



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

Appeal Number: PA/01165/2016

THE IMMIGRATION ACTS

Heard at Field House

On 19 February 2018

**Decision & Reasons
Promulgated
On 09 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**D G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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.

Representation:

For the Appellant: Ms S Akinbolu, Counsel, instructed by Tuckers Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against a decision of First-tier Tribunal Judge Talbot (the judge), promulgated on 25 May 2017, by which he dismissed the Appellant's appeal on all grounds. That appeal was in fact a rehearing following a decision of the Upper Tribunal to set aside a previous decision of the First-tier Tribunal and remit.
2. In essence the Appellant's claim had always been put on the basis that his family was engaged in a blood feud in Albania and that he would be at risk on return to that country as a result.

The judge's decision

3. The judge makes a number of adverse credibility findings. In summary these are as follows. The Appellant had been vague in describing a trip out of Albania in 2014 to Italy, France and Germany. He had failed to explain why his passport did not include re-entry stamps when he allegedly went back to his country in 2014. The Appellant had previously lied in respect of one element of his protection claim, seeking to blame this on a previous solicitor.
4. By virtue of the adverse credibility findings and on the basis of evidence adduced by the Respondent on the day of the hearing (emanating from the British Embassy in Tirana), the judge found that the Appellant had in fact left Albania in February 2014 and had never returned. In turn, this put a large hole in his protection claim given that he had asserted to have been in Albania in 2015 when the blood feud was said to have been triggered.
5. In addition, the judge found that the Appellant's father had been able to live safely in Albania and that his brother had returned to that country on several occasions without experiencing problems. Therefore, although the judge accepted that there had been a protracted land dispute between the Appellant's family and another, it was concluded that there was no live blood feud. Article 8 is dealt with briefly and is said not to assist the Appellant.

The grounds of appeal and grant of permission

6. The application for permission was initially refused by the First-tier Tribunal, and then by the Upper Tribunal. A judicial review of the Upper Tribunal's refusal of permission was lodged and Mr Justice Walker granted permission on 16 October 2017.
7. In his decision he stated that he was particularly concerned that the First-tier may have failed to deal with crucial arguments advanced on the Appellant's behalf at the hearing. In addition, he referred to a particular document (to which I will return below) that appeared to support the Appellant's claim to have been in Albania in 2015. The judge commented that this document did not appear to have been dealt with at all, or at least not adequately addressed at the hearing. Following the grant of

permission a Master in the Queen's Bench Division quashed the decision of the Upper Tribunal to refuse permission to appeal. Subsequent to this Vice-President Ockelton granted permission to appeal. In this way the matter came before me.

The hearing before me

8. Ms Akinbolu referred to the document mentioned by Mr Justice Walker in his grant of permission in the judicial review proceedings. This document is contained at page 80 of the Appellant's original bundle. It purports to be a certificate from an educational establishment confirming the Appellant's attendance on a course in the country between 2014 and 2015. It was submitted that the document had simply not been dealt with by the judge. He clearly found the Appellant's credibility to be significantly damaged on the basis that he had been out of the country when he said he had been within it. The judge's failure to deal with the document at page 80 was a material error.
9. Ms Akinbolu submitted that the judge's findings in respect of the Appellant's father and brother were erroneous, as was his conclusion on the issue of protection, particularly in light of the country guidance in EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC). In respect of the evidence surrounding the trip to Italy, France and Germany, the judge had failed to take account of the Appellant's young age at the time.
10. As regards the stamps in the passport and the document from the Embassy, Ms Akinbolu submitted that this evidence had to be weighed against that contained in page 80 of the bundle. The judge had only had regard to the Embassy evidence and had said nothing about the Appellant's educational certificate.
11. Mr Kotas made the point that the Appellant's representative had not sought an adjournment at the hearing before the judge even though the evidence from the Embassy had only been provided on the day. There was no evidence from the Appellant's side as to the practices of the Albanian authorities in respect of stamping passports upon re-entry. The judge was entitled to take into account those factors that he did.
12. In respect of the document at page 80, Mr Kotas submitted that the judge was aware of it (there was reference to this document in the Record of Proceedings). This was the only evidence coming from the Appellant's side. Mr Kotas commented that the document itself was of fairly poor quality. It was said that on any view the judge was bound to have rejected the value of the document even if he had expressly dealt with it in his decision. In other words, the failure to deal with the document was immaterial. Mr Kotas also submitted that the other matters taken into account by the judge, such as the father's presence in Albania and the brother's visits, were matters to which he was entitled to have regard and place weight upon.

13. In reply Ms Akinbolu accepted that no adjournment had been sought but observed that the document at page 80 was the Appellant's evidence as to his presence in Albania in 2015, and that this fell to be expressly considered in addition to the evidence coming from the British Embassy.
14. At the end of submissions I reserved my decision on whether or not there were material errors of law in the judge's decision.

Decision on error of law

15. This has not been an easy case to decide. I have of course looked at the judge's decision as a whole. I have also borne in mind that judges are not expected to deal with each and every aspect of the evidence placed before them.
16. Here, there are certain matters in respect of which I find that the judge has not erred. In particular, the judge was entitled to take into account the older brother's visits to Albania, the fact that the brother has had his own passport stamped on re-entry, and, perhaps only just, that the father had remained living in the family home without having experienced any particular difficulties.
17. However, there is, I conclude, a material error in the judge's assessment of the evidence. He has failed to address the certificate from the Olof Palme International Centre at page 80 of the Appellant's original bundle. That document was clearly brought to the judge's attention, as is clear from the Record of Proceedings. On its face, the document appears to place the Appellant in Albania between May 2014 and March 2015. This of course is in contrast to the judge's findings that the Appellant left the country in February 2014, never to return. That finding by the judge was based on a number of factors and these may have been open to the judge to take into account as part of an overall assessment.
18. Having said that, the assessment also required him to address the document at page 80. It was clearly a potentially material aspect of the evidence adduced by the Appellant. In the face of the last-minute evidence from the Embassy, that document took on a particular significance (at least potentially).
19. The central problem is that the judge has simply failed to address this evidence in any way.
20. Mr Kotas submits that this failure is immaterial because the judge was, on any view, bound to find as he ultimately did, namely that the Appellant did in fact leave Albania finally in February 2014.
21. I disagree. It is true that the factors against the Appellant were fairly strong. On the other side of the scales, the certificate appears to come from a genuine source and appears to place the Appellant in Albania between 2014 and 2015. There is nothing so obviously suspicious about the document that it is clear that no weight could ever be placed upon it.

In my view it simply cannot be said that the judge was bound to have reached the conclusion that he did even if the relevant document had been expressly dealt with in the decision.

22. The failure is material, not simply on the basis of the Appellant's whereabouts between 2014 and 2015, but also because the judge has quite clearly relied upon his finding on the Appellant's whereabouts as significantly undermining the protection claim as a whole (see paragraphs 21, 22 and 27). Therefore, it cannot be said that the issue of the Appellant's whereabouts is self-contained or otherwise of little importance to the outcome of the appeal as a whole.
23. In this regard I would observe that there is merit to the Appellant's challenge to the judge's conclusion that there is a sufficiency of protection in respect of blood feuds in Albania. On the face of it, this conclusion does appear to run contrary to the guidance set out in EH.
24. For the reasons set out above and with a degree of reluctance given this appeal's history, I conclude that there is a material error of law in the judge's decision and I set it aside.

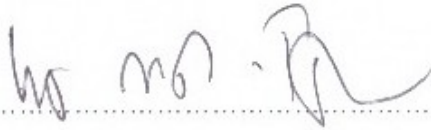
Disposal

25. I canvassed the question of what should happen with this case if I were to conclude that there were material errors of law. There were factors for and against remittal. Neither representative had a particularly strong view one way or another.
26. I bear in mind the understandable desire on the Appellant's part to have his case finally determined expeditiously and the fact that this case has already been looked at by the First-tier Tribunal on two occasions. On the other hand, this appeal clearly involves significant credibility issues, none of which had been conceded by the Respondent before me.
27. Taking matters as a whole and having regard to paragraph 17.2 of the Practice Statement, I have decided to remit this case to the First-tier Tribunal for a complete rehearing in respect of the protection claim.
28. It was agreed before me that Article 8 was not being pursued.
29. There are no preserved findings of fact. I will issue relevant directions to the First-tier Tribunal, below.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and I set it aside.

I remit this appeal to the First-tier Tribunal.



Signed:

Dated: 7 March 2018

Deputy Upper Tribunal Judge Norton-Taylor

Directions to the First-tier Tribunal

- (1) This appeal is remitted to the First-tier Tribunal with no preserved findings of fact;
- (2) The remitted appeal shall not be heard by First-tier Tribunal Judges Talbot and Herbert;
- (3) Article 8 is no longer being pursued;
- (4) In respect of the protection claim findings will have to be made in respect of, amongst other matters,
 - (i) whether the Appellant returned to Albania after leaving the country in February 2014,
 - (ii) the existence of a land dispute between the Appellant's family and the opposing family,
 - (iii) whether this dispute turned into a blood feud at any stage,
 - (iv) the ability of the Appellant's father to live in the family home and the Appellant's brother to visit Albania on a number of occasions since the feud was allegedly instigated,
 - (v) whether the Appellant himself is now a genuine target in respect of the alleged feud;
 - (vi) whether, if the Appellant is a target, he could receive sufficient state protection and/or internally relocate.