IAC-TH-CP-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03239/2015

THE IMMIGRATION ACTS

Heard at Field House
On 19 November 2015

Decision & Reasons Promulgated
On 3 December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

R H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Stuart-King of Counsel
For the Respondent: Ms Brocklesby-Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania born on 24 October 1988. He appealed against the Respondent's decision to refuse asylum, humanitarian protection and on human rights grounds. In a decision promulgated on 8 July 2015, Judge Clarke (the judge) dismissed the appellant's appeal because he found the appellant was not a credible witness regarding events in his own country and that he would not be at risk on return. As regards Article 8, the judge found the appellant did not

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satisfy the requirements of the Rules nor were there any compelling circumstances for him to succeed outside the Rules.

2. The grounds claimed that the judge erred in assessing whether there was an active blood feud. Further, he erred in assessing sufficiency of protection and internal relocation by failing to take account of material factors, misconstruing the law and failing to follow and apply the country guidance.

3. Judge Grimmett refused permission to appeal. She said the grounds were a disagreement only with the judge's findings and raised no error of law. It was clear from the decision why the judge considered there to be no active blood feud and thus the reasoning was adequate.

4. The grounds were renewed and considered by Upper Tribunal Judge Gill who gave permission to appeal in a decision dated 18 September 2015. The judge had found there was no active blood feud. It was plain in that regard that he relied upon the fact that there had only been one attack and in doing so, it was arguable that he overlooked considering the appellant's evidence that his father was in self-confinement and that his brother had fled. See [3] of the grounds. Judge Gill noted that the judge mentioned the father's self-confinement at [41]. That was in the context of his assessment of the appellant's evidence that he did not know his father's whereabouts. Judge Gill said the remaining grounds might also be argued.

5. The respondent filed her Rule 24 response on 8 October 2015 and submitted that the judge directed himself appropriately. The judge applied the test set down in the latest country guidance **EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC)**, considering the five year gap between the alleged incident and the events that led to the appellant leaving Albania when he concluded on the facts that there was no blood feud. See [37] of the decision. The judge found "... *there is an absence of commitment on the part of Mr B or his family to pursue the blood feud*" and that was a finding open to the judge to make on the evidence.

6. The judge went on at [38] to consider the other elements required by **EH**. At [39] the judge found that the family had never reported the claimed feud to the authorities and accordingly had failed to show even to the lower standard that attempts had been made to avail themselves of police protection.

7. From [41] the judge considered other parts of the appellant's evidence, finding that in relation to family contact, see [48], that the appellant declined the offer of contact with his family and that was not consistent with a claim of there being an active blood feud.

Submissions on Error of Law

8. Ms Stuart-King adopted the grounds dated 22 July 2015. The judge appeared to accept that the core of the appellant's claim was credible but found there was an absence of commitment to pursue the blood feud by the B family. See [37]. The judge said that no-one had been killed and that there had been only a single incident in 2014 when the appellant was attacked, but in making that finding the judge failed to take account of material matters:

9. The appellant's evidence was that his father had been living in self-confinement throughout the relevant period and that his brother had fled immediately after the initial event. That explained why there had only been one incident since the paralysis of one of the B family. The commitment of the B family to the feud could not be lawfully considered without taking that into account. Moreover, the appellant himself was attacked and told that he would be killed on reaching 16 and becoming a legitimate target.

10. The judge further misunderstood the nature of the risk faced by the appellant at [40] in finding that he was not the main target. As the son and brother of the two people involved in the fight, the appellant would plainly be at risk as a legitimate target for revenge. That was particularly so if the B family were not able to extract revenge on either the appellant's father or brother, as had been the case.

11. Those errors I have set out above, also rendered the judge's finding flawed at [42] when he found there was no blood feud. Further, given that the judge accepted the core of the appellant's claim, he had failed to give adequate reasons for finding there was no active blood feud.

12. At [39] and [45], the judge noted that the appellant's family had not sought the protection of the police but the judge failed to take into account that the evidence was that the family had sought to reconcile through the village elders, but that the B family had refused. The judge said that as a result of the failure to report matters to the police, the appellant had not shown that he could not avail himself of police protection on return, but that simply did not follow. It was not necessary for the appellant to show that the matter had been reported to the police to demonstrate insufficiency of state protection. In that regard, the judge failed to consider and follow country guidance. In particular, the headnote of ***EH*** [3] said:

> "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."

13. The judge's findings in the alternative at [43]–[49] could not render the above claimed errors immaterial as they infected the findings on internal relocation, in particular, the judge's flawed finding about the B family's

commitment to the feud. The headnote of **EH** at [3] also addressed internal relocation:

> "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."

14. The assessment of the commitment to the prosecution of the feud by the aggressor clan was a material part of the assessment of internal relocation. Thus the flawed finding on the commitment of the aggressor clan to the feud infected the assessment of internal relocation. Further, the judge failed to consider the reach and influence of the clan in assessing internal relocation.

15. The assessment of internal relocation in any event contained further errors. At [43] the judge referred to the possibility of a "*bese declaration*" without taking into account the fact that the B family had refused to reconcile.

16. At [44] the judge departed from the findings in the country guidance case and failed to give adequate reasons for doing so.

17. The judge took no account of the matters set out at [69]–[70] of **EH** and the expert opinion expressed therein by Dr Sievers at Appendix C at [6] and [22] that internal relocation would not be available where there was an active blood feud.

18. Ms Stuart-King submitted that certain aspects of the appellant's claim had been accepted but it appeared that the judge misunderstood certain issues. There were no findings as to whether the appellant was attacked or whether his father was in self- confinement. As a result, there was no adequate analysis regarding whether there was truly a blood feud.

19. Ms Brocklesby-Weller submitted that the judge was entirely alert to the situation. There was no failure to engage and my attention was drawn to [19], [41] and [49] of the decision. The judge had taken into account the fact there had been no further action from the aggressor family

Conclusion on Error of Law

20. In refusing the appellant's application for asylum, the respondent adhered to the UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum 1997 and the appellant's degree of mental development and maturity, UNHCR Guidelines on Protection and Care 1994. As a result, greater dispensation was given to the appellant throughout his claim. See [20]–[21] of the refusal. The respondent observed that the appellant had been generally consistent with regard to his core account but that there were inconsistencies. See [35] and [32]–[33] of the refusal. The respondent did not say the appellant's claim was incredible. Her position was that it was not accepted an active blood feud existed. That same approach was adopted by the judge. He made various

findings and concluded that there was no active blood feud, however, he made no finding that the appellant had put forward an untruthful account.

21. The grounds are misleading at [5] when they say the judge found at [42] that there was no blood feud. What the judge said was that there was no active blood feud, referring in that regard to **EH** at [35] of his decision.

22. The judge made the following findings:

- The feud was not prosecuted by the B family over a five year period from 2015.
- There was only one incident against the appellant in June 2014.
- No-one had been killed.
- There was an absence of commitment on the part of the B family to pursue the feud.
- The main target of the feud was the appellant's father and brother. The appellant was not the main target.

23. Ms Brocklesby-Weller submitted that there was no failure on the part of the judge to engage with the evidence, however, I find that he did fail to engage with the evidence in the sense that he made no findings with regard to the truth of the appellant's account. It was incumbent upon the judge to make credibility findings regarding the existence of the blood feud, the 2009 event, the 2014 event, the appellant's father's self-confinement and whether the appellant's brother was forced to flee. I find that the judge materially erred in dismissing the appeal on the discrete point that there was no active blood feud. It was incumbent upon the judge to analyse the evidence and make findings on the core issues, giving credit for the appellant's tender years. It was only by such a process that the judge could come to a reasoned decision with regard to risk on return. As a result, the judge gave inadequate reasons for the basis upon which he reached his decision. Further, I find what findings the judge did make infected his findings on internal relocation.

Summary

24. The judge erred materially in law for the reasons I have set out above.

Decision

25. I set aside the judge's decision in its entirety which must be re-made in the First tier following a de novo hearing. Directions are attached to this short decision.

Anonymity direction is continued.

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 his 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.

Signed Date 19 November 2015

Deputy Upper Tribunal Judge Peart

IAC-HW-MP-V1

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DIRECTIONS

1. Remit to the First-tier Tribunal, Taylor House, for a de novo hearing.

2. List first available date. Time estimate four hours.

3. Not later than ten working days prior to the hearing, the parties must file with the First-tier Tribunal and serve upon each other, all documentary evidence (including witness statements) upon which they intend to rely, as well as any skeleton arguments.

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Signed Date 19 November 2015

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