



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09747/2017

THE IMMIGRATION ACTS

Heard at Field House
On 6 April 2018 and 30 July 2018

Decision and Reason Promulgated
On 13 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

EMIRIJON [H]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms H Short (for Duncan Lewis Solicitors)
For the Respondent: Mr S Walker (Specialist Appeals Team; April 2018)
Ms A Everett (Specialist Appeals Team; July 2018)

DECISION AND REASONS

1. This is the appeal of Emirijon [H], a citizen of Albania born 20 March 1999, against the decision of the First-tier Tribunal of 5 December 2017 to dismiss his appeal, itself brought against the decision of the Respondent of 21 June 2016 to refuse his asylum application.
2. The Appellant's asylum claim is summarised in the refusal letter thus. He last lived in Dobrac, Shkoder, in Albania, where his family moved when he was aged seven.

On 20 June 2016 four men came to the family home and demanded money; he had not seen any of them previously. They spoke to his father and told him that he owed them money: if he did not pay them, they would either kill his father or deprive the Appellant of his liberty whilst he worked off the debt.

3. The Appellant fled his home village and went to live in Vlore, in the Albanian south. His father went into hiding and the Appellant had not subsequently been in touch with him. He remained in Vlore from June 2015 until October 2015. He telephoned his mother occasionally and she told him that the men had come to the house demanding money, and that they knew the Appellant lived in Vlore. He understood that she had reported the problems to the police, though he did not know where or what she reported. His cousin accompanied him out of the country to Italy, from where he began his journey to the United Kingdom.
4. The Secretary of State considered his claim, and accepted that elements of his account were sufficiently detailed to warrant accepting it as credible, including his flight from his home and the reasons for it, and his time in Vlore. Nevertheless, she refused his asylum claim on the basis that sufficient protection was available to him in Albania which had a functioning police service, and because in any event he could internally relocate to find safety.
5. The Appellant appealed. The First-tier Tribunal noted that much of the Appellant's claim was accepted by the Respondent, though did not consider that this extended to the evidence that he had been traced to Vlore. It noted that he had supplied evidence including a report by Dr Tahiraj, the author of several Home Office Country Policy and Information Notes on Albania, the 2013 OGN review and the commentary on the March 2012 COI report. She noted the expert's opinion that blood feuds still existed, though they were a declining phenomenon, and that they might affect children, who could be forced into self-confinement with relatives once their parents left.
6. Dr Tahiraj opined that Tirana was not necessarily a safe location as it was the location of the majority of blood feud killings and the police could not guarantee a person's safety; the national election register was published periodically and provided an opportunity for anyone to be traced. In any event the Appellant would face serious hardship because of the lack of employment and the 69% youth unemployment rate, the long waiting list for social housing, the poor quality of private housing, and the lack of reintegration support.
7. Additionally the Judge had regard to the July 2017 Country Policy and Information Note and the July 2016 Country Information and Guidance regarding blood feuds, indicating that there was a sharp decline in the number of active blood feuds. The Home Office CPIN stated that the government was taking steps to eradicate corruption and in general a person fearing non-state actors was likely to be able to internally relocate, depending on the nature of the threat and their personal circumstances. The Judge directed themselves to *EH Albania* where the Upper

Tribunal gave Country Guidelines that internal relocation would be available depending on the reach, influence and commitment to the prosecution of the feud by the aggressor clan: internal relocation would only be effective to protect someone where they faced a wholly local risk having regard to the geographical and political reach of the aggressor clan, and had to be assessed making allowance for the possibility of being traced via the compulsory system of civil registration when relocating.

8. The First-tier Tribunal concluded that the Appellant was young and that given his thespian ambitions could reasonably be expected to adopt a stage name as his professional acting persona; if he became highly successful then he would be in a position to discharge the debt by paying it off on his family's behalf. It was not credible that he had been traced to Vlore yet not harmed. He had been able to live in Italy undisturbed by the other clan. The fact that "life might be difficult" in a site of relocation had never been a ground for claiming asylum.
9. Grounds of appeal argued that the Tribunal had erred in law because
 - (a) The Presenting Officer representing the Respondent before the First-tier Tribunal had clearly accepted that the Home Office accepted the Appellant had been traced to Vlore and it was unfair to go behind that concession without notice;
 - (b) There was no finding on whether internal relocation would be unreasonable;
 - (c) Finding that he could avoid his antagonists by adopting a stage name amounted to a requirement to conceal his identity to avoid persecution;
 - (d) His circumstances in Italy were irrelevant to his safety in Albania;
 - (e) The expert report from Dr Tahiraj had been rejected without reasons;
 - (f) Aspects of the Home Office Guidance had been relied on notwithstanding that the conclusions in question amounted to the opinion of a party to the appeal rather than independent country evidence;
 - (g) There was no consideration of the Appellant's private life claim having regard to whether he faced very significant obstacles to integration in Albania (Rule 276ADE(vi)).
10. A Rule 24 response from the Secretary of State accepted that those errors of law Mr Walker helpfully clarified that the Secretary of State's refusal letter should be read as if the Appellant's account of having been traced to Vlore was accepted.

Findings and reasons following the error of law hearing

11. In the light of the realistic stance adopted by the Secretary of State, it was possible to relatively briefly identify the errors of law in the decision below. I accepted that that decision was indeed flawed by material errors of law, of which the most egregious were these.

12. The Tribunal clearly erred in revisiting a concession by the Secretary of State without notice. As most recently stated by Hamblen LJ in *IM (Pakistan)* [2018] EWCA Civ 626, judges do not look behind factual concessions by a party to an adversarial appeal absent exceptional circumstances, such as where the concession is partial or unclear, or where the evidence develops such that the concession requires revisiting. In such circumstances the representatives must be at once informed so that further evidence and submissions may be considered. Here the Judge gave no notice to the parties that the Secretary of State's acceptance of the Appellant's detection in Vlore was to be revisited. That was a material error of law.
13. Clearly the possibility of an internal relocation solution to the Appellant's problems was central to the appeal. Generally speaking consideration of an internal relocation claim will need to consider three distinct possibilities: the existence of a safe haven, its accessibility, and the reasonableness of expecting a person to live there. Here the First-tier Tribunal determined the appeal seemingly oblivious to the need to assess whether the site of relocation was a reasonable one: indeed it seemingly directed itself that that question was irrelevant.
14. It is unclear whether the novel point taken by the judge below regarding the possibility of the Appellant living under a stage name was pressed on her via submissions or was the product of her own ingenuity, but in any event it was plainly a misdirection. In *MSM Somalia* [2015] UKUT 413 (IAC) at [35-48] there is detailed discussion of the impact of 'forced modification' or 'discreet' behaviour of an asylum-seeker on return to their country. The Tribunal concluded that

"In short, the possibility of conduct entailing the avoidance of modification of certain types of behaviour related directly to the right engaged is irrelevant. Thus this possibility must be disregarded."
15. That reasoning represents the latest statement in a distinct line of authority to similar effect. In *Hysi* [2005] EWCA Civ 711 the Court of Appeal recognised that any expectation that a person deliberately conceal their identity on relocation effectively recognised that they would be modifying their conduct to avoid persecution; and, besides, might well require them to forgo association with their family members. The Court directed itself to the statement by Buxton LJ in [2004] EWCA Civ 1578 §14 that "A person cannot be refused asylum on the basis that he could avoid otherwise persecutory conduct by modifying the behaviour that he would engage in, at least if that modification was sufficiently significant in itself to place him in a situation of persecution."
16. As to the question of private life vis-à-vis the Human Rights Convention ground of appeal, the Appellant has lived in the UK for some years and might well have to limit contact with his family in Albania in the future to avoid detection by the agents of persecution there. Thus there was clearly a case under Rule 276ADE(vi) to be considered, as to whether the circumstances he would find himself in would

amount to very significant obstacles to integration back in Albania. Of course that would only require adjudication if the refugee claim failed.

17. The parties were agreed that given the limited further findings that would be required to finally dispose of the appeal, it was appropriate to set aside the decision of the First-tier Tribunal and to retain it for a continuation hearing in the Upper Tribunal. The issues that required determination were the compatibility of the refusal decision, having regard to the acceptance of the historical facts asserted by the Appellant, with the Refugee and Human Rights Conventions.

Findings and reasons following the continuation hearing

Evidence and submissions

18. It is appropriate to set out more of the evidence that was necessary for the previous hearing. Mr [H]'s witness statement set out that he had two sisters and one brother; the sisters were both married, one living in Albania and one in Italy. Both were a lot older than him. His brother and mother remained in Albania.
19. He did not know the identity of the men who had threatened his father. He had never seen his father again after the day his father departed the home and went into hiding. He subsequently found a receipt showing how much money had been borrowed, showing that the debt was owed to the [T] family. His aunt had picked him up and taken him to Vlore. He had not left the house during the time he stayed in Vlore. He had learned that his mother kept receiving threats against him during his absence, from individuals who stated that they knew where he was staying. He was aware that his mother had asked the police for help but none had been forthcoming. His mother feared that the Appellant would be killed to pay for the debt or be forced to work for the creditors. He left the country two days after the last threat.
20. He continued to speak to his mother once or twice a week. She told him that she felt that the security situation for the family in Albania was deteriorating. She had tried to help him as much as possible by seeking to resolve the issue, but without success. She had moved in with her own brother, the Appellant's uncle, in the hope he would protect her; she nevertheless continued to receive threats, but their antagonists would not dare touch a woman. The Appellant feared for his younger brother's safety, as he would soon be sixteen, and could then be targeted himself.
21. In the UK he had become involved with a theatre company, Phosphorous Theatre, originally with a view to improving his English. He took his involvement with the theatre increasingly seriously; he had learned how to perform to an audience and to be part of a community of different ethnicities and backgrounds. He saw the theatre as his future. The family running the company were like his own family now, and helped him with everything, including assisting him with his studies and his legal case. They treated him as a son.

22. I have already mentioned the report from Dr Enkeleida Tahiraj, a Visiting Senior Fellow at LSE who has advised international organizations including the European Commission, EUROFOUND, the UNDP, UNICEF, UN Women and the World Bank as well as national governments on social protection and social inclusion strategy design. In that report she sets out her knowledge and opinion on various aspects of the blood feud phenomenon.
23. She stated that feuds did not necessarily end with blood being taken by the threatening party; it might be settled in such circumstances, but could also continue indefinitely, if it was perceived that honour had not been mutually restored.
24. A regional police chief had stated it was difficult for them to handle the volume of feuds and self-confinements that confronted them. Wealthier individuals could pay the judge to ensure a reduction in their sentence. Whilst the government had taken steps to increase the number and pay of the State Police, their response was often delayed, and their salaries nevertheless remained low enough as to leave scope for them to succumb to corruption; indeed corruption bedevilled the entire national response to human rights problems, and the reforms generally fell short of producing long-term solutions. The police sometimes behaved in a way that threatened fundamental freedoms even though they ought to be protecting them; generally speaking corruption presented a barrier to accessing the law. There were significant delays caused by the formal and lengthy procedures that were necessary to obtain even basic information.
25. Vulnerable individuals were likely to be adversely affected by the abuse of power, corruption and malfeasance at all levels of society. One solution to the violence that attached to blood feuds was self-isolation which might include building tall walls around one's home, which some individuals likened to death because of the degree of social exclusion that resulted.
26. Dr Tahiraj noted the letter from Vilash Pjetri, an administrator with the Rrethina Administrative Unit, specifically written in support of the Appellant's claim. That letter confirmed the fact of the mother's complaints to the authorities and their subsequent failure to negotiate a resolution between the parties, and the inability of the police to resolve the dispute. This was the most reliable documentation that could reasonably be expected to be available in corroborating the potential dangers faced by the Appellant, and the statements therein regarding the limits on the ability of the police force to provide protection were consistent with public domain sources generally.
27. Ms Short placed significant weight on the arguments put forward in her predecessor's Ms Radford's skeleton argument. Having regard to the considerations identified in *EH*, this blood feud originated in the north of Albania, where the [T] clan were based. The efforts to resolve blood feuds had been described as insufficient by the Ombudsman, and the lengthening prison sentences had not

been effective given the possibility of well-off defendants bribing judges for shorter sentences. There was no comprehensive approach to investigations and prosecutions; efforts to combat corruption were limited because of the acquiescence, collusion and complicity of state agents; and access to protection depended greatly on individual circumstances such as family networks, social status, and economic standing. A returnee would necessarily lack a strong social base via which to access such networks. All turned on the ability of the aggressor clan to trace the victim.

28. She submitted that there was reasonable degree of likelihood of him being traced again in the future. The expert's evidence was effectively unchallenged and the conclusions drawn in the report were balanced and reasonably open to the author. His ongoing attachment to his theatre company would place him at risk of persecution.
29. The Appellant had formed very significant private life in the UK via his work for the Phosphoros Theatre Company, having made a substantial contribution to British society through his theatre work. He had helped to address the under-representation of young Muslim men in the theatre, and helped the Company's young and diverse audiences to understand forced migration. The forty-nine letters of support indicated the strength of his ties in the UK.
30. For the Secretary of State Ms Everett submitted that the evidence did not show that a person could not live in safety. There was an arguable sufficiency of protection. It was feasible for him to live safely by registering in a new area and pursuing his grievance with the police and instructing a new lawyer. There would be some prospect of integration. The same factors showing he could reasonably be expected to relocate in Albania tended to show that any interference with private life would not be disproportionate. The fact he was thriving in this country tended to show that he was a capable individual who could readjust abroad without great difficulty.

Findings and Reasons

31. The Upper Tribunal state in their headnote to *EH (blood feuds) Albania* CG [2012] UKUT 348 (IAC):
 - "3. The Albanian state has taken steps to improve state protection, but in areas where Kanun law predominates (particularly in northern Albania) those steps do not yet provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant. Internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan.
 - ...
 6. In determining whether an active blood feud exists, the fact-finding Tribunal should consider:

- (i) the history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud;
 - (ii) the length of time since the last death and the relationship of the last person killed to the appellant;
 - (iii) the ability of members of the aggressor clan to locate the appellant if returned to another part of Albania; and
 - (iv) the past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek protection from the Albanian authorities."
32. Paragraph 339K of the Immigration Rules states that "The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."
33. The Appellant's credibility is course established given the findings of the First-tier Tribunal, to which must be added the accepted fact of the Appellant having been traced to Vlore by the [T] clan. The remaining question is the well-foundedness of his fears and the possibility that state protection or internal relocation will provide a solution to his problems. It is necessary to assess the case against the benchmark of the decision in *EH Albania*: although the Secretary of State has referred to her own policy guidance on Albania in the course of defending this appeal, it was not suggested to me that there were any cogent reasons to depart from the Country Guidelines. I accordingly employ them as the basis of the structured assessment that now follows.
34. *EH* shows that it is essential to consider the degree of commitment by the aggressor clan toward the prosecution of the feud. Whilst there may have been no deaths due to the feud so far, it is clear that the [T] family have continued to hold an animus against the Appellant's family which has led to them visiting the family home relatively recently, in 2015. His father, if he is still alive, remains in a location unknown. The Appellant is clearly an express target of the feud given the visits to his home. He may have been originally threatened with abduction rather than death, but even if he faced the former rather than the latter eventuality, then being required to perform forced labour because of his membership of his father's family would itself amount to effective enslavement contrary to the non-derogable right to be free from slavery.
35. A critical feature of this case is that the Appellant is accepted as having previously been traced to the town of Vlore in the south of Albania by the [T] family. It is unclear how they obtained this information, but in any event this shows that

members of the aggressor clan do have the ability to trace him in another part of Albania. It is doubtful that they could have come across him merely by chance. When considering whether there is a safe haven available to him in Albania, *EH* specifies that one must consider the aggressors' reach, influence, and commitment to prosecution of the feud. Clearly the [T] family have sufficient reach and influence to determine his location, and they have expressed an ongoing animus against him.

36. There is the additional factor that the Appellant cannot be expected to hide his identity on a return to Albania. Given that he has already had some success as an actor, it is clear that he is not someone who will have a low profile on a return to Albania; he is much more likely to come to the attention of the [T] given this aspect of his personal identity. The threats that they have issued to his life and person are required to be taken seriously given the terms of Rule 339K.
37. I accordingly accept that the Appellant faces a real risk of serious harm because of his membership of a particular social group, ie his family. In the light of the opinion of Dr Tahiraj as to the failings of the state protection system in the context of the specific information from Mr Pjetri, and given the lack of any real interest shown in the case so far by the police, I do not consider that effective protection would be available to him.
38. It seems to me that there would be no safe haven available to the Appellant in Albania. He has previously been traced to a location in the south of Albania, which indicates that his antagonists are able and willing to track him down if required. In these circumstances the reasonableness of internal relocation does not arise.
39. The appeal is allowed.

Decision:

The decision of the First-tier Tribunal is set aside.
The appeal is allowed on Refugee Convention grounds.

Signed:

Date: 10 September 2018



Deputy Upper Tribunal Judge Symes