



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06673/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated
On 16 June 2017**

Reasons

On 13 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR NDUE UCA
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Harding (Counsel)

For the Respondent: Mr P Nath (Home Office Presenting Officer)

DECISION AND REASONS

1. I shall refer to the parties as “the Appellant” and “the Respondent” who is the Secretary of State. This is an error of law hearing. I consider whether or not there is a material error of law in the decision the First-tier Tribunal (Judge AW Khan)(“FTT”) promulgated on 19.01.2017 in which he dismissed the appeal on asylum and human rights grounds.

Background

2. The appellant is a citizen of Albania who was born on 15th February 1964. He claimed asylum on the grounds that he was a potential victim in a blood feud. His claim was that his father killed a man in 1991 because of a

land dispute which led to a blood feud. The appellant was not aware of the blood feud until 2000 when his father told him about it on the telephone. The Appellant claimed asylum in January 2015. The respondent did not find his account to be credible and refused the application.

FTT decision

3. The FTT found no reliable evidence that a blood feud existed and that the Appellant's account was not credible. The FTT found no evidence of any death by killing by the Appellant's father. It found that a (twice) translated certificate from the Peace and Reconciliation organisation in Albania was not a reliable document as its provenance was uncertain, there had been a delay in obtaining the documents for which there was no satisfactory explanation and there was no evidence to support the claim that there had been intervention to reconcile the families. The FTT found no explanation for why the Appellant's father had not informed the family about the killing which took place in 1991, until 2000. The FTT rejected the Appellant's explanation. The FTT took into account the Appellant's immigration history in that he arrived in the UK in 1997 and claimed asylum on completely different grounds which were rejected in 2000. He made no further claim on the basis of a blood feud at that time and delayed until January 2015. The FTT found no detailed evidence of the reason for the blood feud other than it was linked to a land dispute. The FTT found it lacking in credibility that between 2000 and 2010 the Appellant lived illegally in the UK and given that during that time he was aware of the blood feud, he made no asylum claim nor took steps to legitimise his stay until January 2015. The FTT placed no weight on the hearsay evidence that added nothing to the case and was unreliable because the letter showed the Appellant's address when he was not in fact living there.

Application for permission to appeal

4. In grounds for permission to appeal it was contended that the FTT failed to make findings on material matters as follows: Whether or not parties came to the appellant's family home in 2000 and established that there was a matter of honour between them? Whether or not the Appellant's father self-confined from 2000-2005? Whether or not the Appellant had been personally told by his father of the killing that he committed and that the Appellant was the next target?
5. The grounds further argued that the FTT failed to consider the claim and credibility in the context of the background material. Further that the FTT used the word "rational" which implied a higher standard of proof was being applied. The FTT failed to give proper reasons for placing no weight on the Peace and Reconciliation document ("P & R document"). The FTT was wrong to find against the Appellant because of the lack of death certificate when the FTT failed to ask the Appellant about the death certificate. The FTT was wrong to place no weight on the witness evidence.

Permission grant

6. Permission was granted by FTJ Ford who found that there were no arguable grounds as to the issue of the death certificate and its translation. It was arguable that the FTT did not adequately explain why the P & R documents were unsatisfactory, that the FTT was wrong to place no weight on the hearsay evidence of the witness and that the FTT failed to make findings on material matters.

Rule 24 Response

7. The respondent opposed the application arguing that the FTT findings and reasons were sustainable on the evidence.

Submissions

8. I heard submissions from both representatives. Mr Harding expanded on his grounds of appeal arguing that the decision amounted to an unclear and unreasoned set of comments about the evidential probity of a document, the FTT ought to have placed some weight on the hearsay evidence, and the FTT did not consider the claim in the context of the background material (COIS July 2016) or **EH** and failed to make findings on material matters. The decision was unsafe.
9. Mr Nath contended that the findings made by the FTT were open to it to make on the evidence. It was reasonable that the document was not reliable given that it only came into existence after 3.12.14 [15]. The finding as to the absence of the death certificate was an open finding. The FTT correctly took into account the delay and the fact that the Appellant had previously made a claim for different reasons [17]. It was reasonable that the FTT had not specifically considered **EH** given that it found that the Appellant's account was not credible [21]. The background material produced was unhelpful.

Discussion and conclusion

10. In terms of the criticism that the FTT did not look at the evidence in the round before reaching its credibility findings, I am satisfied that the FTT made findings on the subjective evidence that were open to it to make in considering if the evidence was internally consistent. The FTT ought also to have considered the Appellant's account in the context of the background material, in other words whether it is externally consistent. Mr Harding acknowledged that the background material included in the Appellant's bundle [20] was neither relevant nor of any assistance to the FTT, but he had relied on the COIS on Blood feuds dated July 2016 to which no reference had been made by the FTT. The COIS did not appear to be in

the file and there was no reference to the same in the decision and reasons. The FTT considered the background material produced by the Appellant and I am satisfied that this material had no bearing on the case at all and that the FTT was right to disregard it. As to the COIS on blood feud, if it was produced it ought to have been referred to when considering the credibility of the Appellant's claim but in the light of all of the evidence that was before the FTT and the findings made, I am satisfied that this is not a material error. The FTT did not deny that blood feuds existed nor take any points that could have been supported by background evidence, but it concluded that the evidence by the Appellant was not reliable and that he had failed to establish the existence of a feud. Mr Harding did not specifically identify any matters with reference to the COIS or to the country guidance case of **EH** that would have supported the Appellant's particular claim. In essence I am satisfied that the FTT found no reliable evidence of a blood feud and it is hard to see why reference to the background material would have altered the findings or conclusions reached in this appeal. The FTT demonstrated an understanding of blood feuds and referred to **EH**.

11. Whilst accepting that the decision lacked precision and clarity in terms of the phrasing of the findings and reasons, I am satisfied that overall the FTT did make findings that were open to it to make on the evidence and also having regard to the immigration history of the Appellant which it was entitled to take into account. I take the view that the FTT's use of the word "rational" rather than reasonable was unfortunate but that it did not imply the application of a higher standard of proof. In reading the decision as a whole there can be no doubt as to why the FTT made the decision that it did. The grounds raised do not either individually nor collectively render the FTT decision as flawed. The FTT is not expected to make findings on every piece of evidence and I am satisfied that the findings made and reason given were sufficient and that there was no material errors.

Decision

12. There is no material error of law disclosed in the decision which shall stand. The appeal is dismissed.

Signed

Date 15.6.2017

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER
NO FEE AWARD

Signed

Date 15.6.2017

GA Black

Deputy Judge of the Upper Tribunal