IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06365/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 March 2016	**On 19 April 2016**

Before

Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)

Between

EN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Kadic of A de Ruano, Legal Advisors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal (Judge C Ferguson) who dismissed the appellant's appeal against the respondent's decisions made on 4 March 2015 refusing his asylum and humanitarian

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protection claims and on 20 March 2015 to remove him under s.10 of the Immigration and Asylum Act 1999.

Background

2. The appellant is a citizen of Albania born on [ ] 1997. He made a clandestine entry into the UK on 22 July 2014 and claimed asylum on 25 July 2014. He had left Albania in early July 2014 travelling to Italy and then to France. On 12 July 2014 he was encountered by Immigration Officers in France, fingerprinted and issued with a Notice to a person liable to removal and returned to Italy but he went back to France two days later. He was then able to make his way to the UK, arriving on 22 July 2014.

3. He based his claim for asylum on the fact that he feared serious harm from a Mr L (L), and L's father who owned a casino and restaurant in a town near the appellant's home village. The appellant's father had started gambling and drinking in 2010 and got into debt. He borrowed money from L who kept asking for his money back. In August 2012 the appellant's father went to Greece to work so that he could repay the money but L and his father continued to contact his family asking where the appellant' father was. The appellant claimed that on 10 March 2014 L had been to the appellant's school threatening him, saying that if he did not give the money back he would kill him. The appellant then stopped going to school and stayed at home. However, on 13 March 2014 he decided to go to the village to buy some groceries but there saw L who approached him with a friend. They hit the appellant with an iron bar on the back of his head and he later woke up in hospital where he saw his mother and the police, who said they would deal with the matter.

4. After this incident the appellant's maternal uncle took him to Tirana where he attended school. The visits to the family from L continued. The appellant returned home at the end of the school year in June 2014 and there was an incident on 21 June 2014 when L came to the appellant's home, dragged him out and said that if he did not get his money, he would kill him. Following this incident the appellant returned to stay with his uncle for about ten days and there was a further incident on 1 July 2014 when shots were fired at the appellant at his uncle's home by L and another man. The appellant lay on the floor for about ten minutes while they fired in his direction and they then drove off. Many people attended the scene and the police came and they said they would do something about it. On 2 July 2014 his uncle made arrangements for the appellant to leave Albania.

5. The respondent accepted the appellant's nationality and identity but not his account of being threatened by Mr L. It was her view that, even if the appellant's account were to be accepted, L was a non-state agent and there was no evidence that he had a political profile or influence over the

authorities or that he had power that would preclude the appellant from seeking state protection. For these reasons the application was refused.

The Hearing before the First-tier Tribunal

6. At the hearing before the First-tier Tribunal the appellant gave oral evidence. He said that he had been targeted by L because he was the eldest son. He had not been in contact with his immediate family since coming to the UK because his uncle had told him that his mother did not want to make contact with him. He had, however, been in contact with a cousin on his mother's side and had obtained a letter from the hospital confirming that he had received treatment there on 13 March 2014 for a cut to his head. His cousin had told him in June 2015 that his uncle had taken his mother and siblings to another house but they were found there and threatened and intended to move to another place. It was the appellant's case that the police in Albania could not offer effective protection as they were weak, inefficient and corrupt and even if he moved to a different part of the country, he would inevitably be found.

7. The judge found, bearing in mind the appellant's age and the detail and consistency of his account, that he was a credible witness and that his story was broadly true [23]. She shared some of the respondent's concerns about the likelihood of the appellant putting himself in a position of danger on two occasions when he went out into the village and when he returned to the family home at the end of the school term, but said that she would not go so far as to say that this made his story inherently implausible and she considered that he had given reasonable explanations in his oral evidence.

8. She placed very little weight on the letter from the hospital because of the oddity in the interpreter's declaration which appeared to refer to a different document but confirmed that her conclusion on credibility was based on the fact that the appellant's account was detailed and consistent and it did not appear that he had sought to exaggerate.

9. At [25] the judge said that the fact that the appellant has faced threats and attacks from a non-state individual is not sufficient, however, to establish a right to asylum, humanitarian protection or protection under the ECHR. She was not satisfied that "being a child of a father whose debts lead him to be threatened" constituted a particular social group for the purposes of the Convention. She said that she had seen no evidence of this being a wider social issue or of the appellant sharing particular personal characteristics with others in such a group [26]. She went on to consider whether there were substantial grounds for believing that the appellant would face a real risk of suffering serious harm if he returned to Albania. She accepted that in the absence of state protection there would be a real risk of suffering

serious harm at the hands of L if he returned to his home village and she identified as the central issue whether the appellant was unable to or owing to such risk unwilling to avail himself of the protection of the Albanian authorities.

10. On this issue, she set out her conclusions at [29] finding in summary that the appellant had not submitted any evidence to show that in general the protection of the authorities in Albania was insufficient and that the evidence from EH (Blood feuds) Albania CG [2012] UKUT 348 was specifically directed to the issue of blood feuds and did not support a conclusion that there was insufficient protection generally. She relied on the Home Office Country Information and Country Guidance document on Albania dated August 2015 (Country Report 2015) and in particular para 2.1.5 to the effect that in general the Albanian authorities were able and willing to provide protection to a person fearing non-state agents or rogue state agents but this was dependent upon the particular circumstances of the case and the profile of the individual. She noted that the appellant had not provided any expert or other background evidence to cast doubt on that recent summary of the general position.

11. The judge found that the appellant’s assertions about L’s power to influence the authorities were speculative. He had no direct evidence of this apart from the possible failure to investigate the attack on 13 March 2014 but little was known about what the police’s involvement was on that occasion. He had not claimed that he had reported to the police what happened or asked for the matter to be investigated and could not even say that the police failed to investigate the later shooting because he left the country immediately after the incident. She said she could not place any weight on the appellant's assertion about the information from his cousin given that it was effectively third-hand and he had not provided a statement for the appeal so there was no evidence of any further threats or attacks on the appellant's family or of the family making failed attempts to seek the protection of the authorities.

12. For these reasons the judge found the appellant had failed to show a real risk of the Albanian authorities failing to protect him from ill-treatment under article 3. It was therefore not necessary to consider the issue of internal relocation but for the sake of completeness, she said she would not have considered it reasonable to expect a young man of 18 to relocate to an unknown part of the country where he would have no family and no means of supporting himself. Accordingly, the appeal was dismissed.

The Grounds and Submissions

13. The grounds raise a number of issues but they can briefly be summarised as follows: the judge was wrong to find that there was no Convention reason and that there was no basis for a grant of humanitarian protection. She had erred in her assessment of the issue of sufficiency of protection by failing to give sufficient reasons for departing from the findings in the

current country guidance in EH. She was wrong to say that the appeal under articles 2 and 3 simply stood or fell with the previous conclusions and had been wrong to reject the evidence from the appellant's cousin.

14. Ms Kadic adopted these grounds, arguing that the judge had erred in law in [25] echoing a comment made when permission to appeal was granted by the First-tier Tribunal that this paragraph was arguably wrong in law. She submitted that the findings on sufficiency of protection set out in EH at [70] should apply. She argued that the judge had wrongly assessed the issue of internal protection and argued that when the Country Report 2015 was read as a whole, the view expressed at para 2.1.5 that in general the Albanian authorities were able and willing to provide protection to a person fearing non-state agents was not justified. In the light of the findings of fact there had not been sufficient consideration, so she argued, of the issue of sufficiency of protection. She submitted that the appellant was in fact being targeted because he was a member of his father's family and on this basis there was a particular social group rather than the more opaquely drafted group of "being a child of a father whose debts lead him to be threatened".

15. Mr Clarke submitted that the judge had reached a decision open to her on the evidence. The country guidance in EH was nuanced and dealt with the specific situation of a blood feud involving revenge killing under Kanun Law predominating in northern Albania. The present case was one of pure criminality and the judge had been entitled to conclude that the Albanian authorities would be able to provide protection. The judge had considered the position of L and whether he exercised power and influence but had found that the appellant's assertions were speculative. He submitted that the judge's findings were wholly reasonable and properly open to her.

Assessment of Whether there is an Error of Law

16. The issue for me to decide is whether the judge erred in law such that the decision should be set aside. The judge accepted to the lower standard of proof that the appellant had given credible evidence and that his story was broadly true. She was not satisfied that he was a member of a social group and therefore could not come within the Refugee Convention but she went on to consider whether he qualified for humanitarian protection. She found that he had failed to show that he could not look to the Albanian authorities for protection. This finding is criticised primarily on the basis that the judge failed to take proper account of the country guidance decision in EH and was wrong to rely on the Country Report 2015.

17. So far as EH is concerned, it clearly deals with the position where there are active blood feuds under Kanun Law: at [74(c)] the Tribunal held that whilst the Albanian state had taken steps to improve state protection, 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. EH was therefore dealing with the specific issue of blood feuds under Kanun Law and does not without more support an argument that the appellant would not be able to look to the authorities in Albania for protection.

18. I am also not satisfied that the judge erred by relying on the Country Report 2015. Ms Kadic pointed to a number of paragraphs in that document, in particular paras 8.2.2, 8.2.9, 10.1.3, 10.1.6-7 and 10.1.10 which highlight a number of problems within Albania but I am not satisfied that they undermine the conclusion set out at para 2.1.5 that in general the Albanian authorities are able and willing to provide protection to a person fearing non-state agents subject to the particular circumstances of the case and the profile of the applicant. The judge referred in [19] to the fact that the appellant had submitted some country background evidence (at pages 9 – 19) of his bundle. This is a report dealing with the situation of children in Albania setting out a number of concerns but it does not contain anything to undermine the conclusions of the Country Report 2015.

19. It is clear from her decision that the judge did look at the appellant's particular circumstances. She was entitled to point out that he had not provided any expert or any other background evidence to cast doubt on the summary at para 2.1.5. She was entitled to find that the appellant’s assertions about L’s power and influence were speculative and that he had no direct evidence of this apart from a possible failure to investigate the attack on 13 March 2014 but little was known about what the police involvement was that on that occasion save for the fact that the appellant said that the police were there when he woke up in the hospital. She noted that he did not claim to have reported to the police what had happened or asked for the matter to be investigated and could not say whether they had failed to investigate the later shooting because he had left the country immediately. In summary, I am satisfied that on the issue of sufficiency of protection the judge, having considered the appellant’s individual circumstances, reached a conclusion which was properly open to her for the reasons she gave.

20. Insofar as whether [25] discloses an error of law, I am not satisfied that it does. It does not say that threats from a non-state individual cannot give rise to a claim for asylum or humanitarian protection. It simply states that the fact that the appellant has faced such threats is not sufficient (i.e. in itself) to establish such a right. The judge made it clear that the issue of sufficiency of protection and internal relocation would have to be considered. She was not satisfied that the appellant had shown that there was no sufficient protection for him in his particular circumstances in Albania. However, she did accept that, had that been the case, she would not have considered it reasonable to expect the appellant to relocate away from the areas where he would be at risk.

21. The grounds also argue that the judge was wrong not to accept the evidence from the appellant's cousin but the judge dealt adequately with that in [29(iv)]. She said that she could not place any weight on the appellant's assertion about the information from his cousin. The assessment of that evidence was an issue of fact for the judge in the light of the evidence as a whole and her finding on that issue was properly open to her. On the issue of whether there was a Convention reason, in the light of the way the case was put to her, it is understandable why she found that there was no Convention reason. It appears that she was not referred to the opinions of the House of Lords in Fornah [2006] UKHL 46. Had she been, she may well have decided that the appellant being a member of his father's family was sufficient to amount to membership of a particular social group. However, the appeal would in any event, have been dismissed in the light of her findings of fact on the issue of sufficiency of protection.

Decision

22. The First-tier Tribunal did not err in law and it follows that its decision stands. An anonymity order was made by the First-tier Tribunal and no application has been made to vary or discharge that order which accordingly remains in force.

Signed Date: 13 April 2016

H J E Latter

H J E Latter
Deputy Upper Tribunal Judge Latter