



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

Appeal Number: AA/07803/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2<sup>nd</sup> December 2013**

**Determination  
Promulgated  
On 6<sup>th</sup> June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MR IRFAN BRAQI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Khan (Counsel)

For the Respondent: Mr G Jack (Home Office Presenting Officer)

**DETERMINATION AND REASONS ON ERROR OF LAW**

1. The appellant's appeal against a decision to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge Prior ("the judge") in a determination promulgated on 17<sup>th</sup> September 2013. The appellant was born in May 1995 and is a national of Albania. He claims to be at risk on

return there in consequence of a blood feud between his family and the Shabaj family.

2. The judge found that much of the appellant's account was given while he was a minor and allowance had to be made for this fact. Nonetheless, his account contained discrepancies and inconsistencies. A critical event claimed to have occurred was the killing of a member of the Shabaj family but the judge found that the evidence before him did not sufficiently support the appellant's account in this regard. Even if the blood feud were in place, the judge was not satisfied that the appellant would be unable to safely relocate in Albania. He did not accept that the Shabaj family was so powerful that they would be able to trace the appellant, if he were to relocate to Tirana. There appeared to be no explanation as to why reconciliation between the two families, having succeeded between 2002 and 2003, could not occur again, to resolve the fresh feud. Overall, the judge concluded that the appellant was not at real risk on return to Albania and dismissed the appeal on asylum grounds, humanitarian protection grounds and human rights grounds.
3. An application was made for permission to appeal. It was contended that the judge erred in several respects. First, the judge found that a contemporaneous newspaper article detailing the murder of a member of the appellant's family, Ismet Braqi, provided some support for the appellant's account although there was no mention of the murder of Bashkim Shabaj, the event which, by the appellant's account, led to the resumption of the blood feud. An article describing the killing of Bashkim a few days after Ismet's murder was not consistent with the appellant's evidence that it occurred a few hours afterwards. There was no reason why this apparent contradiction should not be considered with the same leniency as others, given that the appellant was a minor at the time. If Bashkim's murder took place a few days later, it could not feature in the article, which was dated one day after the killing of Ismet Braqi. Even without the subsequent murder of Bashkim, it was clear that the truce between the families was broken by the killing of Ismet. The logical inference was that the blood feud was reinstated by this murder and not the subsequent one.
4. Secondly, the judge found that an attestation letter from the Peace Missionaries branch should not be given weight, in the light of guidance given in EH [2012] UKUT 00348. There was, however, no basis for the judge not to give weight to the letter and guidance from the Upper Tribunal concerned a different organisation.
5. In a third ground, it was contended that the judge failed to have sufficient regard to corroborative or supporting evidence. This included material downloaded from the internet which described the mayor of Postribe as Faz Shabaj, a member of the aggressor family. Although the judge referred to this individual at paragraph 8 in the determination, there was no further comment or mention. The Peace Missionaries letter also

referred to the head of the municipality, Faz Shabaj, as the brother of one of the victims in the feud, Rasim Shabaj. As was clear from EH, a crucial factor in establishing whether internal relocation is a real possibility is the reach of the aggressor clan. It was clear from the country and background evidence that the aggressor clan in the appellant's case included powerful actors, including the head of the municipality of Postribe. In finding that it was noteworthy that the Shabaj family's influence did not appear to extend to securing police action against Ismet Braqi, despite the murder of Rasim Shabaj, the judge overlooked the country evidence of a parallel system of justice. Country evidence before the judge showed that individual police officers were reluctant to get involved in blood feuds. Finally, in finding that there was no explanation as to why reconciliation between the families could not continue, the judge erred as the appellant was not asked about this matter. He ought not to have taken it into account as an adverse factor.

6. Permission to appeal was granted on 21<sup>st</sup> October 2013, on the basis that the weight given by the judge to the discrepancy regarding the killing of Bashkim Shabaj and the (insufficient) weight given to the supporting documentary evidence, regarding Bashkim's murder, may have given rise to errors of law. The Secretary of State made rule 24 response on 5<sup>th</sup> November 2013, opposing the appeal. She proposed to submit that the judge directed himself appropriately, considered the evidence and arrived at conclusions which were open to him.

### **Submissions on Error of Law**

7. Mr Khan adopted the written grounds. The appellant gave evidence ten years after the events which led to his flight from Albania. The judge had this fact in mind, as was clear from paragraph 15 of the determination, and he properly gave the appellant the benefit of the doubt in certain respects.
8. There was an apparent contradiction regarding the death of Bashkim Shabaj, which occurred a few hours after the murder of Ismet, the appellant's cousin, by the appellant's account. A letter from an NGO, referred to by the judge at paragraph 16, placed the second death a few days after the first. The judge found this to be a material inconsistency. However, the appellant's account was concerned with when Bashkim Shabaj was "killed", whereas the latter referred to Bashkim as having been "found killed". Given that the judge extended the benefit of the doubt to the appellant, as the events occurred while he was a child, he ought to have given him the benefit in this context.
9. In assessing risk on return at paragraph 17 of the determination, the judge found that the appellant's brother appeared not to be at risk from the Shabaj family. The brother was born in 1998. The judge ought not to have given weight to this factor as, as at the date of the hearing, the appellant's brother was not 16 years old, a material age in the context of

blood feuds. Nor did the judge properly weigh the evidence regarding the Shabaj family's influence, Faz Shabaj being the mayor of the town. The appellant's evidence was that the Shabaj family decided to take revenge themselves, rather than going to the police and this was consistent with the country evidence contained in the article before the judge.

10. What was missing, as set out in the written grounds, was an assessment of the influence of the Shabaj family, in the light of the evidence that one member was the mayor of the municipality. The appellant's bundle had relevant evidence on this matter, at pages 6 and 7 in particular.
11. So far as the third ground was concerned, Mr Khan said that the judge rejected the NGO letter on the basis of guidance from EH, to the effect that NGOs should not be treated "in general" as reliable sources. In the present appeal, however, there was other supporting evidence in the form of news reports, which were accepted by the judge. The appellant's own account was broadly consistent with this country material. At the end of paragraph 16, the only fact which appeared to have been rejected by the judge as not shown in the evidence was the murder of Bashkim Shabaj. The rest of the blood feud he seemed to accept. Overall, the assessment was unsafe.
12. Mr Jack said that so far as ground 1 was concerned, the weight due to be given to the newspaper article was a matter for the judge. Moreover, there were clear discrepancies in the appellant's evidence. The judge considered these at paragraphs 12 to 14 of the determination and summarised only some of the reasons for the Secretary of State's decision to remove the appellant and to disbelieve his asylum claim. There were clear discrepancies between the contents of the newspaper article itself and the appellant's account, as was clear from pages F1 and F2 in the respondent's bundle and paragraph 8 of the determination. The fact that the judge gave the appellant the benefit of the doubt in view of his age, at paragraph 15, showed that he determined the appeal in a fair and a balanced way. The source of the information contained in the press article was not disclosed. Overall, the judge did not err in deciding to place little weight on the press article.
13. Mr Jack said that a similar analysis applied in relation to the second ground. This concerned the weight to be given to the letter from the NGO. The judge correctly found that guidance given in EH was that such sources should not, in general, be relied upon. The country evidence before the Upper Tribunal in that case showed that attestation letters were unlikely to prove to be determinative of an appeal and that there was only a small number of live blood feuds in Albania now.
14. The Peace Missionaries letter did state that Faz Shabaj was the head of a municipality, which was a smaller unit than a district. That did not necessarily lead to any firm conclusion regarding the reach of the family, sufficient to exclude relocation as a reasonable possibility. At paragraph

16 of the determination, the judge drew attention to the lack of evidence regarding the murder and the absence of evidence of the sources of information. The judge was entitled to find that no weight should be given to the letter. The discrepancies in the evidence at paragraph 15 of the determination and the assessment of the newspaper article in the following paragraph entitled the judge to make the assessment he had. The weight to be given to the evidence was a matter for him.

15. The documents at pages 6 and 7 of the appellant's bundle were not translated into English, and so rule 52 of the Procedure Rules fell to be applied. There was no error by the judge in not taking them into account.
16. The final ground appeared to amount to a suggestion that the judge should have asked more questions. All he was finding was that he was not satisfied that Bashkim Shabaj had been killed and that the blood feud continued as a result. The newspaper article did not discuss threats. The only evidence in this regard supporting the appellant's case appeared to be the letter from the NGO. The judge was entitled to treat this item with caution.
17. In a brief response, Mr Khan said that it was not correct that there was a lack of evidence of Bashkim Shabaj's murder. The evidence included the appellant's own account. The newspaper article did support this, even taking into account the apparent contradiction. Again, the appellant's evidence was that the second murder occurred a few hours after the first, consistent with the body being found a few days later. So far as the documents at pages 5 and 6 of the appellant's bundle were concerned, one of these was in English and fell to be taken into account. It described the Shabaj family member as the mayor but the judge did not engage with this material and the determination contained no assessment of it.
18. At paragraphs 15 to 17 of the determination, it was not clear that the judge did, in fact, reject the newspaper article. His finding was that it did provide some independent corroboration of the appellant's account although it did not include reference to infidelity which led to the separation of Kujtime Shabaj from her husband.
19. Critical was an assessment of the range and influence of the aggressor clan and missing in the determination was consideration of all the evidence regarding this factor, including the evidence that Faz Shabaj was the mayor of the municipality.

### **Conclusions on Error of Law**

20. The determination has been prepared with care, by an experienced judge. Mr Jack drew attention, in his able submissions, to parts of the determination which showed that the judge adopted a balanced approach in determining the appeal.

21. It is clear that a salient feature of the appellant's case was the range and influence of the Shabaj family. The judge summarised the appellant's core claims at paragraph 8 of the determination and it is there that mention is made of Faz Shabaj, described as the head of the Postribe municipality "for in excess of twenty years". As noted in paragraph 6 of the grounds, there was no further mention of this individual thereafter. It is clear that the judge has properly focused on the influence of the Shabaj family, as is clear from paragraphs 16 and 17. In the latter paragraph, the judge noted that it was "important to consider carefully the evidence relative to the intent and power of the Shabaj family." Some of the evidence in this context was taken into account by the judge expressly, including the newspaper article dated 14<sup>th</sup> June 2003 and the Peace Missionaries letter of 13<sup>th</sup> August 2012.
22. What is missing from the determination, however, is any mention or assessment of the evidence which appeared at pages 5 and 6 of the appellant's bundle. Mr Jack properly reminded me of rule 52 of the Asylum and Immigration Tribunal (Procedure) Rules 2005. The author of the grounds accepted that one of the documents was untranslated and so the judge was not obliged to take it into account. The other document, however, consisting of a download from the internet about the Postribe municipality, and confirming that Faz Shabaj was the mayor, was in English and was, I find, material evidence in relation to the range and influence of the Shabaj family.
23. The judge properly took into account discrepancies and inconsistencies in the appellant's account but, as Mr Khan submitted, the determination shows that he also recognised that there was supporting evidence, including the newspaper article. The country evidence regarding Faz Shabaj's appointment as mayor of the municipality fell to be taken into account in the judge's assessment of the influence and power of the Shabaj family, which he recognised was an important factor.
24. The other grounds have less merit and Mr Jack was correct to describe them as amounting to little more than a disagreement with the judge's findings. However, the absence of any mention of Faz Shabaj after paragraph 8 of the determination, where he appears as a major actor, and the absence of any express consideration of supporting evidence regarding his position as mayor of the municipality, relevant in the assessment of the risk faced by the appellant on return, leads me to conclude that the judge did materially err in law. The overall assessment he made was unsafe by reason of the absence of consideration of this evidence or, alternatively, was insufficiently reasoned.
25. The decision of the First-tier Tribunal contains a material error of law and falls to be set aside and remade. The next question is whether it is appropriate to remit the appeal to the First-tier Tribunal. It is clear from paragraph 17 of the determination that the judge found the absence, as he saw it, of evidence of the range and influence of the Shabaj family to be

a very important factor. There is no sensible prospect of disentangling the particular findings made and seeking to preserve some of them, in view of the error identified. The safest course is to set aside all the findings and for fresh findings to be made in the remaking of the decision. Taking into account paragraph 7 of the Presidential Practice Statement, I remit the case to the First-tier Tribunal to be reheard afresh, under section 12(2)(b) (i) of the Tribunal, Courts and Enforcement Act 2007.

26. As the venue for the First-tier Tribunal hearing was Hatton Cross and as there has been no application for a transfer order of any sort, it is appropriate to remit the appeal for rehearing there. Case management stage and listing will then follow. The appeal will be listed for hearing by a judge other than First-tier Tribunal Judge Prior.

### DECISION

The decision of the First-tier Tribunal contains an error of law such that it falls to be set aside and remade. The decision shall be remade in the First-tier Tribunal at Hatton Cross, before a judge other than First-tier Tribunal Judge Prior.

### **ANONYMITY**

The judge made no anonymity direction and there has been no application for anonymity in the Upper Tribunal. In these circumstances, I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell