Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08578/2017

THE IMMIGRATION ACTS

Heard at Fox Court	**Decision & Reasons Promulgated**
On 12th February 2019	**On 7th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

BRIGEL [D]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss E Mitchell (Counsel)
For the Respondent: Miss J Isherwood (Counsel)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge N Haria, promulgated on 20th June 2018, following a hearing at Hatton Cross on 26th April 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Albania, and was born on 13th October 1995. He appealed against the decision of the Respondent dated 23rd August 2017 refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of the HC 395.

The Appellant's Claim

3. The Appellant's claim is that his family has been involved in a blood feud with the "[V]" family in Albania. The Appellant's parents were born and grew up in Kukes, in northern Albania, where the blood feud tradition remains as the "Kanun". According to the Kanun, the [V] family have a right to kill the Appellant or an adult male aged 17 or above from his family. The feud arose in 1996 when "Arben [V]", was killed by one of the Appellant's paternal uncles. In 2003, there was a retaliation when another of the Appellant's paternal uncles, shot Arben [V]'s father. The victim survived. In consequence, however, in 2009, another paternal uncle of the Appellant shot and killed Arben [V]. He was shot by Bajaram [D], who was prosecuted and imprisoned (see the Appellant's bundle at A36). Following this murder, the Appellant's father, his remaining paternal uncles, and his cousins, fled Albania to avoid being targeted by the [V] family. When the Appellant reached the age at which he too would become a target, his parents made arrangements for him to leave Albania. The Appellant left Albania in September 2012.

The Judge's Findings

4. The judge was not satisfied that the Appellant would be at risk of a targeted killing on account of a blood feud. It was noted by the judge that the Respondent had accepted the Appellant's identity and nationality. It was observed that, "The Respondent accepts that the [D] family is in a blood feud with the [V] family which began in 1996 when Arben [V] killed Fitim [D]" (paragraph 38). However, it was noted that the Respondent now considered that the Appellant would not be at risk of a targeted killing because "There have been no incidents against the Appellant's family with the [V] family since 2009". Moreover, it was the case that "The Appellant's father has been travelling freely in and out of Albania without facing problems" (paragraph 39). It was held that the blood feud was "no longer active" (paragraph 39). In any event, there was an active police system in Albania (paragraph 42) to which the Appellant could turn for assistance.

5. The judge also went on to hold that there were a number of difficulties in the Appellant's own evidence. As he observed, "The first difficulty for the Appellant is inconsistency in his evidence as to his family members. The Appellant has changed his claim as to who are his family members several times" (paragraph 58). The judge also thought that the family had not taken all the necessary precautions that they should have done if the Appellant really had been at risk (paragraph 69). Consideration was given

by the judge to the country guidance case of **EH (blood feuds) Albania CG [2012] UKUT 00348** (at paragraph 87 of the determination). This made it clear that blood feuds in Albania were now few and declining.

6. The judge dismissed the appeal.

Grounds of Application

7. The grounds of application state that the judge had wrongly made adverse findings by rejecting the expert report of Miss Senerdem. It was also argued that the determination lacked the necessary clarity.

8. On 13th December 2018 permission to appeal was granted on both these grounds.

Submissions

9. At the hearing before me on 12th February 2019, Miss Mitchell, appearing on behalf of the Appellant, relied upon her well-crafted skeleton argument, and on the decision in **HK v SSHD [2006] EWCA Civ 1037**, which signified the proper approach to be taken to fact-finding in cases where a different and unfamiliar cultural background was in existence. She submitted that the crux of this appeal was that the Home Office had already accepted that there was a documented blood feud between the [D] family and the [V] family. Indeed, she brought attention to this in her skeleton argument at footnote 2 where there is documentation obtained by his family from the Committee of Nationwide Reconciliation and the Municipality of Kamez (at footnote 2). What was not accepted by the Respondent, submitted Miss Mitchell, was whether this blood feud was any longer continuing.

10. The Respondent's view was that given that the last killing had been in 2009, and given that the Appellant's father had twice visited his country already, the evidence suggested that the blood feud had come to an end. However, she submitted that in this regard the country guidance case of **EH [2012] UKUT 00348** (which the judge refers to at paragraph 87) bore proper consideration. This made it clear (see paragraph 84(vi)) that, in determining whether "an active blood feud" exists, a number of factors should be taken into account.

11. These included 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. They also included the length of time since the last death occurred. Also of relevance was the ability of the members of the aggressor clan to locate the Appellant if returned to another part of Albania. Finally, consideration had to be given to past and likely future attitude of the police and other authorities towards the feud. The judge, submitted Miss Mitchell, had failed to evaluate these considerations properly.

12. Second, the judge was wrong to have disparaged the expert report of Erisa Senerdem. Whereas the judge makes it clear that "She is a highly educated person holding a PhD in economics ... and a Masters in Belgium" (paragraph 77), and whereas it was accepted that "Miss Senerdem had an in-depth knowledge of Albanian society and culture both as a result of her personal background and through advising on the parliamentary committees" (paragraph 80) the judge was wrong to have then stated that, "I am not satisfied that Miss Senerdem currently has a depth of knowledge required of a country expert" (paragraph 80). The criticism that Miss Senerdem "Did not attend the hearing and so she could not be examined on her report" (paragraph 80) was unwarranted, particularly given that the majority of experts do not actually attend hearings before the Tribunal and reliance often has to be placed upon their report only.

13. The more serious criticism, submitted Miss Mitchell, was the judge's statement that "Miss Senerdem makes no additional comments as to any additional factors that may be appropriate", because it is unclear what else she was meant to be saying (at paragraph 85). There is criticism that "She accepts without question that the Appellant is a member of the [D] family involved in a blood feud and has not considered the possibility that the Appellant may simply share the same surname as the family involved in the blood feud" (paragraph 85). However, the Respondent had accepted that there was a blood feud in relation to the Appellant.

14. For her part, Miss Isherwood submitted that there was no material error of law at all. First, it could not be assumed that the Appellant was a member of the correct "[D]" family in this case. The judge addressed this very issue as being of concern to the Home Office, when stating that "Miss Ellis on behalf of the Home Office submitted that the Home Office was of the view that anyone with the surname [D] was pretending to be from the same family involved in a blood feud with the [V] family ..." (paragraph 65).

15. Second, the judge was alive to the position of the Respondent Secretary of State who had "Rejected the Appellant's claim that he is a target of a blood feud on the basis that there had been no incidents against the Appellant's family with the [V] family since 2009" (paragraph 39).

16. Third, the judge had concerns about the Appellant's recollection of the entirety of his family members against the background of how the Home Office viewed the fact that anyone with the name of "[D]" was attempting to relate themselves to the family which had the feud with the [V] family. This is clear (at paragraph 62) when the Appellant had stated that his father had a total of nine brothers, four from one mother, and five from another mother, but the Appellant had "Failed to mention Bujer one of his father's brothers at the asylum interview because four weeks prior to his asylum interview he had spoken to Bujer, who had asked him not to mention his name ..." (paragraph 62). The judge took the view that "I do not accept the reason given by the Appellant for failing to mention Bujer

as the Appellant must have known that he was under a duty to provide correct and complete information" (paragraph 62).

17. In reply, Miss Mitchell submitted that, even if there were discrepancies in the Appellant's account, the essential question here was to do with the "materiality" of these aspects of the evidence. It was simply not material to the Appellant's claim, that there was confusion about his family members, in the same way, it was simply not material as to why the Appellant, who had been taken out of school on account of fears for his safety, was then found to be working at a car wash (at paragraph 69) given that the Appellant's evidence was that his parents used to drive him to the car wash and drive him back again, for reasons of safety. Furthermore, the suggestion that the Appellant could seek internal relocation was not properly reasoned and the conclusions reached by the judge are contrary to the country guidance case.

Error of Law

18. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. First, the judge's conclusion that the expert report could not be relied upon is not sustainable. This is especially given that the Appellant's expert was said to have "an in-depth knowledge of Albanian society and culture". It could not be said that this knowledge was not sufficiently current (see determination at paragraphs 80 and 85). If there was to be criticism of the expert report, it was necessary to identify an aspect of the expert report considered to be deficient. This was not done. The criticism of the expert on the basis of providing an "inaccurate assessment of facts" is also not borne out if regard is had to question 85 of the asylum interview, when the Appellant was asked what the [V] family said to the Appellant when they came to him, and he had replied "We shot at them twice you owe us blood". The Appellant had not said that his family had been threatened by the [V] family. The expert had concluded that there was absence of sufficiency of protection in Albania given the impunity attending upon the specific incidents in a blood feud, and the judge was critical of this (at paragraph 84) but a complete reading of the relevant sections of the report, suggests otherwise (see pages 108 to 147). In the same way the criticism that the expert had made "no additional comments as to any additional factors that may be appropriate" (at paragraph 85) is unwarranted if the Appellant had already provided all the necessary information on the basis of detailed questions asked of her in the instructions that were put to her.

19. Second, the judge's approach to credibility findings was also open to criticism. The Appellant was a child at the time of his screening interview, as well as his asylum interview, and also his first witness statement. There had been a passage of some four years after which the decision was made in relation to his claim, and by the time he arrived at the hearing he was an adult. The background evidence suggested that males of 16 or

over would be at risk under Kanun law. As a child, the Appellant's knowledge and understanding of the underlying tradition was bound to be limited and this conclusion is supported by the country expert, Miss Erisa Senerdem (see her report at paragraph 78). The Respondent had stated that the Appellant's evidence that the [V] family had begun to look for him at school while he was still 16 was "conflicting" and was "damaging to his credibility" (see paragraph 39). However, the evidence was consistent with the Appellant being mistaken as to the precise age when the risk arose. The Respondent had also asserted that the Appellant had "failed to remain consistent as to how many paternal uncles he had" but the Appellant had clarified the position, and made it clear that his father had four brothers and four half-brothers (from a different mother) and this had been referred to by the judge in terms.

20. Third, however, the most important aspect relating to the credibility of the claim as put by the Appellant is the fact that, if regard is had to the country guidance case of **EH (blood feuds) Albania CG [2012] UKUT 00348**, which makes it clear that what needs consideration is "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", then it remains the case that on the lower standard applicable, the blood feud remained active. This was because the most recent killing had been widely publicised. There had been two deaths. There had been a serious attack to date. The families' commitment to the feud had been demonstrated by the gaps of six and seven years between the killings (as set out in the Appellant's skeleton argument at paragraph 22).

21. What remains clear is that although in the determination (at paragraph 87) the judge had set out the headnote of the country guidance case of **EH (blood feuds)**, none of the factors is actually considered, expressly or critically in substance, in the section that is devoted to the reasons under the heading "consideration and findings". The failure to have regard to these factors, as specified in the country guidance case, was relevant to the case before the Tribunal, and its lack of application put the Tribunal into an error of law.

22. Finally, the evidence in relation to the father being able to return back to Albania has not been properly and accurately stated. The Appellant's father, Ilya [D], had stated that he had fled Albania due to the risk arising from the blood feud. He had since been living in Belgium. He returned only twice in recent years to Albania (see the Appellant's skeleton argument at paragraph 19). The trips had been extremely brief. He had been accompanied by stringent safety precautions. He had travelled in the back of a heavy goods vehicle to avoid detection (this was clear from his witness statement at paragraphs 12 to 14).

23. If the Tribunal is to state that the Appellant's father's movements are highly significant, as to whether the blood feud remained active, then it is important that these facts are properly accounted for. This is especially

given that the Tribunal had accepted that the Appellant's father "may be in Belgium" and that he "may have travelled in and out of Albania without his exit and departure being formally recorded" (paragraph 76). If this is the case, then it is not clear why the judge proceeded to give this aspect of the evidence "little weight". On the basis that the fact that the Appellant's father "had been able to travel in and out of Albania without problems was the strongest possible evidence that the Appellant was not at risk in Albania" (see paragraph 76).

Notice of Decision

24. The decision of the First-tier Tribunal involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Haria pursuant to Practice Statement 7.2(b).

No anonymity direction is made.

This appeal is allowed.

Signed Date

Deputy Upper Tribunal Judge Juss 3rd May 2019