



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

Appeal Number: AA/10007/2013

**Heard at Birmingham
on 30th April 2014**

**Determination Sent
on 18th June 2014**

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ADMIRM THACI
(Anonymity direction not made)**

Respondent

Representation:

For the Appellant: Mr Mills – Senior Home Office Presenting Officer.

For the Respondent: Mr Woodhouse of Sultan Lloyd Solicitors.

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a determination of First-tier Tribunal Judge Phull, promulgated following a hearing at Birmingham on 6th December 2013, in which she allowed the appeal on asylum grounds against the direction for Mr Thaci's removal to Albania that accompanied the refusal of his asylum claim.

Background

2. Mr Thaci was born on the 7th March 1996. He claims to be from the North-eastern part of Albania and unable to return to his home state as a result of a blood feud.

3. Mr Thaci states that his father was involved in a blood feud in 1962 and killed a neighbour. His father was found guilty and sentenced to 29 years imprisonment. On release he returned to his home village, married, and had five children of which Mr Thaci is the eldest.
4. It is claimed the family of the person his father killed did not forgive his father and the deceased's grandchildren bullied Mr Thaci at school. He alleges he was told that when he turns 18 he will be killed.
5. The other family did not want to discuss reconciliation and after an incident in which there was a fight and the police and ambulance were called, a message was sent around the village that Mr Thaci will be killed. As a result he remained inside for two weeks and eventually left the country with the help of an agent.
6. The Judge records it was accepted that at the date of his asylum claim Mr Thaci was 17.5 years old. Nationality is not disputed. The Judge found Mr Thaci to be credible [26] and that objective material in the form of a letter from Gjinaj Municipality claiming the village elders were aware of his father's imprisonment and the existence of a blood feud was considered and accepted. It was found the family of the alleged deceased live in the same village as Mr Thaci's family and, indeed, next door to them [30]. It was also found that the family of the deceased will look for Mr Thaci when he attained the age of 18, that there is a real risk of persecution with no protection available from the authorities [34].

Error of law

7. This is a case in which there is arguable merit in the Secretary of States claim.
8. The current country guidance case is **EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC)** in which the Tribunal held:

(i) 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;

(ii) The existence of a 'modern blood feud' is not established: Kanun blood feuds have always allowed for the possibility of pre-emptive killing by a dominant clan;

(iii) 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

(iv) International protection under the Refugee Convention, Qualification Directive or Articles 2 and 3 ECHR is not available to an appellant who is willing and intends to commit a revenge killing on return to his country of origin, by reference to that intention

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

(vi) In determining whether an active blood feud exists, the fact-finding Tribunal should consider: (a) 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;(b) the length of time since the last death and the relationship of the last person killed to the appellant;(c) the ability of members of the aggressor clan to locate the appellant if returned to another part of Albania; and(d) 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;

(vii) 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: (a) his profile as a potential target of the feud identified and which family carried out the most recent killing; and (b) whether the appellant has been, or other members of his family have been, or are currently, in self-confinement within Albania;

(viii) Attestation letters from Albanian non-governmental organisations should not in general be regarded as reliable evidence of the existence of a feud;

(ix) 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 SSHD (Pakistan) [2002]** **UKIAT 00439, [2002] Imm A R 318 (Tanveer Ahmed)**

(x) Unless factual, prompt and consistent, Albanian press reports will add little or no evidential weight in considering whether a feud exist;

(xi) Whether the feud continues and what the attitude of the aggressor clan to its pursuit may be will remain questions of fact to be determined by the fact-finding Tribunal.

9. Although referring to this case the Judge failed to consider a number of relevant issues upon which findings are required such as:

a. The fact Mr Thaci's father is said to have killed the neighbour in 1962 and to have been imprisoned until 1989, yet the alleged aggressor clan have waited until Mr Thaci was approaching the age of 16 before activating the feud.

b. Why, as the feud allegedly lay dormant for over twenty years, it should re-activated now.

c. The need to give adequate reasons for the weight placed upon the letters provided by Mr Thaci in support of his case in light of the guidance provided in EH relating to such material.

d. The existence of an internal flight option

10. The existence of a blood feud was not accepted by the Secretary of State.

11. Although the Judge refers to EH I find there is arguable merit in the assertion by Mr Mills that she failed to apply the principles arising from that case to the facts of this case properly. I find the failure to do so and to give adequate reasons for findings made casts doubt upon the reliability of the key finding regarding the credibility of Mr Thaci and the existence of an active feud. The Judge refers to a feud but should have properly considered whether, if one actually exists, it is active - especially in a case in which the last alleged killing was in 1962, Mr Thaci's father who is said to have been responsible for the killings has been able to live in the village next door to the said victims family with no evidence of attempts to kill him, and to live a relatively 'normal' life as evidenced by his marriage and ability to raise a family openly.

12. Great care has to be taken before denying a party the benefit of credibility findings made in his or her favour, but such findings are only sustainable if the required degree of anxious scrutiny has been applied to the facts and proper consideration given to relevant issues. I find Mr Mills has discharged the burden of proof upon him to prove this is a case in which the required degree of care and/or understanding of the issues have not been demonstrated in the determination.

13. I find legal error proved for these reasons material to the decision to allow the appeal. As the parties have not had the benefit of the issues in the case being properly considered in accordance with the country guidance case law, I set the determination aside without there being any preserved findings. The following directions shall apply to the future conduct of the appeal:

a. The appeal shall be remitted to be re-heard by a salaried judge of the First-tier Tribunal sitting at Sheldon Court Birmingham on the next available date allocated by Resident Judge Renton in light of the operational needs of the Centre. Time estimate 3 hours.

b. Consolidated, indexed and paginated bundles shall be filed with the First-tier Tribunal no later than 14 days before the hearing. The bundle shall include all the documentary evidence being relied upon. Witness statements shall stand as the evidence in chief of the maker and must be signed, dated, and contain a declaration of truth.

c. Any request for an interpreter must be made no later than 14 days from receipt of these directions stating the language and dialect required and reasons for the request.

d. Any application to vary these directions or for further directions must be made in writing and addressed to Resident Judge Renton at Sheldon Court.

Decision

14. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. The appeal shall be remitted to the First-tier Tribunal in accordance with the above directions.**

Signed.....
Judge of the Upper Tribunal

Dated the 9th June 2014