IAC-HW-MP-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/07333/2014
AA/07334/2014
AA/07335/2014
AA/07336/2014
AA/07337/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 4th September 2015	**On 18th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR D (FIRST APPELLANT)
WIFE (SECOND APPELLANT)
FIRST CHILD (THIRD APPELLANT)
SECOND CHILD (FOURTH APPELLANT)
THIRD CHILD (FIFTH APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms Brakaj of Iris Law Firm Middlesbrough
For the Respondent: Mr P Mangion, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants and each of them are citizens of Albania, whose dates of birth are recorded respectively as 29th January 1975, 1st May 1973, 27th December 2009, 10th January 2007 and 18th November 2012. The First and Second Appellants are husband and wife. The remaining Appellants are their children. On 5th January 2012 the Appellants claimed international protection as refugees upon arrival at St Pancras International Station having travelled from Belgium. On 8th September 2014 decisions were made to refuse the applications and to remove them from the United Kingdom by way of directions pursuant to Section 10 of the Immigration and Asylum Act 1999. The Appellants appealed and on 27th October 2014 their appeals were heard by Judges of the First-tier Tribunal Kelly and Evans, sitting as a panel, at Bradford. In a decision promulgated on 11th November 2014 the panel dismissed the appeals and each of them.

2. The basis upon which the Appellants pursued their appeals is set out in the Decision and Reasons of the panel and was as follows:

> "2. Credibility is not in issue in this appeal and the Appellants' history may conveniently be summarised as follows:
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> 3. The Appellant [by which was meant the First Appellant] hails from a village called 'Morin', which is to the north of Kukes in Northern Albania. His family has been locked in a blood feud (known in Albania as 'Kanun law') (sic) since the time when his great-grandfather (I) took back his sister from a member of the 'S' family to whom she was married. I's brother-in-law murdered him in revenge. This prompted I's son to murder his father's killer. There has been at least one further killing since that time and numerous threats of revenge.
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> 4. In an attempt to escape from the consequences of the ongoing feud, the Appellant left Albania, aged 16 years, in 1991. He resided in Greece for the following eight or nine years. This period was frequently interrupted by the Greek police removing him to Albania, following which he would return to Greece almost immediately. In 1999, he went to Macedonia for a few months and then to Italy, where he stayed until either 2002 or 2003. He then returned to Albania for two to three weeks, before moving to Macedonia in either 2003 or 2004. In 2005, he spent a few months in both Slovenia and Austria before returning to Italy, where he remained (legally) until in January 2012, when he came to the United Kingdom. He claimed asylum at St Pancras Railway Station.
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> 5. In 1999, whilst residing in Greece, the Appellant returned to an olive grove where he, his mother, and his younger brother (then aged 14 years) were working, only to find two men stabbing the apparently lifeless bodies of his mother and brother. The two men then turned their attention to the Appellant and began to stab him. The Appellant used a beer bottle in order to defend himself. The Appellant was later informed that one of the two men had subsequently died from the injuries which the Appellant had inflicted upon him with the bottle and that he is being blamed by the S family for this man's death.

6. The Appellant woke up in a Greek hospital, having been in a coma for some six months. Once he had recovered from his injuries, the Greek authorities told him that he had to leave because he did not have any lawful status in the country. So it was that he moved via Macedonia, to Italy.

7. Throughout the Appellant's travels with his family around southern Europe, the family in Morin has remained unoccupied. In 2011 whilst residing lawfully in Italy, the Appellant's paternal aunt (who had remained in Morin) died. The Appellant and his father therefore returned to Morin in order to attend her funeral. However, the Appellant was threatened whilst in the family home by a man who was armed with a gun. The man told the Appellant that he needed the S family's permission to be in Morin. He was rescued by his cousins, who were also armed and had travelled to Morin in order to attend the funeral. The Appellant thereafter returned immediately to Italy. His father was permitted by the S family to remain for his sister's funeral and returned to Italy on the following day.

8. In view of the incident at his aunt's funeral, the Appellant concluded that it was not safe for him and his family to remain in Italy. They therefore travelled by train, via Belgium, to the United Kingdom.

9. The Appellant fears that if he returns to Albania he will be killed by the S family and that the Albanian police will not protect him."

3. The Secretary of State had accepted the Appellants' account generally but refused the application on the basis that internal relocation to Tirana, the Albanian capital, was a viable and reasonable option for these Appellants.

4. The panel agreed with the Respondent. Applying the lower standard the panel was satisfied that the Appellants were not currently at risk of being killed or ill-treated by the S family provided they were to reside outside the general area of Kukes. On that basis the appeals and each of them were dismissed.

5. Not content with the panel's decision, by Notice dated 26th November 2014, the Appellants and each of them made application for permission to appeal to the Upper Tribunal. The grounds submit that the premise upon which the panel found that the Appellants might internally relocate was flawed amounting to an error of law. On 16th December 2014 Judge of the First-tier Tribunal Cruthers granted permission.

Was there a material error of law?

6. In order properly to understand the issue it is helpful to set out in full the relevant paragraphs in the Decision demonstrating the panel's reasoning:

"18. On the basis of the primary facts that we have summarised at paragraphs 3 to 8 (above), we are satisfied that the Appellants are not currently at risk of being killed or ill-treated by members of the S family, <u>provided</u> that they reside outside the general area of Kukes in northern Albania. We arrive at this conclusion because the last

occasion upon which the S family demonstrated a commitment to reaching beyond their home area was now some fifteen years ago.

19. We have noted that both the Appellant [First Appellant] and his father returned to Kukes in 2011 and thereafter returned to Italy unharmed. It is of course right also to note that the Appellant had to be rescued from possible harm by his cousins on that occasion, and that his father was only able to remain for his sister's funeral with the permission of the S family. We thus accept that there continues to be a real risk that the Appellant would suffer serious harm if he were to return to either Kukes or his home village of Morin. Nevertheless, the S family's reaction to this recent visit provides further evidence to show that their adverse interest in the D family is now confined to opposition to their return to the home area.

20. Mrs Liddle sought to persuade us that the Appellant had only been able to avoid persecution by the S family since 1999 by living in self-confinement. However this phrase is intended to cover a situation in which a victim of a blood feud is only able to avoid its consequences by living discreetly in his home area [see paragraph 71 of **EH (Blood feuds) Albania**] not withstanding the fact that this characterisation was also adopted by the decision maker [see paragraph 17 of the reasons for refusal letter] it is not in our judgment appropriate to describe the Appellant's account of how he has been living since 1991. If it was, then internal relocation could never be considered as an appropriate means of avoiding persecution by non-state actors. In our judgment, the appropriate characterisation of the Appellant's lifestyle since 1991 is one of self-imposed exile.

21. We have noted that the Appellant claims to have constantly changed his address whilst he was most recently living in Italy. There is however no evidence to suggest that the S family were seeking to trace him during this period, or any other time since the incident in 1999. We are therefore satisfied the continued exile outside Albania is no longer necessary in order to avoid being harmed by the S family, and we have no real doubt that he would be able to live openly and safely with his family in the Albanian capital of Tirana. Moreover, we are satisfied that it is reasonable to expect him to relocate to that city. Despite the many years that he has spent residing in other countries in southern Europe, the Appellant remains fluent in Albanian (as was evidenced by his use of an Albanian interpreter at the hearing) and he is, incidentally, also fluent in Italian and Greek languages (see his replies to the 'illegal entrant interview'). Furthermore, he has experience of working as a carpenter as well as in less skilled occupations [see the 'illegal entrant interview']. There is thus no reason to suppose that he will be destitute in Tirana, anymore than he was when residing in the numerous other countries that he has visited since 1991.

22. Finally, we are satisfied by the evidence that is cited at paragraphs 19 and 20 of the reasons for refusal letter, that the Albanian authorities take steps in order to prevent persecution or the suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of the perpetrators of such acts and that the Appellant would have access to that legal system. …"

7. The Appellants' case as set out in the grounds is that the Tribunal failed to take account of the fact that the First Appellant was stabbed whilst in Greece when the S family specifically sought out the family for the purpose of effecting the blood feud and that whilst that event occurred approximately fifteen years ago that was evidence on the part of the S family of its intention to seek out the First Appellant and inflict harm upon him should he be found. That no further harm came to the First Appellant was, in the submission made in the grounds, only evidence that he was not found rather than any lack of interest in him. Further it was submitted that the Tribunal erred in attaching significant weight to the First Appellant and his father returning to the Kukes area for the wake. Reliance was placed in the grounds on the fact that the First Appellant had to be rescued by his cousins and therefore that, it was submitted, provided significant evidence that the S family still wished to inflict harm upon the First Appellant were he to be found. Insufficient regard therefore was said to have been given overall to the risk to the First Appellant and his family.

8. Though not mentioned in the grounds, Ms Brakaj began by seeking to draw my attention to a document dated 21st December 2012 which was headed, 'Confirmation'. The document purported to be from the Committee of the Pan-national Conciliation. Clearly that document was before the Secretary of State; reference is made to it at paragraph 7 of the refusal letter and again at 8(g). In fact, insofar as there appeared to the Secretary of State to be discrepancies concerning dates, it is clear that they arose from that document. However it was common ground that there was no evidence that that particular document was before the panel: certainly it does not appear in the bundle of either party. The reason why Ms Brakaj sought to bring the document to my attention was because its third paragraph reads:

> "The Committee of Pan-national Conciliation will do all the efforts to conciliate the parts but in the actual situation the committee confirms that the life of [the First Appellant] and the lives of his family are in danger from this blood feud in every moment and in every territory of Albania" (sic).

9. It is disappointing to note that since the Appellants' representatives had relied upon the document and submitted it to the Secretary of State they had not, it would seem, sought to ensure that the document was available for the panel nor, given the provisions of Rule 15(2A) of the Tribunal Upper Procedure Rules 2008, made any application to the Upper Tribunal for that document to be considered. Nevertheless given the nature of the appeal, with the consent of Mr Mangion, I looked to the document, though I remind myself that the country guidance case of **EH (Blood feuds) Albania CG [2012] UKUT 00348** makes reference to attestation letters from Albanian non-governmental organisations with the guidance being that little weight should be given to them as they should not be regarded as reliable, see paragraph 74(h). On any view the 'confirmation letter' of 21st December 2012 was not accepted on the issue of internal relocation since the refusal letter made plain that that internal relocation was in issue.

10. It is difficult to see how the panel can be found to be in error for not having considered this document when it was not placed before them. Even were I to have allowed the Appellants to amend their grounds to place reliance on this document, given that little weight should be attached to it, it is difficult to see how any error could be found to be material.

11. Ms Brakaj then made further submissions which she accepted could be summarised as follows, "There was no sufficient analysis of the reach of the S family or of its intent".

12. I remind myself of the guiding principles that affect my approach to this appeal. These are well-known and are helpfully summarised in the case of **R (Iran) –v- Secretary of State for the Home Department [2005] EWCA Civ 982**:

> "… it may be convenient to give a brief summary of the points of law that will most frequently be encountered in practice:
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> (i) making perverse or irrational findings on a matter or matters that were material to the outcome ("material matters");
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> (ii) failure to give reasons or any adequate reasons for findings on material matters;
>
> (iii) failure to take into account and/or resolve conflicts of fact or opinion or material matters;
>
> (iv) giving weight to immaterial matters;
>
> (v) making a material misdirection of law on any material matter;
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> (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;
>
> (vii) making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the Appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made".

13. The Court of Appeal went on to emphasise that any error needed to be material. Further where late evidence was to be admitted, the principles in **Ladd –v- Marshall [1954] 1 WLR 1489** were apposite. A judge may only be overturned by the use of further evidence if it can be shown that:

> "(1) the new evidence could not with reasonable diligence have been obtained for use at the trial (or hearing);
>
> (2) the new evidence must be such that, if given, it would probably have had an important influence on the result of the case (though it need not be decisive);
>
> (3) that the evidence was apparently credible although it need not be incontrovertible".

Those principles are relevant to the confirmation letter of 21st December 2012.

14. In this case the panel directed itself by reference to the country guidance case of **EH (Blood feuds) Albania CG [2012] UKUT 00348** and set out from the headnote those parts which were material to the issue which they had to resolve. There was some discussion as to whether the panel had considered only the headnote rather than the substance of the country guidance but given reference to paragraph 71 at paragraph 20 of the statement of reasons any such submission would be difficult to sustain. Further I note at paragraph 16 that the panel were careful to make clear that they had considered all the evidence in the round before making their findings.

15. In the case of **VW (Sri Lanka) –v- Secretary of State for the Home Department [2013] EWCA Civ 522** McCoombe said at paragraph 12:

> "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying that the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that it is no basis on which to sustain a proper challenge to a judge's finding of fact. …"

16. In **McGraddie (Appellant) *v* McGraddie (AP) and another (AP) (Respondents) (Scotland) [2013] UKSC 58** the Supreme Court reminded all appellate jurisdictions of the care that is to be taken when looking to reverse findings of fact made at first instance and that they should do so only when satisfied that the findings were plainly wrong and not supported by the evidence.

17. The question for me is whether despite the apparently careful consideration given to the evidence, the panel nevertheless made a primary finding that was not open to it.

18. It is to be remembered that it is the lower standard which is to be applied in appeals such as this. I do not find that it was open to the panel to find that the incident in Greece, for which it found the S family responsible, albeit fifteen years ago, and which resulted in the First Appellant being hospitalised for six months, or the more recent incident in 2011, when members of the S family travelled approximately 40 kilometres to find and threaten the First Appellant (see question 29 of the substantive interview) entitled the panel to find, applying that lower standard, that evidence pointed to the S family no longer having an interest in pursuing the Appellant outside of Kukes. On the contrary the evidence indicated that when it was possible to trace or find the Appellant he was at significant risk. That the family in 2011 travelled 40 kilometres to do him harm reinforces not that the Appellant was no longer being pursued but the contrary. That the Appellant's father was allowed to stay for the wake was consistent with the local "honour system", as to which see paragraph 71 of **EH (Blood feuds)** which makes reference to a *besa* which might be given

for a particular event such as a family funeral. Further that the S family had not pursued the Appellant and his family in Italy in circumstances where the family kept changing their address again does not lead to the conclusion that this family could relocate to Tirana and just settle down. It is to be remembered that their evidence was accepted as credible. Their history had been one of an almost nomadic existence. It is not surprising therefore that there had not been many times when the families had cone into contact. That is far removed from concluding that there was no evidence that the S family were any longer interested in pursuing the Appellants outside their home area.

19. If the Appellant were required with his family to live in Tirana whilst fearing leaving their homes then the issue of self-confinement and the principles which emerge from the guidance in **HJ (Iran) –v- Secretary of State for the Home Department [2010] UKSC 31** are relevant.

20. Having found that the premises upon which the conclusion that the Appellants might internally relocate are not sustainable and amount to a material error of law I have to decide whether the matter should be remitted to the First-tier Tribunal to be re-heard or whether it is possible from the findings already made and the evidence received to re-make the decision myself. I come to the view that I am able to do that.

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21. In my judgment the undisputed facts demonstrate that the S family remain committed to the feud. The panel made that finding itself. Where I depart is that the incident in 1999 and more latterly in 2011 did not permit a finding, when applying the lower standard, that the S family would not pursue the First Appellant in Tirana were they to become aware of his presence there. That there is a sufficiency of protection for certain individuals is to be seen in the context of all of paragraph 69 and 70 of **EH** which provides as follows:

> "69. If there is a risk of persecution or serious harm on the particular facts of an Appellant's appeal, the next question is whether internal relocation is available affording effective protection, including whether it would be unreasonable to expect the Appellant to avail himself of that protection. We remind ourselves how small the population of Albania is, just over 3,000,000 with a land mass of about 10,000 square miles, roughly fifteen times the size of London, much of it mountains. The Respondent's current guidance on internal relocation in Albania is set out in her May 2012 Operational Guidance Note as follows:
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> > '2.4.2 Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of

the country where they would not be real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

2.4.3 Albania covers a total area of 28,748 square kilometres and has an estimated population of 3,002,859. Tirana is the capital and other principal cities are Koritsa, Durazzo, Berat, Elbasan, Lushnje, Scutari, Kavaje, Valona, Pogradec and Fier.

2.4.4. The constitution and law provide for freedom of movement within the country, foreign travel, emigration and repatriation and the government generally respected those rights in practice. Internal migrants must transfer their civil registration to their new community of residence to receive government services and must prove they are legally domiciled through property ownership, a property rental agreement, or utility bills. Many persons could not provide this proof and therefore lacked access to essential services. Other citizens lacked formal registration in the communities in which they resided, particularly Roma and Balkan Egyptians. The law did not prohibit their registration but it was often difficult in practice to complete. The law prohibits forced exile and the government did not employ it.

2.4.5 It may be practical for applicants in some categories who may have a well-founded fear of persecution in one area to relocate to other parts of Albania where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect to do so.

70. Internal relocation will be effective to protect an applicant only where the risk does not extend beyond the Appellant's local area and he is unlikely to be traced in the rest of Albania by the aggressor clan. A crucial factor in establishing whether internal relocation is a real possibility is the geographical and political reach of the aggressor clan: where that clan has government connections, locally or more widely, the requirement to transfer civil registration to a new area, as set out at 2.4.4 above, would appear to obviate the possibility of 'disappearing' in another part of the country, and would be likely to drive the male members of a victim clan to self-confinement in the home area as an alternative. Whether internal relocation is reasonable in any particular appeal will always be a question of fact for the fact-finding Tribunal".

22. In my judgment, despite Mr Mangion's valiant efforts to persuade me otherwise, the evidence points to a determination on the part of the S clan, contrary to the findings of the panel, to pursue the First Appellant whenever his whereabouts comes to their attention. The panel itself accepted that the First Appellant could not return to his own area and were he to do so then the question of "self-confinement" in the home area

would have been an issue. However self-confinement must also be considered also were the First Appellant to relocate because if in going to Tirana, as suggested by the panel, he would be unsafe in leaving his home, then it follows that relocation to that life would be unduly harsh.

23. Looking to the guidance I come to the view that it would be unduly harsh to expect these Appellants, against the history of this feud which has gone on for so long, with real harm having come to the First Appellant, and who because of the feud has spent many years moving from place to place, now to return to Albania where in my judgment there remains a real risk of harm coming to him and where the country guidance does not suggest that in circumstances such as his there is sufficiency of protection.

24. As is said at paragraph 74(k) 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. In my judgment the evidence points only to a real risk of a continuing danger such that this Appellant and his family cannot reasonably be expected internally to relocate.

Notice of Decision

The appeals of each of the Appellants to the Upper Tribunal are allowed. The decision of the First-tier Tribunal is set aside. The decisions are re-made such that each of the appeals are allowed. The First Appellant's appeal is allowed on asylum grounds. The remaining appeals were dependant upon that of the First Appellant and are allowed on that basis. The appeals were not advanced on human rights grounds other than an acceptance that the human rights aspect of the appeals stood and fall with the asylum claim.

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

Unless and until a Tribunal or Court directs otherwise, the Appellants are 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 Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed **Date**

Deputy Upper Tribunal Judge Zucker