



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08627/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 4 September 2017

Promulgated

On 12 September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

DM

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Khan, instructed by Malik & Malik Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 17 November 1972.

2. The appellant entered the UK in 2015 and after being apprehended applied for asylum in February 2016. The reason he gave for his application was that he was at risk in Albania because of a blood feud which had been ongoing since 1997 when his brother killed someone. The respondent did not accept he was genuinely at risk because of a blood feud and rejected the application.
3. The appellant appealed to the First-Tier Tribunal. In a decision promulgated on 16 March 2017 his appeal was dismissed by Judge Heatherington. The appellant is now appealing against that decision.
4. Judge Heatherington did not find the appellant credible. His primary reason for this was the information that emerged at the hearing about a previous application for asylum made by the appellant in 1999.
5. In his asylum interview, dated 11 May 2016, the appellant referred to his previous application in 1999 for asylum. In response to a question about why he made that application, his answer was that he came to the UK for the same reason (ie because of the blood feud) but he reported himself as Kosovan on the advice of an interpreter. He stated that he withdrew his claim and returned to Albania because one of the people threatening him came to the UK.
6. Judge Heatherington, at paragraph 1.5 of the decision, stated that on the morning of the hearing the Home Office Presenting Officer provided a copy of the determination by Judge O'Malley of the appellant's appeal heard in Nottingham on 20 February 2001. This appeal relates to the appellant's 1999 asylum application. The appellant's case at the 2001 hearing, as set out in the determination of Judge O'Malley, was that he was from Kosovo and feared the Kosovo Liberation Army ("KLA") because they wanted him to join them. He referred to his father being killed and said it could have been by Serbs, KLA or other Kosovans. There is no mention in the decision of a blood feud. Judge O'Malley dismissed the appeal, describing the claim to fear the KLA as "plainly an invention".
7. At paragraph 8.1 Judge Heatherington stated:

"He arrived at the hearing today intending to claim that in 1999 he entered the UK because of a blood feud declared in 1997. That was entirely untrue. The 2000 [sic] determination makes it clear the then asylum claim had nothing to do with a blood feud."
8. The judge proceeded to consider other aspects of the appellant's claim. At paragraph 8.5 he commented that the appellant failed to claim asylum at the first opportunity and only submitted a claim after being arrested. At paragraph 8.7 the judge noted that there was no evidence to support the appellant's claim to have been beaten up in 2007, including an absence of scarring. At paragraph 8.8 the judge found that the appellant's claim to

have been confined to his home was undermined by his claim to have been with his wife and family in the village centre when subjected to threats.

9. The judge commented, at paragraph 8.9, that he found the appellant surly and unhelpful.
10. The judge concluded that the appellant was not credible and dismissed the appeal.
11. The grounds of appeal take issue with the judge's evaluation of the appellant's credibility. It is argued that the judge improperly attached weight to the appellant's demeanour, describing him as surly and unhelpful without foundation to do so. It is also maintained that the judge made adverse credibility findings without having regard to the appellant's explanation for his conduct in his witness statement. In his witness statement the appellant explained why he left his self-confinement on the occasion he was threatened, but the judge had not taken this into consideration.
12. The grounds also contend that the judge failed to consider documentary evidence adduced by the appellant. The appellant submitted Albanian court documents showing his brother had committed murder and been imprisoned as well as a letter from the CPS concerning his nephew who had been attacked. These documents are not evaluated in the decision and the grounds argue that this amounts to a material error of law.
13. Before me, Mr Khan accepted that the appellant's witness statement did not accord with the 2001 determination but argued that this did not excuse the judge from properly considering the evidence before him. He highlighted the documentary evidence referred to in the Grounds of Appeal, which he claimed corroborates the appellant's account of a blood feud and are of central significance. Mr Khan argued that the judge had no basis for inferring the appellant was not the victim of violence because of a lack of scarring - there was no medical or other evidence to support such a position.
14. Mr Tufan focused his submissions on the difference between the appellant's claim in 1999 and the present one, describing them as completely different. He argued that the documentary evidence relied on by the appellant does not strongly support the case, contending that there was no evidence establishing that the person who the appellant claims is his nephew and about whom the CPS document is written is in fact his nephew.
15. As is clear from the 2001 determination of Judge O'Malley, when the appellant applied for asylum in 1999 he did not claim to be in a blood feud, even though his current case is that the blood feud has persisted since 1997.

16. This is completely inconsistent with the information he gave when applying for asylum in 2016 where he maintained that the application in 1999 arose from the current blood feud.
17. Moreover, the fact that the first asylum claim was adjudicated in 2001 is inconsistent with his claim in 2016 that he withdrew the 1999 application. In addition, in the current application the appellant stated that his parents died in 2005 and 2008 (paragraph 27 of the asylum interview). However, in the 2001 determination it is stated that he claimed his father had been killed by the Serbs, KLA or other Kosovans.
18. In assessing the appellant's credibility, the judge was entitled to attach - indeed, it would be difficult to envisage any judge not attaching - substantial weight both to the fact that (a) in the appellant's claim for asylum in 1999 no mention was made of the blood feud which is now said to have started in 1997; and (b) that in making the current application the appellant mischaracterised the basis for his 1999 application - stating, incorrectly, that it arose from the blood feud when in fact he contended before Judge O'Malley in 2001 that his fear of return stemmed from the KLA, not a blood feud.
19. At paragraph 8.9 the judge stated that he found "the appellant's general demeanour and his testimony not to be credible or trustworthy." I agree with the appellant that an adverse credibility finding should not be made because of an appellant's demeanour. See MM (DRC, Plausibility) [2005] UKIAT 19. I also agree that the judge erred by not making a finding in respect of the documentation purporting to show the appellant's brother's arrest and imprisonment, as well as the letter from the CPS concerning the person the appellant claims is his nephew.
20. However, given the damage to the appellant's credibility arising from the 2001 determination I am satisfied that any errors in respect of documentation or otherwise were not material and that the judge was entitled to find, for the reasons he gave, that the appellant lacked credibility and to dismiss the appeal on that basis.

Decision

- A. The appeal is dismissed.
- B. The judge has not made a material error of law and the decision of the First-tier Tribunal stands.

Signed



Deputy Upper Tribunal Judge Sheridan Dated: 10 September 2017

