



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02275/2015
AA/02272/2015

THE IMMIGRATION ACTS

Heard at Field House
On 14th December 2015

Decision & Reasons Promulgated
On 20th January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

OK
KK

(ANONYMITY DIRECTION MAINTAINED)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Burrett, Counsel; Ozoran Turkan Solicitors
For the Claimant: Ms S Sreeraman, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants appeal with permission against the decision of First-tier Tribunal Judge Aujla dismissing the Appellants' appeals against the Respondent's decision refusing to grant them asylum or recognise that their removal would result in a breach of their human rights.
2. The Appellants appealed against that decision and were granted permission to appeal by Upper Tribunal Judge O'Connor. The grounds upon which permission was granted may be summarised as follows:

- (i) It is arguable that the judge erred in his consideration of the documentary evidence, in particular the failure to consider the evidence in the round prior to coming to the conclusion on the credibility of the first Appellant's evidence at paragraph 40 of the determination: that no weight was placed on the documentary evidence
 - (ii) It is arguable that the judge erred in failing to consider the recent claimed facts when considering the alternative position of the Appellants, rendering that consideration inherently flawed.
3. I was provided with a Rule 24 response from the Respondent.

Error of Law

4. At the close of submissions, I indicated that I would reserve my decision, which I shall now give. I find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
5. At §40 of the judge's determination, when considering the first Appellant's credibility and core claim, the judge failed to engage with the background situation. It is correct that the judge discusses the facts in 2011 earlier in the determination (see §§31 and 38), however omits consideration of those events in assessing credibility by referring to the last event as occurring in 2001. However, this is plainly not so given that the wounding occurred in 2011 and represents the last claimed incident.
6. There is also mention of failure to engage with the first killing in 1997 as the starting point for the blood feud. The age of the children and entry into teenage years is also not dealt with as well as the risk to the appellants as children and the future risk they face. I find that these points have force and compound the earlier error in relation to the omission of the 2011 incidents. Whilst the Respondent's Rule 24 reply states that the judge's error at §40 is rectified at §41, I agree with Mr Burrett that this alternate consideration is flawed as it omits consideration of the 2011 events, which is corroborated by §44 of the determination which confirms that the last killing was over 14 years ago and that no recent incident occurred which represents an incorrect alternate assessment of the Appellants' claimed account.
7. I also find that the documentary evidence should not have been overlooked in the manner which it unfortunately appears to have occurred. The judge needed to consider the documentary evidence regardless of the Appellant's credibility as the documents were of some significance and included death certificates, newspaper articles and apparently a DVD depicting the funerals in 2002. Although this finding is tempered by the fact that the newspaper article of 6 May 2011 which allegedly referred to Mr I K at page 150 of the Appellant's bundle appears to be in Albanian.

Nonetheless, I am *just* persuaded that this second independent ground represents a material error.

8. In the light of the above findings, I set aside the decision and findings of the judge in totality.

Decision

9. The appeal to the Upper Tribunal is allowed.
10. The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal, to be heard by a differently constituted bench.

Anonymity

11. The anonymity order of the First-tier Tribunal is maintained.

Signed

Date

Deputy Upper Tribunal Judge Saini