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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06160/2014

THE IMMIGRATION ACTS

At Field House
On 28th September 2015

Decision and Reasons Promulgated
On 21st December 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MR R M
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M.Trevelyen, Counsel, instructed by JD Spicer Zeb, Solicitors.
For the Respondent: Mr.E.Tujan, Home Office Presenting Officer.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. This is because the appellant claims he is at risk of a revenge attack and revealing his identity could put him at risk. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. The appellant is a national of Albania, born in January 1997.

2. He made a claim to asylum on the basis he was at risk because of a blood feud. He said this arose because of an incident in June 2013 when a taxi driver was stabbed by his cousins. He claimed no involved in the incident. Consequently, all his male relatives over the age of 16 left Albania, including his father. The appellant remained behind because arrangements had not been made for him and it was thought he would be safe given his age. However, that month he was the victim of a grenade attack and required hospitalisation.

3. His application was rejected on 11 August 2014. The respondent did not feel the index incident was likely to result in a blood feud. If it did, then there was sufficiency of protection and the appellant could reasonably relocate within Albania.

4. His appeal was heard at Birmingham in January 2015 by First-tier Judge Grimmet. At that stage the appellant was days short of his 18th birthday. He was represented, as he is now, by Mr Trevelyen.

5. His representatives had arranged for a report from a Dr Francis Arnold. The doctor, a specialist in wound healing, concluded that the scarring to the appellant's lower legs and right arm was consistent with shrapnel injuries. The appellant said some of the wounds were stitched and some were not which the doctor found consistent with the likely treatment and felt the appellant would not otherwise have known this. The doctor concluded that the scarring was highly consistent with the account of an explosion. The doctor dated the scarring to at least one year before his examination on 13 November 2014. This was consistent with the claim. The doctor also made a diagnosis of post-traumatic stress disorder.

6. His representatives had obtained a report from a country expert, Dr Antonia Young in relation to blood feuds in Albania. A similar report from her was considered by the Court of Appeal in MF v Secretary of State for the Home Department [2014] EWCA Civ 902. Lord Justice Moore-Bick concluded she had considerable experience of Albania and blood feuds and her evidence deserved to be given considerable weight. She was criticised however for unduly straying into the areas which the Tribunal had to decide.

7. In a decision promulgated on the 26th January 2015 his appeal was dismissed. The judge accepted that he suffered from post-traumatic stress disorder; may have problems recalling and had shrapnel injuries to his legs. However, the judge said there were numerous inconsistencies in the evidence and that the expert reports contained errors which undermined their reliability. The judge was not satisfied

that members of the appellant's family had murdered a taxi driver; that the male members had all left and that he was attacked as claimed, or that he was a risk.

8. In seeking permission to appeal it was argued that First-tier Judge Grimmet did not have an adequate basis for attaching so little weight to the two expert reports. Furthermore, it was submitted the judge erred in finding the attack lacked credibility and that a police report was unreliable. Finally, the judge had not properly considered the country guidance case of EH (blood feuds) Albania CG [2012] UKUT 00348.

The Upper Tribunal

9. Mr. Trevelyen sought an adjournment because there was no court interpreter available. The application was opposed by Mr. Tujan on the basis of interpreter was not required on the error of law issue which would be dealt with by way of submissions from the representatives.

10. I had regard to the procedural rules which state the overriding object of the rules is to deal with cases fairly and justly and ensuring so far as practicable that the parties are able to participate fully in the proceedings. It was desirable that the appellant have an appreciation of the arguments being advanced even though at this stage he was not an active participant. However, not to proceed would occasion delay and waste public funds. On balance I decided to proceed on the understanding the hearing was in relation to the error of law issue only.

11. Mr. Trevelyen relied upon the grounds on which leave had been sought. He submitted that the evidence of Dr. Young did not stray into areas properly for the Tribunal to determine. He acknowledges there were errors in the reports but these were not of substance. He did accept that if the judge were correct in finding there was no blood feud there was no need to proceed through the various considerations set out in EH (blood feuds) Albania CG [2012] UKUT 00348. However, he submitted that the judge's reasoning in relation to the non-existence of a blood feud was flawed, particularly in relation to the treatment of the expert evidence.

12. Mr. Tujan submitted that the judge was entitled to reach the conclusions she did in respect of the expert report. He submitted that the errors in the report could not be simply attributed to typographical matters but went to the reliability of the report. He said that the judge also looked at other factors before reaching the conclusion that the account was inconsistent. He suggested that the appeal simply amounted to a disagreement with the outcome decision.

Consideration

13. The first observation I would make is that the appellant was an unaccompanied minor at the time of his appeal. Allowance for his

vulnerability as a consequence must be made as the judge acknowledged at paragraph 6.

14. Expert evidence in relation to scaring was considered in detail in KV (scarring - medical evidence) Sri Lanka [2014] UKUT 00230 (IAC). Amongst other matters the guidance was that doctors preparing medico-legal reports for asylum seekers must consider all possible causes of scarring. Dr Arnold had background information on the claim and carried out an examination lasting approximately 2 hours. The doctor asked about any history of trauma. The doctor acknowledged there were other possible causes for individual scarring but discounted this because of the multiplicity of scars and the account given of treatment.

15. The doctor went on to consider the appellant's mental state. This was not his area of expertise but nevertheless comment could legitimately be made applying recognised criteria. The doctor concluded the appellant has post-traumatic stress disorder and stated this can result from any life-threatening experience, including childhood abuse. The doctor questioned the appellant about other causes and writes `*she* (my emphasis) denied, any such experience other than those described in the history above'. There is a subsequent repetition of the gender error.

16. Judge Grimmet at paragraph 14 notes the doctor accepts the cause of the scarring because of its multiplicity and the account of the treatment. However in the following paragraph the judge found this conclusion and the reference to PTSD was seriously damaged by the content of the last page of the report. The judge believes this may be referring to a different appellant altogether. The judge also criticises the doctor for not explaining why he is of the opinion the appellant has *severe* (my emphasis) psychological damage.

17. At paragraph 12 the judge dealt with the report from Dr Young. The judge appears to dismiss the report on the basis it is largely generic. Again, a reference to `twins' suggested to the judge the expert may be confusing the appellant with another case.

Conclusion.

18. Looking at these matters and the decision in its entirety it is my conclusion that the judge materially erred in law in her consideration of the appeal.

19. My impression from the decision as a whole is that the judge did not believe the claimant and was not open in her appraisal of the evidence presented. It is of note that the refusal letter does not question the truth of the underlying incident but takes the view that the circumstances would not amount to a blood feud which would put this appellant at risk. The refusal concluded in the circumstance there was sufficiency of protection for this appellant and in the alternative he could relocate. The

immigration judge went further than this and concluded that the index incident did not occur or that other family members had left the country or there was any risk from another family. It seems to me the judge discounted all of the evidence presented on behalf of the appellant frequently on the basis of what appear to be minor inconsistencies.

20. The medical evidence was on its face strongly supportive of the appellant's claim. The doctor gave reasons for accepting the appellant's account with the injuries. The doctor referred to the multiplicity of injuries and what the appellant said about treatment. The judge accepted the appellant has a shrapnel injury and suffered from post-traumatic stress disorder and his memory is affected. The account of being injured by a grenade was consistent with the injuries and it is not immediately obvious what other scenarios could expose a 15-year-old to such injuries. Some aspects of the report may be pro forma, for instance, in relation to the Istanbul protocol. It may well be that aspects of the final page have been word-processed and the doctor was careless in proof reading. However, I do not believe the judge was entitled to treat the report as seriously damaged because of this. Having accepted the diagnoses of post-traumatic stress disorder, rather than accepting the obvious cause given, the judge speculates it could be attributable to the trauma of leaving home .The judge appears to have attached little weight to this medical evidence. It is my conclusion this evidence has not been properly dealt with.

21. I reach the same view in relation to the judge's treatment of the evidence of Dr. Young .The Court of Appeal has recognised her expertise. The criticism was not for commenting on relocation in general terms. It was because she dealt with the specifics of the individual claim which was a matter for the tribunal. Again, the judge appears to attach little weight to this report, apparently dismissing it as generic and the fact that at one point she mistakenly referred to `twins'. It would seem inevitable that much of a country expert report will be generic. This does not undermine the strength of the report. Again, I do not feel this evidence has been properly dealt with.

22. There are similar patterns in the decision whereby evidence is dismissed. For instance, the judge placed emphasis on whether the appellant was in hiding throughout or whether he was tending animals prior to the hand grenade incident. The appellant had submitted a letter from a hospital in Albania, which was discounted on the basis the injuries identified differed from those mentioned elsewhere. Similarly, the appellant submitted a police report, which was discounted on the basis the country expert said the police would not do anything to help in a blood feud situation.

23. In summary, I find the judge in her decision did not demonstrate the evidence had been adequately considered. This is particularly so in respect of the expert evidence. Because of the judges conclusion

consideration in turn was not given to whether the circumstances were likely to amount to a blood feud.

Decision

The decision of the First-tier Judge Grimmet dismissing the appellant's appeal materially errs in law and cannot stand. The appeal is remitted to the First-tier Tribunal for a *de novo* hearing.

Deputy Upper Tribunal Judge Farrelly

Appeal Number: AA/16160/2014

MR R M
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Directions.

1. Retest as a *de novo* hearing in the First-tier Tribunal. Exclude First-tier Judge Grimmet.
2. An Albanian interpreter will be required.
3. The parties are to exchange bundles for use in the appeal no later than one month before a date of hearing is indicated.

Deputy Upper Tribunal Judge Farrelly