



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12260/2018

THE IMMIGRATION ACTS

Heard at: Field House  
On: 29 May 2019

Decision & Reasons Promulgated  
On: 03 June 2019

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

FC  
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Blackwood, instructed by Morgan Pearse Solicitors  
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This case involves a cross-appeal, with both parties appealing the First-tier Tribunal's decision of 6 February 2019.

2. The appellant is a citizen of Albania born on 10 February 1960. Following various visits in 2009, July 2014, April 2016, December 2016 and November 2017, the appellant entered the UK on 29 March 2018 and claimed asylum on 16 April 2018. Her claim was refused on 9 October 2018 and her appeal against that decision was heard in the First-tier Tribunal on 20 November 2018.

3. The appellant's claim can be summarised as follows. In 1997 she moved to Tirana with her husband and two young sons. Her husband purchased a piece of land but the sale had been fraudulent as the seller was not the rightful owner. He came to an agreement with the rightful owner and they made a home on the land. One night a masked man came to their house and threatened to kill them. Four days later the same man returned with two others and he fired 72 bullets at them, leading to her husband's death in hospital four days later. The appellant was herself shot twice in the leg. Once she was discharged from hospital the appellant took her two children and moved to her husband's family home. Six months after her husband's murder three men were arrested and all were convicted. The appellant testified at their trial and identified one of them, AL, as having been the masked intruder who had later killed her husband. One of the men was sentenced to three years' imprisonment and another to six months. AL was sentenced to 23 years. Two of his relatives came to speak to the appellant and to her brother asking to settle the matter by withdrawing her claim but she refused. AL was released from prison in 2016. In December 2016 a stone was thrown through the window of their third floor apartment. Three days later her neighbour told her that two men had asked her which apartment belonged to her and a week later, on 30 November 2016, two men banged on her door at half past midnight and shouted at her to open the door, but she did not. She reported the matter to the police and went to the town council who dealt with reconciliations but they said they were unable to help. On 26 February 2018 an attempt was made to kidnap her when she was waiting at a bus stop but a young man helped her and took her to the police station and then to her home. Her brother told her that this was the last time that she could bring such problems to his home and her neighbour told her that she could not stay there. She left Albania and came to the UK. She believed that a blood feud had been declared against her as a result of her refusing to withdraw her testimony against the three men.

4. The respondent accepted, from the documents produced by the appellant, that her husband had been murdered by the three men but did not accept her account of threats and harassment from the men and did not accept that she was the victim of a blood feud. The respondent did not accept that the appellant was at risk on return to Albania either on account of a blood feud or as a lone female. It was considered in any event that there was sufficiency of protection available to the appellant and that she could internally relocate to another part of Albania. It was not accepted that the appellant's removal to Albania would breach her human rights.

5. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Clarke. The judge commented that the murder of the appellant's husband was particularly brutal and noted that the murder had happened in front of the appellant's children and that the appellant had been shot twice in the legs. The judge noted that the appellant had

produced a number of documents as proof of her claim and accepted that she was a key eye witness in the trial of the three men and helped secure their convictions. The judge referred to records of reports made by the appellant to the police, in respect of the incidents on 30 November 2018 and 26 February 2018 and a document entitled "certificate" from the Mufti of Diber dated 25 November 2016 confirming the appellant's husband's murder. The judge accepted that the documents were consistent with the appellant's claim and accepted that the appellant had been harassed by AL. The judge noted the reference to a blood feud in the letter from the Mufti of Diber as well as in a letter dated 30 November 2017 from the Head of the Administration Unit of Peshkopi and noted that a letter dated 23 November 2017 from the Head of the Administration Unit of Maqellare confirmed that they could not offer the appellant protection. However, with reference to the country guidance in EH (blood feuds) Albania CG [2012] UKUT 348, the judge did not accept that the appellant's situation constituted a blood feud but that it was a matter of a criminal gang who had murdered her husband and who now harassed her and that she was a victim of criminal behaviour. The judge did not accept that the appellant was a member of a particular social group as a victim of a blood feud or as a lone female and did not accept that she had a well-founded fear of persecution for a Convention reason. Neither did the judge accept that the appellant qualified for humanitarian protection or that Articles 2 and 3 applied, as he concluded that there was a sufficiency of protection available to her from the Albanian authorities.

6. With regard to Article 8, however, the judge found that there were very significant obstacles to the appellant reintegrating into life in Albania for the purposes of paragraph 276ADE(1)(vi) of the immigration rules, based upon the trauma of her past experiences, her mental health problems, her fear of AL and his criminal associates and the harassment she experienced from them. The judge found that accordingly the appellant's removal to Albania amounted to a disproportionate interference with her Article 8 rights and he allowed the appeal on that basis. He dismissed the appeal on asylum, humanitarian protection and Articles 2 and 3 grounds.

7. Both parties sought permission to appeal against the respective decisions of the judge. With regard to the judge's decision to allow the appeal on Article 8 grounds, the respondent relied, in his grounds, upon the case of Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 and asserted that the judge's findings on paragraph 276ADE(1)(vi) were insufficiently reasoned. As for the decision to dismiss the appeal on asylum, humanitarian protection and Articles 2 and 3 grounds, the appellant's grounds asserted that the judge had erred in his identification of a particular social group (PSG); that the judge had made a material misdirection of law in finding that the appellant was the victim of criminal behaviour and not a blood feud and that his analysis of the EH blood feuds factors was incomplete; and that the judge had erred in finding that the Albanian state was unable and/or unwilling to protect the appellant.

8. Permission was granted to the respondent by the First-tier Tribunal and also by the Upper Tribunal to the appellant on the last two grounds.

## Appeal hearing and submissions

9. Mr Blackwood submitted that the judge had erred in law in his consideration of the factors in EH and that the documentary evidence referring to a blood feud should have been properly addressed as supporting the appellant's case. Mr Blackwood referred to the Home Office Country Policy and Information Note (CPIN) on "Albania: Blood feuds" version 3.0 dated October 2018 which in turn referred, at paragraph 3.4.4, to the conclusion in the Cedoca report 2017, in regard to the difficulties in defining a blood feud. As for the second ground of appeal, Mr Blackwood submitted that the judge had erred in his consideration of sufficiency of protection. He referred to Horvath v. Secretary of State For The Home Department [2000] UKHL 37 in that regard and submitted that the presumption of innocence arising in the case of Osman v. United Kingdom - 23452/94 [1998] ECHR 101 was not applicable in the appellant's case as her husband's killer was not presumed innocent. There was ample evidence that the killer was ruthless and determined. The Albanian state had a duty to protect the appellant but failed to take steps to protect her after she reported the harassment to them. The judge, in finding that there was a sufficiency of protection, relied upon the actions of the police in relation to the appellant's husband's murder, but did not address the appellant's fear of her own murder. Mr Blackwood submitted that the judge's decision on the appellant's asylum, humanitarian protection and Article 2 and 3 claims ought accordingly to be set aside and re-made.

10. Mr Lindsay relied upon the CPIN in submitting that the judge was correct in reaching the conclusion that he did as to the existence of a blood feud. He referred to paragraphs 3.3.1 and 3.3.2 of the CPIN in regard to the evolution of blood feuds and the fact that they were declining and were often just criminal acts. He submitted that the letters upon which the appellant relied were reflected by those parts of the CPIN and supported the judge's finding that this was a matter of criminals trying to seek revenge rather than a blood feud. As for the second ground, Mr Lindsay submitted that the judge reached a sustainable decision and that the appellant was simply seeking to re-argue the matter.

11. In regard to the respondent's grounds of appeal in relation to Article 8, Mr Lindsay submitted that the judge had provided insufficient reasoning as to why the factors mentioned at [104] and [105] of his decision amounted to very significant obstacles to integration for the purposes of paragraph 276ADE(1)(vi), and that those factors were not rationally capable of meeting the terms of Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813.

12. Mr Blackwood submitted that the respondent's submissions did not reflect the grounds of appeal which were based upon Shizad. The judge undertook a broad evaluative judgment and the findings made were open to him on the evidence. The judge set out the obstacles to integration which included the effect of the trauma of witnessing her husband's murder with her children. The GP's letter confirmed her mental health issues arising from the incident. The judge was entitled to allow the appeal on Article 8 grounds. Mr Blackwood responded to Mr Lindsay's submissions on the interpretation of a

blood feud and sufficiency of protection, relying on the references in the Cedoca report to the Albanian authorities being insufficiently active in prevention of crimes and addressing blood feuds.

### Consideration and findings

13. I do not find the grounds of challenge to be made out for either party. It seems to me that the grounds, as put to me at the hearing, amount to little more than disagreements with the judge's decision.

14. Mr Blackwood's submission in regard to the findings on the existence of a blood feud was that the judge failed to explain why the letters produced by the appellant, which specifically referred to the existence of a blood feud, were not accepted as supporting the case that a blood feud existed and why the appellant's case was not accepted as meeting the relevant factors in EH in that regard. The letters referred to are as follows. At page 46 to 48 of the appellant's appeal bundle, a "Certificate" dated 25 November 2016 from the Mufti of Diber on behalf of the Muslim Community of Albania confirming in the last paragraph: *"Situating in this drama, Madam FC and her sons are endangered by blood feud phenomenon as this phenomenon is a widespread drama in Albania."* At pages 49 to 52, a "Record" dated 30 November 2016 from the Dibra District Prosecutor's Office of the appellant's report to the police of the incident on 29 November 2016 in which she refers to her family being in a blood feud. At pages 54 to 55, an "Attestation" dated 30 November 2016 from the Chairman of the Administrative Unit of Peshkopi stating that *"Mrs FC is seriously endangered by the phenomenon of blood feud"* and that *"we cannot defend the life of this respected citizen"*. At pages 56 to 57, an "Attestation" dated 2 December 2016 from the Mayor of the Municipality of Diber referring to the *"conflict between the parties"* continuing.

15. The judge referred to these documents at [81], when considering whether the harassment against the appellant amounted to a blood feud. At [82] the judge went on to consider the factors set out in EH at paragraph 74(f) which are to be applied in determining whether a blood feud exists and at [86] he considered the factors in paragraph 74(g) of EH. Having assessed all the evidence, the judge then provided reasons for concluding that the circumstances did not amount to a blood feud. Whilst the judge did not specifically respond to the references in the various official letters to a blood feud, it is undeniably the case that he had regard to those letters in making his findings. It is to be noted that [9] of EH states that such documents *"may"* assist in establishing the existence of a blood feud and, furthermore, I find myself in agreement with Mr Lindsay that the relevant issue is not so much whether the authorities consider it appropriate to use such a term but whether the term of "blood feud" is correct in this jurisdiction. I also agree with Mr Lindsay that the paragraphs in the CPIN to which he referred support the judge's analysis of the appellant's circumstances, in particular at paragraph 3.3.1 and 3.3.2, and specifically:

3.3.1:

*"... Alfred Koçobashi stated that blood feud still occurs "when someone innocent, a third party has to pay the price for the damage a family member has done, but he added that since the 1990s it is not about honour anymore. 80% is criminal and not related to customary law"*

or medieval common law. It's about mafia-style killings. It's murder cases for other reasons than blood feud, just like they happen elsewhere. It's normal killings or vendetta killings."

Elsa Ballauri from the Albanian Human Rights Group (AHRG) also referred to the transformation of blood feud: ...She also declared: "It's more a justification nowadays because they are committing crimes and they say: 'I did it for blood feud'. But for me, none of the cases after the 1990s is a real blood feud case.""

### 3.3.2:

'The General Director from the Albanian State Police also stated that revenge cases, that most often are the consequence of criminal problems and individual conflicts or disputes, can happen to everyone and everywhere and are very often wrongly labelled as blood feud... "'

16. In the circumstances I find no error of law in the judge's assessment of whether a blood feud existed and in his conclusion that the events were related to criminal activity and amounted to a criminal vendetta rather than a blood feud. Accordingly I uphold his decision in that regard.

17. Turning to the question of sufficiency of protection, I accept the point being made by Mr Blackwood, namely that the issue was not that the Albanian authorities had demonstrated a willingness to take action against the appellant's husband's killers, but whether they were willing and able to take preventative measures to prevent the appellant's murder. Mr Blackwood relied upon the letters from the Albanian authorities in submitting that they were not able to take such measures, that the police had not taken action against AL and his associates when they harassed the appellant and that the judge ought to have concluded as such on the evidence. The appellant's grounds at [34] challenge in particular the judge's finding at [85] of his decision in relation to a document entitled "Decision for the Non-Initiation of the Criminal Proceeding" from the Judicial Attorney of Diber at page 63 and 64 of the appellant's appeal bundle. However the judge plainly gave detailed and careful consideration to the matter and had full regard to the implications of the decision in that document, as well as the other documentary evidence, in light of the guidance in Horvath. At [93] to [95] the judge considered the matter further in the context of the background country information, noting the limitations of the Albanian police force but providing cogent reasons for concluding nevertheless that the police would prosecute AL and his associates if there was evidence that they had been involved in harassing the appellant. Plainly the documentary evidence showed that the police investigated the appellant's allegations of harassment and for the reasons properly given the judge was unarguably entitled to conclude that there was a sufficiency of protection available to the appellant to the Horvath standard. I agree with Mr Lindsay that the challenge to the judge's decision in this regard is no more than a disagreement with his properly made findings and again I uphold his decision.

18. Turning next to the Secretary of State's appeal against the judge's decision to allow the appeal on Article 8 grounds, I agree with Mr Blackwood that, whilst the challenge was said to be on the basis of an insufficiency of reasoning, the submission made by Mr Lindsay strayed into the realms of rationality. In any event I find no merit in either grounds of challenge. At [104] of his decision the judge had full regard to the relevant


caselaw in considering the question of very significant obstacles to integration into life in Albania and followed the guidance in Kamara in conducting a “broad evaluative judgment”. At [104] and [105] he gave detailed reasons as to why he reached the conclusions that he did. Whilst the respondent may not agree that those reasons are sufficient to amount to very significant obstacles to integration, there is no dispute as to the facts behind those reasons and the various matters considered by the judge, including the appellant’s mental health, were supported by the evidence. There was no insufficiency of reasoning and neither was there anything irrational about the judge’s conclusions, which were clearly and unarguably based upon the evidence before him. There are accordingly no grounds upon which to conclude that the judge made any error of law in concluding as he did. I therefore uphold the judge’s decision in that respect.

## DECISION

19. Accordingly, both appeals are dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law, such that the decision has to be set aside. I do not set aside the decision. The decision to dismiss the appellant’s appeal on asylum, humanitarian protection and Articles 2 and 3 grounds and to allow the appeal on Article 8 grounds therefore stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed   
Upper Tribunal Judge Kebede

Dated: 30 May 2019