



IAC-PE-SW-V1

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

Appeal Number: AA/03214/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 July 2015**

**Decision & Reasons Promulgated
On 6 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**E K
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A de Ruano, Legal Representative

For the Respondent: Miss E Savage of the Specialist Appeals Team

DECISION AND REASONS

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The appellant

1. The appellant is an Albanian born in 1996. On 18 July 2013 he arrived in the United Kingdom as a minor and on the next day claimed asylum based on his fear to return because of his family's involvement in a blood feud.

The Decision of 30 April 2014

2. On 30 April 2014 the respondent refused the appellant's claim and made directions for his removal to Albania. After taking into account the appellant's youth, the respondent concluded that he had not established the basis for his claim. Even if the basis of his claim was true which the respondent did not accept, she considered there was a sufficiency of protection available to the appellant from the Albanian authorities and he could relocate in Albania without undue hardship.
3. On 20 May 2014 the appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds are formulaic and refer to the Refugee Convention and Articles 2, 3 and 8 of the European Convention.

The First-tier Tribunal's Decision

4. By a decision promulgated on 29 October 2014 Judge of the First-tier Tribunal Nicholls found the appellant had not established that his family was in a blood feud and that he would be at risk on return to Albania. He noted that even if the appellant's claim was true on his own evidence there had been no incident since 1992. He dismissed the appeal on all grounds.
5. The appellant sought permission to appeal and on 26 November 2014 Judge of the First-tier Tribunal Pooler refused permission. The application was renewed to the Upper Tribunal on the same grounds. and on 27 March 2015 Deputy Upper Tribunal Judge Chapman granted permission to appeal on the following grounds:-
 - (i) in rejecting the documents from the commune of (the Appellant) as not being genuine, given that the information contained therein was consistent with the Appellant's account and capable of corroborating it;
 - (ii) in making contradictory findings: at 18 finding that the Appellant had not established that there was ever a blood feud or a killing in 1992 but accepting that the Appellant's family moved from ... to ... and that there had been no actual incident since 1992;
 - (iii) given that the Appellant was a child at all material times in Albania until 9 August 2014, in relying on an absence of corroborative evidence viz an explanation from the Appellant's mother any documentation from the police or statements from his parents concerning attempts at reconciliation the judge may have imposed too high a burden of proof upon the appellant;
 - (iv) in failing to make clear and consistent findings in light of the country guidance case of *EH (blood feuds) Albania CG [2012] UKUT 348 (IAC)*.

The Upper Tribunal Hearing

6. The appellant did not attend the hearing. Mr de Ruano relied on the grounds for appeal to the Upper Tribunal and the grant of permission to appeal. Further, he said that new evidence have come to the appellant's attention since the last hearing which had not yet been received from Albania and on receipt would require translation.
7. The Judge had erred in law and the appeal should be remitted for hearing afresh when the new evidence would be available.
8. Ms Savage relied on the respondent's response of May 2015 under Procedure Rule 24 that the Judge had made a mixed finding on the blood feud at para.18 of his decision. Whether expressed as a complete rejection of the evidence or a refusal to accept that the feud had been re-ignited the Judge had made proper findings with reference to the appropriate standard and burden of proof. Further, he was entitled to conclude it would be reasonable for particular documents or further evidence to be provided. Although the appellant arrived in the United Kingdom as a minor he had been legally represented and there was no barrier to the Judge expressing doubt about documents and giving little weight to them as expressed at para.16 of his decision.
9. At paras.13 and 16 the Judge had given cogent reasons to reject the appellant's claim and it was properly open to him to attach little weight to the document from the appellant's commune. Having found the appellant had not established his claim the Judge was entitled to give little weight to the documents from the appellant's commune in line with the principles established in *Tanveer Ahmed starred [2002] UKIAT 00439*. She also referred to paras.20-21 of *TK (Burundi) v SSHD [2009] EWCA Civ. 40* which address the desirability of supporting evidence, if readily obtainable, being provided and that the failure to produce such evidence without a credible explanation for such failure could be "a very strong pointer that the account being given is not credible". I noted that *TK (Burundi)* involved a claim under Article 8 of the European Convention and not an asylum claim.
10. Ms Savage continued that the Judge had given good reasons to reject the appellant's account without requiring corroborative evidence. At para.18 he had made mixed findings but there was no material error of law. The grounds for appeal amounted to no more than a disagreement with the Judge.
11. The Judge had taken the country guidance in *EH (blood feuds)* into account as was clearly evident at para.12 of his decision. The Judge's findings were consistent with country guidance: in particular, the guidance that active blood feuds in Albania were few and decreasing, that there was a small number of deaths annually arising from those feuds and a small number of adults and children lived in self-confinement for protection. There were government programmes to educate self-confined children although very few were involved in them and the factors enumerated in para.6 of the headnote to *EH (Blood feuds)* to determine whether an active blood feud existed.

12. The Judge had considered these factors at parag.15 of his decision and with the additional evidence was entitled to conclude that if there was a blood feud it was no longer active. The decision did not contain a material error of law.
13. In response Mr de Ruano submitted the decision was vague and lacking in detail which in itself was insufficient basis for the Judge rely on the jurisprudence in *Tanveer Ahmed*. The finding that further evidence should have been available did not impugn the evidence which was available. The decision contained an error of law and should be set aside.

Findings and Consideration

14. The Judge gave reasons for coming to the conclusion that the appellant had not shown the letters from his commune were genuine and that in any event they added little of any significant weight to his personal account because of the various omissions and lack of explanation for them which he had previously detailed. At para.17 he referred to other available sources of information identified by the appellant but from which he had not produced any evidence. The Judge was entitled to attach weight to the absence of any statement from the appellant's parents and especially his mother with whom the appellant said he remained in contact. There was no evidence other than the appellant's assertion of any attempts at reconciliation. There was no letter from any institution in Albania involved in attempting reconciliation in blood feuds. Such letters are regularly produced in blood feud cases, notwithstanding the comments in *EH (blood feuds)* about "false attestation letters".
15. At para.18 of his decision the Judge was careful not to reject the appellant's claim of a blood feud but simply to assert he had failed to discharge the burden of proof to show that there was a blood feud. The Judge had set out at length the burden and standard of proof at paras.6-7 of his decision and reiterated it in shorthand in para.18 by referring to "the required standard of a real likelihood". There may have been many reasons why the appellant's family had moved in 1998 to a different place and the Judge was entitled on the evidence, or rather the lack of evidence, before him to find the appellant had not discharged the burden of proof to show the move was a consequence and for the avoidance of the blood feud.
16. The appellant's evidence that there had been no actual incident since 1992 was accepted by the Judge. He did not expressly state whether he took this to indicate that he found there was a blood feud but since 1992 it had not been actively pursued or that there had never been a blood feud. I doubt that in reality whether there was never a feud or there had been no incident for some 22 years makes for any material difference. There was no evidence that there had been no potential victims in either family throughout that time until the appellant would have reached the minimum requisite age. The Judge might have expressed the ante-penultimate sentence of para.18 more clearly but I do not find that it amounts to a finding so in contradiction of any other material finding as to amount to a material error of law.

17. The appellant may have arrived in the United Kingdom as a minor. He had benefit of legal advice at least from the time the appeal was lodged in May 2014. The Judge was entitled to place weight on the absence of any statement from either of the appellant's parents although he said that he was in contact with his mother. His legal advisors will have been aware of the country guidance in *EH (blood feuds)*. It gives clear guidance as to what sort of documents the Tribunal would expect to see and the legal advisor would be aware that in the absence of such documentation it would be likely the Tribunal would be looking for an explanation.
18. The expert evidence available would have been taken into account by the Upper Tribunal in coming to its country guidance. The relevance of such expert evidence will depend in any individual case to a substantial degree on whether the applicant's claim to be involved in a blood feud is accepted. In this appeal, the Judge did not accept the claim to be involved in a blood feud or at least one which was other than entirely historic. He was clearly aware of the relevant considerations as evidenced by para.12 of his decision.
19. The reference in the grounds to giving the appellant the benefit of the doubt fails to reflect the meaning of that expression as explained in *KS (benefit of the doubt) [2014] UKUT 00552 (IAC)*.
20. The First-tier Tribunal's decision does not contain a material error of law and it shall stand.

NOTICE OF DECISION

The First-tier Tribunal's decision does not contain an error of law and shall stand.

Anonymity order made.

Signed/Official Crest

Date 31. vii. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal