



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08494/2019 (P)

**THE IMMIGRATION ACTS**

Decided under rule 34  
On 18 June 2020

Decision & Reasons Promulgated  
On 29 June 2020

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MS  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J. Bond, Counsel instructed by Alexander Shaw Solicitors  
For the Respondent: Mr C. Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is appealing against a decision of Judge of the First-tier Tribunal Hembrough promulgated on 6 January 2020. Permission to appeal was granted on 2 March 2020. The hearing was listed for 15 April 2020. However, because of the Covid-19 pandemic the hearing was postponed.

2. Directions were issued by the Vice President of the Upper Tribunal giving the provisional view that in the light of Covid-19 it would be appropriate to determine the error of law issue in this appeal without a hearing. The parties were directed to make further submissions in writing and given an opportunity to express their view on whether a hearing would be necessary. Both parties made submissions. Ms Bond's submissions are dated 7 May 2020 and 21 May 2020. Mr Bates' submissions are dated 12 May 2020. Neither party has objected to a decision being made without a hearing. I agree with the provisional view reached by the Vice President and am satisfied that I am in a position to determine the error of law issue in this appeal fairly and justly on the basis of the written submissions.

### Background

3. The appellant is an Albanian citizen born on 29 March 1980. His partner is an Albanian citizen with Indefinite Leave to Remain in the UK. They have two children, born in 2014 and 2018, both of whom are British citizens.
4. The appellant was deported from the UK in April 2017, having been convicted (in 2014 and 2015) of committing two serious crimes for which he was sentenced to a combined total of over 10 years imprisonment. In 2018 he re-entered the UK in breach of the deportation order.
5. The appellant claims that he will be at risk of persecution (and serious harm contravening articles 2 and 3 ECHR) in Albania because of a blood feud arising from an incident in the UK in 2013 when he was attacked by armed Albanian men, amongst whom were brothers named B and E M. The appellant claims that he gave evidence against B and E and a blood feud ensued. He claims that his father made an unsuccessful attempt at reconciliation and that because of the hostility of the M family in Albania his parents were forced to flee to Greece, where his brother resides.
6. The appellant also claims that he has a family life with his partner and two British children, who cannot be expected to relocate to Albania.
7. Following the respondent's refusal of his protection and human rights claim the appellant appealed to the First-tier Tribunal where his appeal was heard by Judge of the First-tier Tribunal Hembrough ("the judge").

### Decision of the First-tier Tribunal

8. With respect to the appellant's protection claim, the judge found that:
  - a. the appellant is excluded from protection under the Refugee Convention and from a grant of Humanitarian Protection because he

has committed a particularly serious crime and continues to represent a danger to the community in the UK; and

- b. the appellant is not at risk from a blood feud and therefore deportation to Albania will not breach articles 2 and 3 ECHR.
9. The judge's assessment of the appellant's claim to be at risk from a blood feud is set out at paragraphs 51 – 72 of the decision. The judge gave several reasons for not accepting the appellant's account. These include:
- a. The appellant did not submit any documentary evidence (such as a copy of a charge sheet, indictment, or transcript of proceedings) to show that the violent incident and subsequent criminal proceedings in 2013 involving the M brothers occurred as claimed.
  - b. There was no supporting evidence from the appellant's father about the attempted reconciliation with the M family and the appellant's evidence on this issue was "extremely vague". The judge noted that he was unable to say how the approach had been made or by whom.
  - c. The appellant submitted a letter from the "Reconciliation Mission" to corroborate his claim about the attempted reconciliation. The judge did not give weight to the letter, noting that it was obtained via family rather than a legal representatives, and having regard to the observation in *EH (blood feud) Albania CG [2012] UKUT 00348* about the lack of reliability of such documents.
  - d. The judge gave no weight to the witness statement of the mother of the appellant's partner on the basis that it was based entirely upon what the appellant had told her.
  - e. The appellant submitted a report by an Albanian lawyer Mr Brace. The report contains a description, in general terms, of blood feuds in Albania that is interspersed with comments and observations about the appellant's claim. No source is given for the comments specific to the appellant, and there is nothing in the report to indicate that the parts of Mr Brace's report that are concerned with the appellant's blood feud are based on anything other than what he was told by the appellant. The judge stated that whilst he accepted the credentials of Mr Brace, he did not give the report weight as it was based upon "an unquestioning acceptance of the appellant's account".
  - f. The judge took into consideration that the appellant's criminal offences involve the conspiracy and money-laundering, and that he was accustomed to engaging in deceit and dishonesty.

- g. The judge noted that the appellant had been living in the UK openly since his return in August 2017 and there was no evidence of any attempt to harm him by the M family or anyone else.
10. The judge found that, in any event, there is sufficient state protection in Albania and that, in order to avoid any local difficulties, the appellant could relocate to another part of the country, such as Tirana.
11. The judge's consideration of the appellant's article 8 claim is set out in paragraphs 73 – 93. The judge directed himself to the "very compelling circumstances" test under s117C (6) of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act").
12. The judge accepted that the appellant has a genuine and subsisting relationship with both his partner and his children but found that the effect of deportation on them would not be "unduly harsh".
13. The appellant relied on a report by Mr Shuttleworth, a clinical psychologist. The judge stated at paragraph 79 that the report was "not a particularly helpful piece of work". He described the conclusion as "speculative and unsubstantiated by referenced materials". The judge then stated:
- "I know from my work as a Judge of the Social Entitlement Chamber that depression and anxiety are clinical conditions often requiring specialist diagnosis the consequences of which are difficult or not impossible to predict. It is at best fanciful to suggest that separation will inevitably result in bad behaviour on the part of the children".
14. The judge also noted that the report appears to not have considered whether the appellant is in fact an appropriate role model for his children in the light of his offending behaviour.

Preliminary issue: application to adduce further evidence

15. The appellant has applied, under rule 15(2A), for permission to adduce the indictment in the criminal trial referred to in para. 9a. above. The explanation given for this document not being before the First-tier Tribunal is that it was only recently located in a large amount of disclosure documentation relating to the criminal proceedings.
16. I do not admit the further evidence for several reasons. First, this evidence could, with reasonable diligence, have been made available to the First-tier Tribunal. Second, as noted by the judge at paragraph 53, the respondent set

out her position in unambiguous terms and therefore the appellant could have been in no doubt as to the significance of this evidence. Third, this is not a case where there has been a misapprehension of an established and relevant fact. Fourth, the new material would not inevitably resolve a factual issue in the appellant's favour. Considering these factors together, I am not satisfied there is a basis to admit the evidence.

17. In any event, as will be apparent from para. 23 of my decision, admitting the evidence would not have affected the outcome of this appeal.

#### Grounds of appeal and submissions

18. The appellant's first ground of appeal submits that the judge failed to give proper consideration to evidence that supported his claim to be at risk because of a blood feud. The appellant takes issue with the judge stating that his partner was not an entirely independent witness and argues that if the judge had properly applied the lower standard of proof to his analysis of her oral evidence he would have found that there was a fight between him and the M brothers. It is also submitted that the judge failed to consider that Mr Brace's report addressed the issue of blood feuds from a wider perspective and that Mr Brace concluded, having considered all of the available evidence, that the appellant and his family would be in danger in Albania.
19. The response of the respondent to this ground of appeal is that the judge was entitled to note that the appellant's partner was not an independent witness and that, in any event, the judge found that even if there was enmity between the appellant and M brothers that did not mean there was a blood feud. With respect to the evidence of Mr Brace, the respondent notes that there is nothing to suggest that he conducted independent research to corroborate aspects of the appellant's claim.
20. The second ground of appeal submits that the judge failed to give any consideration to the "memorandum" of Mr F, an Albanian lawyer who stated in a memorandum that he represented one of the M brothers in criminal proceedings in Albania in 2008 and that he made enquiries and has been informed that the families have not reconciled.
21. The respondent does not dispute that the judge failed to refer to the evidence of Mr F, but argues that the judge was not required to address every item of evidence in the appellant's bundle and appropriately considered the evidence concerning the claimed attempt at reconciliation.
22. The appellant's third ground of appeal argues that the judge failed to give appropriate weight to the report by clinical psychologist Mr Shuttleworth and

that it was procedurally unfair to dismiss the report on the basis of an undeclared personal knowledge arising from experience in the Social Entitlement Chamber. It is also submitted that Mr Shuttleworth's conclusions were properly reasoned, justified and supported by reference to his clinical experience, and therefore cannot properly be described as "fanciful". The respondent's response, in summary, is that the judge gave sufficient and cogent reasons for not accepting Mr Shuttleworth's conclusions and for finding that deportation would not give rise to "undue harshness".

## Analysis

### The protection claim

23. The judge found, at paragraphs 70 -71 of the decision, that there exists sufficiency of protection in Albania and that the appellant, to avoid any local difficulty, could relocate to another part of Albania. These findings have not been challenged. Therefore, even if the appellant is correct (which I do not accept) that evidence concerning the claimed blood feud was not properly considered and that it has been adequately established that he is at risk from the M family, this would make no difference to the outcome because, if the appellant is at risk from the M family, he can either rely on state protection or relocate to another part of the country.
24. In the light of the unchallenged finding that the appellant could rely on state protection or relocate to another part of Albania, it is not necessary to consider grounds 1 and 2, as they cannot affect the outcome. However, for completeness, I will briefly explain why, in my view, grounds 1 and 2 lack merit.
25. The judge gave numerous reasons, as summarised above in paragraph 9, explaining why he did not accept that there was a blood feud. The reasons are cogent, clear, and consistent with the evidence that was before the Tribunal. There is no merit to a "lack of reasons" or rationality challenge, which seems to be implicit in the grounds.
26. The judge was clearly entitled to observe that the appellant's wife was not an independent witness, because she was not.
27. With respect to the evidence of Mr Brace, the judge was correct to observe that his assessment of the appellant's circumstances appeared to be based solely on what he had been told by the appellant. Certainly, there is nothing in his evidence to indicate that he has based his assessment of the risk faced by the appellant on other sources. Mr Brace's report combined a description of the appellant's particular circumstances with a general discussion about

blood feuds. The evidence on the latter is relevant to assessing the risk the appellant might face if it were accepted that there is a blood feud but is of little assistance in ascertaining whether the claimed blood feud in fact exists.

28. The appellant is correct that the judge did not address the evidence of Mr F. However, I do not consider this to constitute an error of law. As noted by the respondent, it is not necessary to address every item of evidence. The appellant submitted a large bundle of documents, which included several documents concerning the claimed “reconciliation”, and the judge adequately addressed the issue.

### The Article 8 claim

29. The appellant’s article 8 case is primarily based on the effect his deportation will have on his children. If the appellant had been sentenced to a period of imprisonment of less than 4 years, he would need to show that the effect on his children of his deportation would be “unduly harsh”: s117C(5) of the Nationality, Immigration and Asylum Act 2002. However, because the appellant was sentenced to more than 4 years imprisonment subsection (6) of s117C is applicable and he needs to show something “above and beyond” undue harshness. As was explained in *SSHD v JG (Jamaica)* [2019] EWCA Civ 982 at [16]:

...in so far as the Respondent sought to rely on the effect of his deportation on his son (who, being a British citizen, was a qualifying child) it would not be enough to show that that effect would be “unduly harsh”, in the sense explained in *KO*. That would satisfy Exception [2], but because his case fell within section 117C(6) he needed to show something over and above that, which meant showing that the circumstances in his case were, in Jackson LJ’s phrase in *NA*, “especially compelling”. **In short, at the risk of sounding flippant, he needed to show that the impact on his son was “extra unduly harsh”.** [emphasis added]

30. The appellant relied, in order to establish that the impact of his deportation will be “extra unduly harsh”, on a report by a clinical psychologist Mr Shuttleworth.
31. The report is very brief. After describing how the children appeared to him at his meeting with the family at his offices, and stating that the appellant and his partner characterised their mood as worsening when they think about the possibility of separation and better when they are with their children, Mr Shuttleworth stated:

“I would predict that both [the appellant and his partner] would become profoundly depressed if separated and, while this would be very unpleasant for both of them, it would also potentially have a rebound effect on the children if they were to be left with their mother and father gone. Research

has shown that clinical depression has its most marked effect on the mental welfare of children – up to the age of around 15 – when they are exposed to depression from their mother (and much less when the father is depressed).”

32. Then, after stating that there is a strong possibility of PTSD in the appellant and his partner but that he was unable to test them because of their limited reading skill he stated:

“I believe that separation from their father and husband would have a profound effect on the children’s and mother’s mental health with, at the very least, high levels of depression, anxiety and, in the case of the boys, disciplinary problems because of their absent father”

33. The report is remarkable for not containing any detail about, or evaluation of, the appellant’s children (apart from a description of how they behaved at the consultation), as well as the absence of any reasoning or rationale to support the conclusion reached. There is nothing in the report to indicate that the appellant’s children have any particular vulnerabilities (such as a learning disability or medical condition) or to explain why they would suffer more than any other typical child as a result of separation from their father. This report tells us almost nothing about the appellant’s children and is not, in my view, evidence, that on any legitimate view, could support a finding of undue harshness, let alone that separation would be “extra unduly harsh”.
34. The judge’s reference to his work in the Social Entitlement Chamber is unfortunate as it gives the impression that he was relying on specialist knowledge that was not drawn to the attention of the parties. However, the judge cannot be faulted for his assessment of the psychology report and his conclusion that it is “not a particularly helpful piece of work”. This conclusion did not depend on any specialist knowledge arising from a different jurisdiction. Rather, it was a conclusion any judge in the First-tier Tribunal could be expected to reach when faced with a report so lacking in detail and analysis.
35. It was clearly open to the judge, based on the evidence before him, to conclude that the effect of deportation would not be “unduly harsh”. Indeed, having carefully considered the evidence for myself, it is difficult to see how any judge could have reached a different conclusion.

#### Notice of Decision

36. The appeal is dismissed. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.



Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

37. 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.

Signed:

*D. Sheridan*

Upper Tribunal Judge Sheridan

18 June 2020