set aside to be re-made. The matter was reheard on 13 March 2012 before Deputy Upper Tribunal Immigration Judge Holmes who, in a determination dated 3 July 2012, made adverse findings as to the appellant's credibility and dismissed the appeal finding that it had not been proved that the appellant would be at risk from a blood feud on his return to Albania as claimed.
>
> 2. The appellant then ought permission to appeal to the Court of Appeal. Permission was granted by the Rt. Hon. Sir David Keene on 23 November 2012 (sealed order dated 5 December 2012).
>
> 3. The respondent has considered the appellant's notice of appeal, accompanying bundle and skeleton argument and considers that the Upper Tribunal materially erred in law in first failing to provide a determination which concerned issues of credibility within a reasonable period of the hearing and second in relying on material that was not adduced in evidence and upon which the parties were not given opportunity to comment, namely a report of the Immigration and Refugee Board of Canada dated 1 February 2012.
>
> 4. The parties are in agreement that this matter should be remitted to the Upper Tribunal for re-determination in accordance with the current country situation prevailing in Albania."

The appellant's written statements

3. The appellant has made four statements in connection with these proceedings. In the first, he describes the alleged blood feud, as originating in a dispute between his family and the A family about a piece of land. In August 2007, the appellant was grazing cattle near the disputed land where he saw members of the A family working it. He shouted at them and was beaten up by them as a consequence. Upon arriving home with the news, the appellant's uncle took a gun and shot BA, fatally wounding him. The A family sent "elders to formally notify us that our family was

now in a blood feud with the A family". The appellant's father and elder brother were "immediate targets" and "began to stay indoors". A week after the killing, the father and brother fled the village.

4. In September 2007 a maternal uncle took the appellant and his mother to live with him in the town of P; but the A family got to know about this. By the summer of 2009, even before the appellant had turned 16, a message was received from the A family saying that since they had failed to find the father, brother or uncle, the appellant was to become the next target of the blood feud. Attempts at reconciliation failed. Accordingly, the maternal uncle decided that it was better for the appellant to leave Albania. He boarded a lorry that took him to France. After two failed attempts to come to the UK from France, he finally arrived here in March 2011.

5. In his second witness statement dated 12 June 2011, the appellant sought to reply to various matters raised in the respondent's letter, refusing his application for asylum. The appellant said that it was difficult for him to provide evidence that his uncle had killed BA but the "fact that my uncle fled from the village and the police came to our house" was said to be evidence of suspicion at least. The appellant said that the reason he was not harmed for the first month after the death of BA was because he was indoors in "self-isolation". This was in accordance with the laws of the Kanun, which provided that a blood feud target "is never attacked in his own home. I could have been attacked if I am outside". The appellant contended that the police could not protect "anyone from blood feud revenge" and that blood feuds were "a significant part of the lives of most Albanians". State protection was not an option and "anyone can find anyone in Albania" given its small population grouped around a few major towns. As for the fact that he could live in a suburb of Tirana and had done so for over three years, "I lived in hiding, indoors. Of course I could [not] live in that situation for the rest of my life".

6. Dealing with the issue as to why he had not claimed asylum in France, the appellant said that the situation there was "very loose". One could get in and out of the country quite easily. I felt insecure in France. I also saw a lot of people who were attempting to claim asylum in France but the French authorities were simply not interested in their claims. I myself was stopped twice by the police but they did not provide me with any help to communicate with them".

7. The appellant said that his father's whereabouts were not known, although it was believed he could be in hiding in Albania. He said he would provide a document from the Nationwide Reconciliation Committee to confirm the work they had done to seek a reconciliation in his case.

8. The third witness statement is dated 5 March 2012. With this, the appellant provided "an up-to-date letter from the Reconciliation Committee dated February 2012". He had asked his mother to procure this letter, which had been delivered by a friend travelling from Albania to the UK. It was stamped and sealed by the CNR.

9. The appellant said that in the beginning "I did not even have contact with my family. I even lost my passport in France". The appellant had suffered injuries following the attack by the A family and had moments of panic and anxiety. Although he felt safer in the UK "I still feel scared". He said that he had had to go into isolation in Albania since "if I had gone out I would have been apprehended as I was made a target and stayed indoors. From 2007 when the events happened, I was very young and not a target straightaway. From when just before I turned 16 in 2009, I was made a target". He said he had lived with his maternal uncle in the suburbs of Tirana. He had been in France for two months staying in a camp. When he had asked for help from the French police he had been "slapped" and since he did not want to be hit again, he would run away whenever he saw the police. His agent had told him that he would be going to the UK and the appellant was told "to wait at this abandoned house in France". There had been at least two more attempts to reconciliation since the last appeal hearing.

10. The appellant said that prior to his departure from Albania he had been given a phone number (mobile number) belonging to his family as they had no landline. This number had been written on a piece of paper but the appellant believed it had been lost when he had washed his trousers with the paper in it.

11. The appellant's fourth statement is dated 19 August 2013. He said that despite the previous Tribunal's adverse credibility findings he maintained he would be at risk of persecution because of the blood feud. He confirmed that he was currently in contact with his mother and maternal uncle in Albania. His mother "continues to live with my uncle in … Tirana". They had recently informed the appellant that his father and elder brother had made contact with his mother "and said that they were safe and living abroad after they fled the village". The whereabouts of the uncle who had killed BA remained unknown.

12. The appellant's mother and uncle had told the appellant that they would not be able to obtain police reports of the murder "because they did not have any authority as the matter was against my paternal uncle". Although the assault on the appellant had not been because of the blood feud, young teenagers in Albania "are considered to be young men and can be targets of feuds". Gjin Marku of the CNR had provided two letters in support of the blood feud. The one dated 24 February 2012 confirmed his signature was genuine. There was also a letter from the head of the municipality.

The first determination of the appellant's appeal

13. In the determination promulgated on 7 November 2011, Immigration Judge Sharp dismissed the appellant's appeal. Judge Sharp found that the appellant was not a credible witness. Although the determination was subsequently set aside and the decision in the appeal re-made by Deputy Upper Tribunal Judge Holmes, the issue of what Judge Sharp recorded the appellant as saying at the hearing is of potential significance for the purposes of the present proceedings:

> "35. He was asked about the arrangements made for his departure and he agreed that he had never been outside Albania before and his mother and uncle sent him across the world by himself. He was asked whether he had any means of communicating with his family and he explained that there was no method of contract agreed and he did not take any phone number with him and his uncle and mother did not know where he was other than that he was travelling through France.
>
> ...
>
> 40. He was finally asked further questions as to the arrangements made when he left Albania and reiterated that although his mother said goodbye to him, they made no discussions as to remaining in contact or communicating in the future. He said his uncle had a mobile telephone but he did not take the mobile number. Equally his uncle wished no confirmation that he arrived despite the fact that his uncle was paying for his trip.
>
> 41. He then reiterated how he eventually managed to get in touch with them again through the Social Services and spoke to his mother and it was through the person met at Social Services who knew their family."

The second determination of the appellant's appeal

14. As I have already observed, Deputy Judge Holmes's determination was quashed by the Court of Appeal. He too found the appellant not to be credible. At [70] of the determination, Judge Holmes recorded the following evidence:-

> "The appellant was asked why he had initially denied being given contact details for his mother and maternal uncle, and had then changed his account to claim that he had lost those contact details whilst in France as a result of washing his trousers which had in the pocket a piece of paper with the contact details on ... He offered no explanation for the inconsistency, which I am satisfied exists, but asserted that his most recent version of events was correct. He then claimed however to have lost both the contact details and his passport at the same time, because the contact details were on a piece of paper inside the passport. He gave a new explanation for the loss, which was that he had dropped his passport when climbing onto a lorry in France. He then changed tack again, and said he could not now recall if the contact details were in the passport, or separately on a piece of paper in a pocket."

The appellant's oral evidence on 30 August 2013

15. The appellant gave evidence with the assistance of an Albanian interpreter, who I am satisfied the appellant understood (and vice versa). The appellant sought to rely on all four of his witness statements, saying that they were true. While he was in France, what might have happened was that the telephone number written on a piece of paper had fallen out of his trousers while he was washing them; or he might have lost it in his wallet, when he got onto a lorry. This was when he also lost his passport, with the result that all he had on arrival in the United Kingdom was his ID card, which he kept separately.

16. The appellant was asked about the psychiatric report prepared on him by Dr Hajioff on 6 March 2012. This described the appellant as "suffering from chronic PTSD and has evidence of injury consistent with his account". It was said that he would "benefit from anti-depressant medication" in the form of specified anti-depressants and also "from psychological treatment such as counselling". The appellant was asked if he had ever received such treatment or counselling. He said not. This was because although he had a GP he did not speak to his GP about the matter because he could not speak English. In cross-examination he said he had not been to his GP after receiving the medical report. The appellant's social worker had not said anything to help him about this matter and the appellant had chosen not to mention it again as he was afraid of upsetting the social worker.

17. The appellant said that the A family was a very big family who lived all over Albania and would be able to find him, wherever he might be in that country.

18. In cross-examination, the appellant was asked about the passage in the determination of Immigration Judge Sharp, where the appellant was recorded as saying that he had not taken any telephone number with him. The appellant said that he had been speaking at that point about his home telephone number, which he had not taken but he did take the mobile number.

19. The appellant said that he moved to Tirana in September 2007. Asked to account for the absence of risk to him before he moved, the appellant said that he was under age and so not under threat but his brother and father were older and that is why they had run away. He also remained in the house with his mother. Asked why he had not left Tirana for some two years (2011) after hearing in 2009 that he was considered a target of the feud, the appellant said he hesitated to be separated from his mother because she was in distress. He also did not think he would have to leave because he hoped that the feud would be reconciled.

20. The appellant was asked about the letters from Mr Marku. That dated 24 February 2012 was in the appellant's bundle. The appellant said he did not know about the alleged existence of a further letter.

21. The appellant said that the plan was for him to come to the United Kingdom as it was known that he would be safe here. He had not sought protection in France because Albania was in Europe. Asked what that meant, the appellant said that one could use an Albanian passport to travel to Italy or France. Thus the A family could travel to France but not to the United Kingdom. Asked how the A family would know he was in France, the appellant said that there were lots of Albanians in France and it was easier to travel to France. There were probably members of the A family in France.

22. It was put to the appellant that if there was any truth in the assertion that there was a blood feud concerning him, he would have been harmed in Tirana during the

eighteen months or so spent there. The appellant said that he was locked up in the house and according to the Kanun, one could not be harmed whilst inside the home. Having stayed indoors for so long he could not remain there any longer. He therefore decided to leave.

23. It was put to the appellant that at questions 107 and 108 of his asylum interview, he had said that he was "mainly" inside and that, he must, therefore, have gone outside on occasions. The appellant said that he rarely went out but when he did so it would be with his maternal uncle, such as obtain his passport .

24. In answer to a question from me, as to where his father was living, the appellant said that he did not know; other than that his mother had told him that the father was living outside Albania. His father had spoken to his mother and the mother had said that he had not told her where he was. Asked if that was not strange, given that the appellant's mother knew that he was in the United Kingdom, the appellant responded that his father had not said. As far as the appellant knew, the letters from Mr Marku were genuine.

Other evidence

25. Besides the written materials to which I have already referred, the appellant's bundle contains a number of other evidential documents, including the UKBA COI Report on Albania (March 2012), an expert report of Antonia Young (incomplete but subsequently supplied in complete form), the "certificate" of 24 February 2012 signed by Gjin Marku (with translation) and a certificate, with translation, dated 9 June 2011, purported to be issued by the head of the Kala e Dodes municipality in Dider, Albania. In reaching my decision in this appeal, I have had regard to the entirety of the evidence in the appellant's bundle, along with the oral evidence and what previous judges have recorded the appellant as saying (as opposed to their conclusions thereon). I considered all of this evidence as a totality.

Burden and standard of proof

26. The burden of proof is on the appellant, to show that there is a reasonable likelihood (or real risk) that, if returned to Albania, he would suffer persecution within the ambit of the Refugee Convention (and Qualification Directive) or inhuman or degrading treatment or punishment, contrary to Article 3 of the ECHR. I have applied that standard of proof in the present case.

Country guidance

27. The relevant country guidance case is EH (Blood feuds) Albania CG [2012] UKUT 00348. For our purposes, the relevant passages of the guidance are as follows:

1. While there remain a number of active blood feuds in Albania, they are few and declining. There are a small number of deaths annually arising from those feuds and a small number of adults and children

living in self-confinement for protection. Government programmes to educate self-confined children exist but very few children are involved in them.

…

3. 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 sufficient protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan.

…

5. Where there is an active feud affecting an individual and self-confinement is the only option, that person will normally qualify for Refugee status.

…

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.

8. Attestation letters from Albanian non-governmental organisations should not in general be regarded as reliable evidence of the existence of a feud.

9. Documents originating from the Albanian courts, police or prosecution service, if genuine, may assist in establishing the existence of a blood feud at the date of the document relied upon, subject to the test of reliability set out in A v Secretary of State for the Home Department (Pakistan) [2002] UKIAT 00439, [2002] Imm A R 318 (Tanveer Ahmed).

28. Apart from the various items of background evidence, testifying to there being serious issues regarding the genuineness of letters issued by Mr Marku on behalf of CNR, the Tribunal in EH, which heard oral evidence from Mr Marku, formed a "strongly negative view" of his credibility and of "the value of any attestation letters from the CNR" [54]. The Tribunal also found as follows:-

> "55. We reject the evidence of the CNR and Mr Marku that the blood feud problem is large and growing; international press reports before us are all traceable to his evidence and are tainted by its unreliability. We noted that Mr Marku admitted that at least some CNR letters had been forged by Mr Loci, and that the organisation would accept benefits in kind such as cars, as part of the mediation process. We consider that the organisation and Mr Marku are wholly unreliable and that no weight can be placed on the attestation letters they produce. We also reject Mr Marku's evidence that the CNR is the only body which can issue attestation letters: we note the position of the Albanian authorities that attestation is a matter for the prosecutors and the courts.

56. On the totality of the evidence before us, we consider that Mr Marku's claimed expertise is so damaged that an attestation letter from the CNR, or indeed from any of the mediation organisations now under investigation, adds no weight whatsoever to an otherwise unsatisfactory account of an alleged blood feud. We do not go so far as saying that an attestation letter ought to be regarded as detracting from such an account, although such a conclusion may be permissible on the individual facts of a particular case. But, as a general proposition, we consider that where an appellant relies on a CNR or other NGO attestation letter to prove the existence of a blood feud from which he would be at risk on return, that is unlikely to be determinative of the appeal in his favour. By contrast, documents found genuinely to originate from the Albanian courts, police or prosecution service may assist in establishing the existence of a blood feud at the date of the document relied upon. However, given the evidence regarding corruption in Albania, the fact that such a document comes from its asserted source will not necessarily be probative of the reliability of the information contained within that document. Judicial fact-finders may, therefore need to assess its reliability on Tanveer Ahmed principles."

Discussion

29. In order to establish a claim to international protection, the appellant in the present case needs to show that there is a reasonable likelihood that he is involved in a blood feud with the A family. If he is not, that is the end of the matter. Accordingly, the first and, possibly, only issue is whether the appellant is reasonably likely to be telling the truth. In considering that question, I have placed his own evidence of his alleged experiences in the context of the background evidence. This includes the expert report of Antonia Young. However, her evidence is set out in a report dated 1 August 2011. By contrast, the Tribunal in EH analysed evidence up to early 2012 and did so on a more comprehensive basis. I do not consider that there is anything in Ms Young's report or, indeed, in any other of the materials adduced on behalf of the appellant, to cause me to depart from the country guidance in EH (applying Practice Direction 12 of the Senior President's Practice Directions of 2012). In particular, the background material, read overall, does not, with respect, point to an "appalling situation concerning an increase in the number of blood feuds currently operating in Albania" (as asserted on page 11 of Ms Young's report). Furthermore, although that report notes certain problems that had been identified by others in the utterances of Mr Marku of the CNU, the full extent of those problems became apparent only in the proceedings leading to promulgation of the country guidance in EH. When dealing with the appellant's specific case, Ms Young appears to have placed weight on the certificate allegedly issued by Mr Marku's organisation (page 18). She also speculated that the appellant "might not have undertaken the self-isolation that his father and uncle imposed on themselves" following the death of BA, owing to his age, when the appellant's evidence points to the fact that he *did* do so.

30. Whilst I accept the fact that the medical report provides some support for the appellant's account (I note particularly the Istanbul Protocol terminology used at [35] of the report), none of the physical symptoms examined by the doctor, even if

consistent or highly consistent with an incident of personal violence, have a necessarily strong correlation with the fundamentals of the appellant's case; namely, he was attacked so as to lead to a fatal retributive killing and an ongoing blood feud, in which the appellant is a target.

31. Despite Miss Heller's able submissions, I have come to the firm conclusion that the appellant is not telling the truth as regards his claim to be in need of international protection. I make that finding, notwithstanding the supportive elements to which I have just made reference, as well as bearing in mind his comparative youth and, in particular, that he was around 17½ years of age when he arrived in the United Kingdom in March 2011 (and when he was interviewed by the Home Office).

32. I agree with the respondent that there is a striking contradiction between, on the one hand, the asserted animosity of the A family and its capacity to seek out the appellant, not only throughout Albania but also, it is alleged, in France and, on the other hand, that family's failure, particularly from 2007 to 2011, to take any steps to inflict physical harm on the appellant. This is particularly so, given that the evidence, as it has emerged, indicates that the appellant may well have been a target from the outset, given that teenagers are said by him to be at risk, and that nothing befell him following the alleged indication in 2009 from the A family that he was now a target. This is particularly so, given that the appellant did not obey the Kanun principles of seclusion, whilst in Tirana but would go out from time to time (albeit in the company of his uncle).

33. The appellant failed to give a coherent explanation for the decision in 2011 to leave Albania. Whilst I accept Miss Heller's submission that a person living in confinement might well, after time, come to the conclusion that, in effect, "enough is enough", the appellant's evidence indicates that attempts at reconciliation were, allegedly, still ongoing when he decided to leave. This sits poorly with the appellant's assertion that he did not want to cause his mother distress and did not see a reason to leave, whilst he harboured hopes of reconciliation: [19] above.

34. As a judicial fact-finder, I am not compelled by section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to conclude that the appellant's case is necessarily damaged *significantly* by his failure to claim asylum in France, where he remained for some one and a half months. By the same token, however, the existence of section 8 does not preclude me from placing very considerable weight on events in France, if I find that is warranted. In the present case, I consider it clearly is. The appellant has given contradictory reasons for not claiming asylum. These range from indifference on the part of the French authorities to outright hostility. All of that is indicative of an interest in claiming asylum in France (supported by the comment in his screening interview that he did, in fact, try to claim). However, in evidence to me, the appellant was adamant that he was intent on getting to the United Kingdom because he feared that the A family could detect him, even in France, owing to the fact that Albanians were able to travel to France more easily than they could to the United Kingdom.

35. The appellant has also been significantly inconsistent on the issue of whether, at some stage during his stay in France, he did or did not have a telephone number, which would have enabled him to contact his relatives in Albania. When the discrepancy between his most recent statements on this issue and what he had said to Immigration Judge Sharp was put to him, the appellant attempted to suggest that, in answering questions at Judge Sharp's hearing, he had been referring to the absence of a landline telephone number, rather than a mobile number. That is, however, impossible to reconcile with the totality of what Judge Sharp recorded in his determination: [13] above. Despite the problems regarding the findings of Judge Sharp, it has not been shown that the latter incorrectly recorded the evidence.

36. The appellant would have me believe that, although his mother knows that he is in the United Kingdom, his own father has not seen fit to tell his mother where his father and brother are residing, other than that it is not in Albania. Miss Heller submitted that it was speculation to derive anything from this. I disagree. Whilst I accept that the appellant cannot be held responsible for the acts or omissions of his father, it is frankly incoherent and incredible for the mother to be unaware of the location of the father and brother and/or that those persons, if outside of Albania, would nevertheless have feared to tell the mother where they are.

37. I have considered the terms of the certificate of Mr Marku, as translated (page 20 of part A of the bundle). Even without the benefit of the country guidance in EH, the terms of this document are highly problematic. It certainly does not in any way materially assist the appellant's case. On the contrary, given the problems I have with the appellant's credibility, and given what is now known about the unreliability of Mr Marku, I conclude, on the individual facts of this case, that the decision to enlist his support further damages the overall credibility of the appellant's claim (see [56] of EH).

38. In reaching my findings, I have specifically had regard to the certificate (bundle part A page 22) said to be from the head of Kala e Dodes Municipality. This is dated 9 June 2011. Although there is no indication that Gjin Marku has had a hand in the production of this document, it is in its own terms problematic. It purports to "declare" that the appellant "has left Albania because his life was threatened by the [A] family because of conflict that his paternal uncle [AG] had with [BA]". There is no explanation as to how the head of the municipality came to know that the appellant had left Albania. More significantly, the certificate makes no mention at all of the appellant's assertion that his uncle fatally wounded BA. On the contrary, it goes on to describe the "conflict" between the two families as having "happened a few years ago because of a property dispute that ended up with the use of the fire arms". Since the municipality's "committee created for the reconciliation of the blood feuds" is supposed to have been involved in reconciliation in the present case, this lack of detail assumes significance. The same is true of the entirely vague description of the A family being "a big family".

39. Despite the fact that the appellant has claimed that the threat posed by the A family was reported to the police, no police records have been forthcoming. Likewise, there is no official record for the death of BA. Antonia Young does not appear to have undertaken her own independent research to identify potentially reliable records of the feud. There is no evidence from independent sources to support the surprising assertion in the appellant's fourth written statement that the family in Albania could not obtain official confirmation of the alleged murder of BA because the matter involved the father's side of the family: [12] above.

40. In all the circumstances, I have concluded that the appellant is not a witness of truth and that he is, in reality, a party to an attempt, involving members of his family, to concoct an entirely false claim to international protection. No Article 8 claim was advanced on behalf of the appellant at the hearing; nor is such a claim "Robinson obvious".

Decision

41. The appellant's appeal is dismissed on asylum and human rights grounds (Article 3). The appellant is not entitled to the grant of humanitarian protection.

Signed Date

Upper Tribunal Judge Peter Lane