



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/12472/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 21 July 2016**

**Decision & Reasons Promulgated  
On 29 July 2016**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**DG  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Hussain, instructed by Morgan Dias Immigration  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, DG, is a female citizen of Albania. She appealed to the First-tier Tribunal (Judge Garbett) against a decision of the Secretary of State dated 20 August 2015 refusing her claim for asylum. The First-tier

Tribunal, in a decision promulgated 17 May 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant's claim concerned the extent of the threat posed to her in Albania by the existence of a family blood feud. At [30] the judge had accepted that the appellant's husband had been killed by the Haklaj family in 2002. However, the judge went on to note that "the appellant's own evidence is that murder was a mistake and in recognition of this the Haklaj family apologised and that apology appears to have been accepted because they [the Haklaj family] were granted 40 days in which to roam". Later, when seeking to characterise the appellant on the basis of the Tribunal's findings, the judge wrote [32] "what I am left with is a woman whose husband was tragically killed by accident by a member of the Haklaj family in 2002 immediately after which the family apologised".
3. The grounds of appeal assert the judge has made a material error in a finding of fact; the evidence (presented primarily in the written statement of the appellant) indicated that although an apology had been offered, it had not been accepted by the appellant's family. Indeed, as the grounds point out, had the apology been accepted it would not have been necessary to grant 40 days to the Haklaj family in order for them to leave the area ("roam"). There seems to be little doubt that the judge has based the Tribunal's assessment of the risk to this appellant upon return to Albania on the misapprehension that the appellant's family had accepted the Haklaj family's apology. This is important because two members of the Haklaj family had allegedly been killed during the 40 day grace period referred to by the judge. At [31] the judge records the lack of firm evidence regarding those later killings although the judge makes no firm finding of fact that the killings did not actually occur. In any event, I am satisfied that the judge has misunderstood the evidence regarding the apology and that, because the judge has based, at least in part, his assessment of risk on a misunderstanding, the Tribunal has erred in law such that its decision falls to be set aside.
4. I also note the contents of [34]:

"Given the evidence of the Upper Tribunal in *EH* that the number of blood feuds in Albania is now small and declining and in the absence of credible evidence I am not satisfied, even to the low standard of proof that this appellant or her children are a potential victim of a blood feud. The expert report is of course of help only if I find a blood feud is established and for the above reasons I do not."
5. It appears the judge's intent has been to deal with the expert evidence only having decided whether or not the appellant had given a credible account. That is an approach which appears to be contrary to existing jurisprudence (see *Mibanga* [2005] EWCA Civ 367). It was necessary for the judge to consider all the evidence in the round before reaching any findings, including findings as to the credibility of the appellant's account.

6. In the light of what I have said above, I have decided that the decision should be set aside. There will need to be a new fact-finding exercise as none of the findings of fact of the First-tier Tribunal shall stand. That fact-finding exercise is better conducted in the First-tier Tribunal.

**Notice of Decision**

7. The decision of the First-tier Tribunal promulgated on 17 May 2016 is set aside. None of the findings of fact shall stand. The matter will be returned to the First-tier Tribunal (not Judge Garbett) for that Tribunal to re-make the decision.

**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 their 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 29 July 2016

Upper Tribunal Judge Clive Lane