Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05343/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Heard on 22nd of January 2018	**On 24th January 2018**
Prepared on 22nd of January 2018	

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

[A K]
~~(Anonymity order not made)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A. Eaton of Counsel
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Albania born on 12th of February 1990. He appeals against a decision of Judge of the First-tier Tribunal Bartlett sitting at Taylor House on 17th of July 2017 who dismissed the Appellant's appeal against a decision of the Respondent dated 10th of March 2015. That decision was to refuse to grant the Appellant international protection.

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2. The Appellant left Albania in 2012 and was encountered by British police on 8th of June 2014 on the A20 near Folkestone. He was served with removal directions which were deferred after he submitted an application for judicial review. On 19th of June he claimed asylum.

The Appellant's Case

3. The Appellant was not called as a witness at the hearing of his appeal relying instead on the written documents submitted to the Judge. The Appellant's claim was that his family were involved in a blood feud with a rival family, the [R] family. The Appellant was 8 years old when his father was murdered by the [R] family who wanted to take over the land owned by the Appellant's family. In 2010 when walking through his village the Appellant was attacked and hit on the left side of his head. He woke up in hospital having lost consciousness. His mother told him that his father had been killed in almost the same way as the Appellant was attacked and that the Appellant was lucky to survive. The rival family wanted to kill the Appellant as the only male member left to liquidate as they wanted the land for themselves and they wanted to expel her. His knowledge of these events came from his mother who told him that if he the Appellant returned to Albania he would be killed by the [R].

4. There would be inadequate care for him upon return. The Appellant relied on a number of medical reports which confirmed his injuries and described his mental difficulties. The Appellant had great difficulty looking after himself and receiving appropriate services for his mental and/or physical condition because of his unsettled immigration status in this country.

5. The Respondent did not accept that the Appellant had suffered persecution but rather was that victim of a criminal act. It was not accepted that an active blood feud existed. The [R] family had no influence over state authorities or throughout Albania and there was nothing to suggest they had an ongoing interest in the Appellant. There was no evidence that the authorities in Albania would be unwilling to assist the Appellant. There was a sufficiency of protection.

The Decision at First Instance

6. The Judge accepted that the Appellant had been hit on the head by a hard metal object in 2010. This could have occurred through an accident but the Judge was prepared to accept, in light of the reports, that the Appellant was injured as a result of a brutal attack upon him. The Appellant had suffered a brain tumour in Albania which had been operated upon but it was unclear if the problems the Appellant had arose from the attack or from the brain operation. The Judge accepted the conclusion of one of the doctors, a psychiatrist Dr Cullen, who concluded that the Appellant did not suffer from PTSD.

7. The Appellant had expressed fear about returning to Albania and experienced nightmares. The Appellant was in regular almost weekly contact with his mother in Albania but there was no evidence from her to support the Appellant's appeal. She had not provided a witness statement nor any documents from Albania such as the ownership documentation of the land in dispute. The Appellant had been in the United Kingdom for 3 years by the time of the hearing and the Respondent's refusal letter was dated 2 ½ years before the hearing. There had been ample time for steps to be taken to obtain such evidence.

8. The Appellant failed to identify more than the most basic information about the blood feud. There was little beyond identifying the [R] family, that his own family remained living in the village after the death of his father and that the Appellant remained in hiding after primary school. There was no identification of who in the [R] family had carried out the crimes; what actual threats had been made to the Appellant or his family or how his mother had been able to remain on the family land by herself for years without the [R] family causing her any harm. Although women were excluded from blood feuds, if the point of the feud was to obtain land, it would seem logical that the Appellant's mother would not be immune from the adverse attention of the [R] family.

9. The Judge commented at [27] that the Appellant had said his mother had sent him to the United Kingdom so he could receive better medical treatment as there was nowhere else he would receive treatment for his physical problems. The Judge inferred from this evidence that the Appellant was not truly in fear as a result of a blood feud but his reasons for coming to the United Kingdom were more linked to medical treatment or care.

10. Although the Respondent had relied on a letter from the British embassy in Tirana which appeared to suggest that the Appellant's father had not been killed by members of the [R] family nor had the Appellant been abused physically by them, the Judge placed little weight on that letter as it was no more than assertions. The Appellant's case was that his family had never approached the police and therefore they would not know about the incidents.

11. The Judge directed herself in accordance with the Upper Tribunal authority on blood feuds in Albania **EH [2012] UKUT 348**. No evidence had been provided about the notoriety of the killing of the Appellant's grandfather or father. The last act in connection with the blood feud was the attack on the Appellant in 2010 and the last death with was that of his father in 1998. There was no evidence as to how the [R] family had any means to locate the Appellant outside his village. The Appellant had given no reasons why he felt unsafe living in Kosovo for 2 years to which he had travelled after leaving Albania. There was insufficient protection from the authorities in the north part of Albania where the Appellant came from partly because of corruption and partly because of a general disinterest.

12. The Judge rejected the submission that relocation would be unduly harsh because the Appellant on his own evidence had relocated to Kosovo for 2 years. There was no evidence why Kosovo was unsafe. The Appellant was able to function and live there even without the help of his mother. The Appellant had lived in the United Kingdom with virtually no help from the authorities apart from some medical support. He had relied entirely on members of the Albanian community for his accommodation. The [R] family did not have the means or desire to pursue the Appellant throughout Albania or Kosovo. There were no details of any threats that the Appellant had received in Kosovo or that the [R] family had chased him there. The Appellant would not need to protect himself if he relocated. He would be in proximity to his mother who might wish to relocate to live with him to provide him with support. The appeal was dismissed.

The Onward Appeal

13. The Appellant appealed against this decision in grounds settled by counsel who had appeared at first instance and who appeared before me. It was argued that the Judge had failed to consider the evidence of Dr Cullen alongside the evidence of a psychologist Dr Shuttleworth who had carried out a forensic psychological examination of the Appellant. Dr Shuttleworth had concluded that the Appellant had an extremely low level of overall verbal and non-verbal functioning. The Judge gave no reason why she preferred Dr Cullen's speculative suggestion as to why the Appellant was not able to engage with the doctors questions rather than the clear evidence of Dr Shuttleworth regarding the basic inability of the Appellant to do so in a meaningful way. The Judge was incorrect to find that the Appellant had repeated in his evidence that the reason he came to United Kingdom was for medical treatment.

14. It was perverse to conclude that the killings of the Appellant's father and grandfather could not be categorised as a blood feud just because the initial cause of the feud was a land dispute. The Judge appeared to accept that the Appellant's father and grandfather were killed as part of the feud concluding that there was no further evidence regarding the notoriety of the killings. It was perverse to find against the Appellant because the last incident was the attack in 2010. The Appellant had been in the United Kingdom since 2014 and was in Kosovo from 2012. The Appellant was an only child.

15. The 2nd ground of appeal related to the issue of internal relocation. The Appellant would be entirely dependent upon others in order to internally relocate. The Appellant's appearance when he first arrived in the United Kingdom, an unkempt individual who hardly functioned suggested that before arriving in the United Kingdom he was not able to care for himself. He had been a victim of periodic epileptic seizures and needed both regular personal and medical assistance. The Judge had erred in suggesting the Appellant could relocate to Kosovo. Kosovo was an independent sovereign state in which the Appellant had no right to reside. The Appellant had left there because he did not feel safe. If the Appellant was sufficiently

at risk such that internal flight needed to be considered then the history and notoriety of the blood feud was relevant for the consideration of internal flight.

16. The [R] could only take the Appellant's family land if all the male members of his family were dead. It was perverse to conclude that the [R] would not be interested in finding the Appellant if he were returned to Albania. Due to his injuries he would not have the ability to take normal precautions to protect himself against the [R] family finding him in Albania.

17. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Hollingworth on 8th of November 2017. In granting permission to appeal he found it arguable that the lower burden of proof was satisfied in this case. The Appellant would have needed to have fallen into a higher grouping than 0.1% of the population in order to provide the extent of the details sought by the Judge as to the details of the feud. It was arguable that the origin of the feud had not been fully related to the way in which blood feuds were conducted regardless of origin. The Judge attached too much significance to the absence of further evidence regarding the notoriety of the killings and insufficient weight to the cumulative nature of the factors identified by or on behalf of the Appellant. The Judge had not fully considered the cumulative effect of the psychiatric and psychological examinations. The assessment as to internal relocation had thereby been affected.

18. The Respondent replied to the grant of permission by letter dated 28th of November 2017. The complaint that the two medical reports of Dr Cullen and Dr Shuttleworth were not considered in the round was not made out. The Judge has set out the key findings of all three doctors called by the Appellant. The Judge had found an inconsistency between the Appellant's football injury which he had sustained in the United Kingdom (he dislocated his elbow) and the report of Dr Shuttleworth that attested to the Appellant's mental function score as co-relating to an Alzheimer's sufferer. The Judge had properly concluded that the medical reports taken in the round did not provide a clear picture of the Appellant's situation. The grounds of onward appeal amounted to a mere disagreement.

The Hearing Before Me

19. At the hearing before me to determine whether there was a material error of law in the determination counsel relied on the grounds of onward appeal. The Appellant had not been substantively interviewed by the Respondent because of his medical condition. The Appellant had passed the test for feigning memory. The Judge had not considered what Dr Shuttleworth said about the Appellant's very low IQ. There was no contradiction between Dr Cullen and Dr Shuttleworth. Their reports had not been put to the other doctor for comment. Dr Cullen's finding that the Appellant was feigning memory loss should be read alongside Dr Shuttleworth's report that it was not feigned. The Appellant had wanted to come to United Kingdom for medical treatment. He told Dr Shuttleworth that he had come here because of the problems he

had had with the other family. The desire for medical treatment was not the main reason why the Appellant had come to the United Kingdom.

20. The reason why the blood feud had started was irrelevant. To avenge honour was not the only definition of a blood feud. In any event it was academic whether it was or was not a blood feud as there had been a series of attacks on the Appellant's family and no reason why they should abate. The Appellant had been out of Albania since 2012.

21. The Appellant was not able to look after himself to be able to relocate. He did not recall what had happened in Kosovo. In response to my question as to whether the doctors had been asked to consider why the Appellant might be unable to recall the events in Kosovo (a period of two years) counsel replied that the doctors could only deal with what the Appellant was able to recall. It was inconsistent for the Judge to find that the [R] family would not want to find the Appellant given what had happened to the Appellant's family in the past. He would be more easily found if he attempted to relocate to Tirana with his mother. The Judge had made no findings on whether the authorities would be able to help the Appellant if he were in Tirana as opposed to the north of Albania.

22. In reply the Presenting Officer argued that there was no material error of law in the determination. It was the Respondent's case that the Appellant had been the victim of a criminal act. That was how [20] of the determination should be read. There was no acceptance by the Judge that the assault on the Appellant had happened for the reason the Appellant claimed. What the Judge accepted was that the Appellant had fears not the details of the actual incident.

23. Much weight in the grounds was placed on the contents of Dr Shuttleworth's report. The Appellant was unable to recall the details of his claim. At page 164 of the Appellant's bundle Dr Shuttleworth stated that the Appellant had attended his surgery with a friend, a middle-aged woman whom he had met near his home at the time when he first left his detention hostel. Dr Shuttleworth wondered whether this lady was a friend of the Appellant's family but neither the Appellant nor the lady gave any indication that this was the case. The doctor continued "certainly she acted as a very positive advocate for him particularly emphasising the danger he would be in if he returned to his native country." The Respondent's submission was that this lady was not independent and thus what she told Dr Shuttleworth could not be given significant weight as an indicator of future risk to the Appellant.

24. The Judge had gone through the medical reports and was entitled put weight on Dr Cullen's report. The Appellant had said on a number of occasions that he came to the United Kingdom for medical treatment. The Judge pointed out inconsistencies in the Appellant's evidence. There was a lack of effort by the Appellant in response to Dr Cullen's questions. The Judge was not ignoring Dr Shuttleworth but reaching a conclusion open to her on the evidence. The Appellant was in weekly contact with his mother yet nothing had been provided from her. The Appellant had only been able to

give the most basic information about the blood feud. The Appellant was not truly in fear as a result of a blood feud. The Appellant was merely repeating what his mother had told him to say. The doctors were not in a position to decide whether what they were being told by the Appellant was or was not the truth.

25. The Judge had decided the case in the alternative. At [31] she had found that even taking the Appellant's case at its highest he had failed to establish that his situation fell within a blood feud. The Appellant was simply asking the Tribunal to accept his evidence at a bare minimum. The Judge was entitled to say, given the gap in the timeline for the period the Appellant spent in Kosovo that he would be able to relocate. The Appellant was able to function. The determination considered all of the evidence and the Appellant's case came down to a mere disagreement with the Judge's conclusions.

26. In conclusion, counsel reiterated that Dr Shuttleworth evidence had not been considered properly. The evidence of whether an advocate had gone with the Appellant to the appointment with Dr Shuttleworth was neither here nor there. In his screening interview the Appellant had said nothing about medical treatment. He did not know any details himself he had been told everything by his mother. She was not asked to give a witness statement and counsel had no instructions on why that was so. The Appellant had received treatment in this country, it was not correct to say he had received no assistance from the authorities.

Findings

27. The Appellant suffered a serious head injury in or about 2010 as a result of which he now functions mentally at a very low level. His asylum claim was based on fear of a rival family in Albania who wanted to take over the Appellant's family land. The Appellant's knowledge of the background of this feud with the rival family was very limited confined in fact to what his mother had told him. His mother was not called to give evidence. Whilst I appreciate that there might have been difficulties in securing a visa for the Appellant's mother to come to the United Kingdom to give evidence in support of her son, there appears to have been no effort made whatsoever to even take as basic a step as to obtain a proof of evidence from her. No explanation was given to me why that basic step had not been taken.

28. The Judge was evidently unimpressed by that failure particularly given the ample time open to the Appellant and his representatives to obtain that evidence. She pointed out correctly that supporting evidence is not a requirement in an asylum claim but where evidence can be readily obtained it is a legitimate subject for comment that that evidence has not been obtained.

29. It was difficult for the Judge in this case to assess the Appellant's evidence since there was so little of it that was first hand from the Appellant. A more detailed account of what happened appears to have been given to the psychologist Dr Shuttleworth instructed by the Appellant's solicitors and great reliance was placed on that account

in submissions to me that it supported the Appellant's claim that there was a blood feud. The difficulty with that argument was, as pointed out in the submissions on behalf of the Respondent, that when Dr Shuttleworth saw the Appellant he was accompanied by a lady who was acting as an advocate for him. She indeed appears to have been the source of much of the information then reported in Dr Shuttleworth's report. It is somewhat inconsistent for the Appellant to argue that he is so brain-damaged that he cannot give the details of his account but that the details of his account which appear in Dr Shuttleworth's report confirm the strength of his claim.

30. A further difficulty which the Judge had was to reconcile the two medical reports between Dr Cullen on the one hand and Dr Shuttleworth on the other. Dr Cullen indicated that the Appellant displayed a persistent lack of effort at interview. Dr Shuttleworth's potential explanation for this was the very low mental functioning of the Appellant. It is to be deprecated that the Appellant's solicitors did not see fit to refer Dr Cullen's report to Dr Shuttleworth and vice versa. The Judge had to make her decision based on what she had before her. Given the unresolved contradictions between the two doctors it is not surprising that the Judge at [23] found that the medical reports did not provide a clear picture of the Appellant situation. The Judge had looked at both reports in some detail quoting from them in her determination. It would be quite wrong to say that she did not.

31. The Judge was also concerned about the complete lack of evidence as to what had happened to the Appellant during the two years that he had lived in Kosovo between 2012 and 2014. The Appellant said that he could remember nothing about that only that he left because he felt unsafe. He could not say why he felt unsafe and there appears to be no evidence that he was targeted by anyone whilst in Kosovo. Whilst I appreciate the argument that the Appellant could not be expected to go to another sovereign state of which he is not a national the fact of the matter is that the Appellant did go to Kosovo for two years (on what basis we do not know), that nothing appears to have happened to him there. The one person who might have been able to enlighten the court as to what had happened in Kosovo was not asked to give any evidence. I refer of course to the Appellant's mother with whom the Appellant is said to be in weekly contact.

32. The Appellant's case is that he cannot be expected to relocate because he cannot look after himself due to his low functioning. That he lived in Kosovo for two years therefore needs some explanation. It was open to the Judge to draw an adverse conclusion against the argument that the Appellant could not relocate because of that lack of explanation about what had happened in Kosovo. The Appellant also argues that his unkempt appearance noted shortly after arrival in this country is evidence that he cannot cope on his own. There are however other explanations why an illegal entrant who has travelled across Europe to come to the United Kingdom, perhaps living rough on the way, might be in a state of disarray. That does not answer the point that if the Appellant was reunited with his mother he would be able to cope rather better than while travelling to enter the United Kingdom.

33. The Appellant submits that he is at risk upon return because of a feud with the rival family. The Judge did not consider that there was a blood feud. She specifically directed herself at [30] that the burden of proof was to the lower standard. In granting permission to appeal Judge Hollingworth appears to take the view that because of the Appellant's mental difficulties the lower burden of proof was satisfied. I do not accept that reasoning. That the Appellant has serious mental difficulties is most regrettable and of itself should not mean that a claim for international protection should be rejected. Indeed, in the case of minors the immigration rules provide that more weight should be placed on objective factors of risk than on the Appellant's own claims which may be subject to difficulties because of the Appellant's disability. The tenor of the determination indicates that the Judge was aware of these problems. I do not consider that there was any failure to treat the Appellant as a vulnerable party.

34. There were a number of problems with the evidence before the Judge. The attack on the Appellant was 2010 and yet he had managed to live in Albania for a further two years after that without further adverse attention. By this stage the Appellant was 20 years old and if this was a genuine blood feud a potential target. There was no evidence as to how the [R] family were likely to be able to find the Appellant. They appear not to have been able to find him in Kosovo. There was no supporting evidence of the notoriety of the feud. This was important because the Appellant could have approached his mother to find documentation to support the claim. This would have included as the Judge pointed out, title documents but could also have included news reports or other documentary evidence. Yet nothing was provided.

35. Whilst it is correct that a blood feud can start for any number of reasons including a dispute over land, it was open to the Judge, particular given the lack of evidence from the Appellant's mother, to find that if the dispute was over land and the Appellant's mother remained living on the land with seemingly no one else to help or protect her it was logical to assume that the [R] family would have made some effort by now to have removed the last obstacle to them gaining the land in question. However, there is no evidence to suggest that this happened. Again, it was a matter for the Judge to decide what weight to place on that.

36. The argument that the Appellant could not internally relocate to Tirana because he would have to travel with his mother and would then become more recognisable I find has no merit. It is mere speculation. It appears to assume that the [R] family have spies or informants all across Albania who would spot a disabled man in company with his mother and would become instantly suspicious. There is no evidence even on the Appellant's case that this somewhat fanciful scenario is at all likely.

37. The Judge's finding that the authorities would not protect the Appellant related to the north of Albania where blood feuds occur. The Judge accepted that Albania had a functioning police force and the position in the capital would potentially be quite different. The Judge gave the Appellant the benefit of the doubt in relation to alternative dispute resolution methods of solving the feud with the [R] family (if such a feud existed) but her comments in relation to the lack of state protection referred to

the situation in the north of Albania and not relocation to Tirana. The feud has never been reported to the authorities but there is no reason why if it existed it could not be reported to the authorities in Tirana.

38. The Judge carefully considered all of the evidence before arriving at cogent conclusions which were open to her. She was not assisted by the conflict between the medical reports, she was not assisted by the failure of the Appellant's mother to give evidence and she was not assisted by the unexplained gaps in the evidence (such as the two years spent in Kosovo). The Judge's overall conclusion was that the Appellant had come to the United Kingdom to seek medical treatment for his serious mental problems. Whether the Appellant said as much in so many words, when interviewed by Dr Cullen the Appellant's concern reported at 3.4 was that he did not know how he could get money to pay for his medication if he returned to Albania.

39. Dr Cullen had found it surprising that the Appellant was able to tell him less about the claim than the Appellant had been able to tell the Respondent in interview, see 5.1 of the report. The Appellant did not seem aware of the reason for his asylum appeal but said he remembered when he was prompted. The Appellant appeared fit to be interviewed although in fact no interview was carried out and the Appellant did not give oral testimony. If the Judge was to be asked to prefer Dr Shuttleworth's report to Dr Cullen's, the latter should have been given the opportunity to comment on the differences.

40. The Judge could only deal with this case on the basis of the evidence that was before her. She arrived at conclusions open to her on that evidence. The onward grounds of appeal are a mere disagreement with the Judge's conclusions. They claim that certain of the Judge's conclusions were perverse. That is a high threshold to cross and these grounds do not approach that threshold. There is no indication in the determination of any material error of law and I dismiss the Appellant's appeal against the decision of the First-tier Tribunal. I make no anonymity order as there is no public policy reason for so doing.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

Signed this 22nd of January 2018

…….
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 22nd of January 2018

…….
Judge Woodcraft
Deputy Upper Tribunal Judge