Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08916/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 October 2020	**On 11 February 2021**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

MR ZENEL KAMERI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J. Plowright, instructed by Solacexis Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Zenel Kamari is a citizen of Albania, born on 7 April 1990. On 3 May 2019, the Secretary of State refused his human rights claim. In a decision promulgated on 6 November 2019, First-tier Tribunal Judge Wylie dismissed the appellant's appeal against that decision. A central issue in the appeal had been the impact of the appellant's relationship with Ms Ala Abbas, a British citizen, on the Secretary of State's decision to refuse his human rights claim. One of the bases upon which the appellant contended that there would be "insurmountable obstacles" to his relationship with Ms Abbas continuing in Albania was a land dispute in which his family is involved. The judge declined to engage with the land dispute issue,

holding that it was a "new matter" under section 85(5) of the Nationality, Immigration and Asylum Act 2002, with the effect that there was no jurisdiction for the First-tier Tribunal to consider the point.

2. On 13 August 2020, Upper Tribunal Judge Macleman set aside the decision of Judge Wylie, to the extent that it did not engage with the claimed land dispute. That was a decision on the papers under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Judge Macleman held that the issue of the land dispute had always been before the Secretary of State, and was not, therefore, a "new matter". Judge Macleman directed that the matter be reheard in the Upper Tribunal to determine the land dispute issue. Judge Macleman's decision is set out in the **Annex** to this decision.

Factual background

3. The appellant entered this country clandestinely in March 2015. On 2 June 2018, he applied for leave to remain based on his relationship with Ms Abbas. That application was refused and certified as "clearly unfounded" under section 94 of the Nationality, Immigration and Asylum Act 2002. It did not carry a right of appeal that could be exercised from within this country. On 30 March 2019, the appellant made further submissions which were treated as a fresh claim by the Secretary of State and refused on 3 May 2019 in circumstances which attracted a right of appeal. It was that decision that was under appeal before Judge Wylie, and which remains under consideration in these proceedings.

Preserved findings of fact

4. The only conclusions of Judge Wylie which have not been preserved are those which relate to the appellant's claimed land dispute in Albania.

5. The following findings were not set aside by Judge Macleman and are preserved for the purposes of this decision. References in square brackets are to the decision of the First-tier Tribunal.

6. As at the date of the hearing in the First-tier Tribunal on 21 October 2019, the appellant and Ms Abbas were in a relationship, and the judge found their relationship to be genuine [51]. However, the judge was not satisfied that they had lived together in a relationship akin to marriage for at least two years, as Ms Abbas was still using as her correspondence address the address of her parents. There was insufficient evidence to show that they had both been living at the same address since February 2017 [51].

7. Ms Abbas is an educated woman with a background in teaching and experience of working in different work environments [57]. While it would be difficult for her to live and find work in a small Albanian village, it is likely that she would be able reasonably quickly to find employment in the city in Albania, and the appellant would be able to assist her with his own

language skills and experience that he gained since leaving Albania. He has the resilience to have been able to cope with living and supporting himself in this country, with little knowledge of the customs or language, since 2015. Ms Abbas would have his support and assistance if she were to choose to return to Albania with him.

8. Ms Abbas, through the appellant, had claimed that she would encounter difficulties in seeking to practice her Shia faith in Albania, and that those difficulties fell to be considered in the context of the appellant's claimed "insurmountable obstacles" to them continuing their relationship in Albania. At [59], the judge found that there was no reliable evidence to support the contention that Ms Abbas would be unable to practice her faith in Albania. There was no expert report which supported the difficulties the couple claimed that Ms Abbas would encounter.

9. At [60], while it would be difficult for Ms Abbas to move away from the United Kingdom, it would not cause very severe hardship for her to do so. Pausing here, this is a finding which, by definition, relates to the absence of severe hardship not taking into account any claimed difficulties arising from the land dispute limb of the appellant's case; it will be necessary for me to address this aspect of the judge's findings in light of my own findings concerning the land dispute issue, below. Ms Abbas has a close family in this country, and she would be able to maintain contact with them personally, or with modern means of communication and holiday visits. Neither of her parents, who are in this country, need care.

10. The decision of Judge Macleman held at [15]:

> "The case will be listed in the UT for further decision, by way of remaking the decision of the FTT, limited to ground [1], matters arising from an alleged blood feud…"

Legal framework

11. This appeal is brought under Article 8 of the European Convention on Human Rights. The essential issue for my consideration is whether it would be proportionate under the terms of Article 8(2) of the Convention for the appellant to be removed, in the light of the private life he claims to have established here. Pursuant to the terms of Judge Macleman's decision, this issue is to be addressed through the lens of paragraph EX.1(b), which provides:

> "EX.1. This paragraph applies if
>
> […]
>
> (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

> EX.2. For the purposes of paragraph EX.1.(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

The hearing

12. The appellant relied on the original bundle from the first-tier tribunal appeal, and a supplementary bundle. He adopted his statements dated 12 July 2019 and 21 October 2019 and was cross-examined.

13. I will outline the salient parts of the appellant's evidence to the extent necessary to give reasons for my decision. Full record of the evidence may be found on my record of proceedings and, of course, the proceedings were recorded.

14. The hearing was face-to-face.

Discussion

15. I reached the following findings having considered the entirety of the evidence in the case, in the round, to the balance of probabilities standard.

16. Mr Plowright on behalf of the appellant confirmed that he did not seek to rely on any additional article 8-based materials, such as a contemporary assessment of his private family life position. The sole focus of the case was the appellant's claimed land dispute and its impact on the issue of whether there would be insurmountable obstacles to Ms Abbas and the appellant continuing their relationship in Albania.

17. It was common ground at the hearing that the appropriate standard of proof was the balance of probabilities. Although the appellant's claimed land dispute is a matter which would more commonly be considered within the confines of a protection appeal, thereby enjoying the benefits of the lower standard of proof applicable to asylum and protection proceedings, Mr Plowright confirmed that the appellant's case was to rely on the claimant land dispute as evidence of "insurmountable obstacles" to the continuation of his relationship with Ms Abbas in Albania.

18. It follows, therefore, that the appellant must demonstrate, to the balance of probabilities standard, that the land dispute he claims to be a party to is such that it would amount to an "insurmountable obstacle" to the continuation of his relationship with Ms Abbas in Albania.

19. By way of a preliminary observation, the manner in which the appellant has chosen to have the land dispute issue determined, namely within the confines of a human rights appeal concerning the issue of whether there are "insurmountable obstacles" as outlined above, brings with it certain structural weaknesses which would not be present were this a

conventional asylum or protection claim. There has not, for example, been a screening or substantive asylum interview. The Secretary of State has not had the opportunity to consider the appellant's claim in detail, nor provide detailed reasons for refusing this aspect of the claim, as would normally be the case in the refusal of an asylum or humanitarian protection claim. The only analysis from the Secretary of State in writing is the following statement, which may be found for of the refusal letter dated 3 May 2019:

> "However, the Secretary of State has not seen any evidence that there are insurmountable obstacles in accordance with paragraph EX.2. of appendix FM which means the very significant difficulties with which [sic] would be phased by you or your partner in continuing your family life together outside the UK in Albania, and which could not be overcome or would entail very serious hardship for you or your partner. This is because no evidence has been provided to support your claim in relation to your fear of returning home…"

20. On page 5, the refusal letter continued:

> "You have told us that you have a fear of returning home due to potential abduction or harm inflicted on yourself and that there would be serious hardship on yourself and your partner due to your partners [sic] caregiving needs to her parents and brother.
>
> We have reached this decision because no evidence has been provided to support your claim in relation to your fear of returning home…"

21. The appellant has since sought to provide some evidence, which I now consider.

22. Under cross-examination, the appellant explained that in 1992 his family purchased property from the daughter of a landowner who was in prison for the murder of his brother. The landowner's sons were also in prison in Albania at the time of the purchase, but when the youngest was released, he demanded the return of the property, on the premise that he had not authorised the sale. At that age, the appellant would have been two years of age. The youngest son of the landowner continues to this day to seek return of the property and has contacted the appellant's father at least twice demanding its return, which led the family to report the approaches to the police.

23. In his statement dated 12 July 2019, the appellant writes:

> "In Albania, my family was involved in a land -related dispute. Unfortunately, this dispute has not resolved yet. I feel that Ala and I can be easily targeted due to this feud if we had to return to Albania. I do not have any documentary evidence to prove this issue and I never thought that I would be needing any document in relation to this feud when I left Albania."

24. In his second statement, dated 21 October 2019, the appellant provides some documentary evidence. He writes that, on 15 October 2020, his

father obtained a letter from the local town council office concerning the claimed land dispute, "because my local town council office knows about it through first-hand reports." The translation of the council report states that in 2005, the sons of the former owners of property demanded it's return, and that, "due to this ongoing conflict, [the appellant] has been obliged to leave Albania, because [the land owner's sons] were constantly threatening his life."

25. Also in the appellant's supplementary bundle is a report from a Gijn Marku, on behalf of the Committee of Nationwide Reconciliation in Albania, a non-governmental organisation which provides letters of attestation in blood feuds (see EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) at [4]). It is titled "*Opinion on the continued risk posed to the life of [the appellant] and his family due to blood feud with [***] kin*". It states that the appellant is at a "very high risk" of being murdered due to the land dispute and the honour involved, and that he is at a "high risk at any moment and that every corner of the territory of Albania." The remainder of the report addresses accounts of people being killed in different blood feuds. There are no personal details relating to why this appellant is said to be at risk.

26. Mr Plowright confirmed that the Mr Marku relied upon by the appellant is the same Mr Marku who gave evidence before the Upper Tribunal in EH. There was evidence before the tribunal that occasion that Mr Marku had been involved in the taking of bribes as payment for the provision of attestation letters: see the summary of the concerns set out in the Immigration and Refugee Board of Canada's reports, at [51]. At [54], the tribunal stated, "Overall, by the end of the hearing, we had formed a strongly negative view of the credibility of his evidence and the value of any attestation letters from the CNR." At [56], the panel held that Mr Marku's claimed expertise was:

> "so damaged that an attestation letter from the CNR… adds no weight whatsoever to an otherwise unsatisfactory account of an alleged blood feud."

27. I find that the appellant's evidence does not get remotely close to demonstrating that there is a land dispute such that he is at risk in his home area of Albania. He has sought to rely on an unreasoned report from a discredited "expert", which itself features no analysis of the basis upon which the appellant is said to have a fear of the family of the former landowner. The report consists entirely of unreasoned assertions, or details pertaining to unrelated cases. The report from the town council is similarly lacking in detail. As Mr Tufan noted during cross-examination, there is no statement from the appellant's father, or any other family members, nor any other details of the sort one would readily expect to be available where this claim which had a shred of credibility at its heart. The appellant's own account of the incident lacks detail, and, taken at its highest, reveals no threat of harm to him such that there would be grounds for finding that there would be "insurmountable obstacles" to his

relationship with Ms Abbas continuing in Albania. In cross-examination, the appellant said that his father had been contacted twice by the former owner of the land. There is no evidence, or even a suggestion, of any harm having been inflicted. The account of the dispute in Mr Marku's report is that the trigger for the feud was the 2005 release from prison of the sons of the former landowner. That was some 15 years ago. There is no evidence that any events have taken place since then such that it is more likely than not that the land dispute even occurred, or that if it did, it continues to the present day.

28. I find, therefore, that the appellant and his partner would not be prevented from continuing their relationship in the appellant's home area by virtue of the claimed land dispute. In any event, the findings of Judge Wylie were that the appellant and his partner would most likely encounter difficulties with securing employment for Ms Abbas in the appellant's home village, but that they would be less likely to do so in a city such as Tirana. The appellant contended that one of the sons of the landowner in question lives in Tirana, and that he would not be safe there. I reject that suggestion. There is no land dispute such that the appellant would encounter any difficulties anywhere in Albania, still less would he face insurmountable obstacles to continuing his relationship with Ms Abbas in Tirana, or elsewhere, on its account.

29. Mr Plowright did not seek to advance any further human rights-based grounds upon which the appellant sought to rely.

30. The appeal is dismissed on human rights grounds.

31. There has been no application for anonymity, and I do not consider it necessary to make an order for anonymity.

Notice of Decision

The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed Stephen H Smith Date 12 October 2020

Upper Tribunal Judge Stephen Smith

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Stephen H Smith Date 12 October 2020

Upper Tribunal Judge Stephen Smith

Annex – Decision of Judge Macleman under rule 34

Upper Tribunal
(Immigration and Asylum Chamber) HU/08916/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34 Issued on

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Before

UT JUDGE MACLEMAN

Between

ZENEL KAMERI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION ON ERROR OF LAW and FURTHER DIRECTIONS

1. The respondent's decision which leads to these proceedings is not the one dated 10 December 2018 in her FtT bundle, but the one dated 3 May 2019 in the appellant's FtT bundle, item 5, p.A19. That confusion has something to do with what went wrong at the hearing in the FtT.

2. FtT Judge Wylie dismissed the appellant's human rights appeal by a decision promulgated on 6 November 2019. At [8-9] she declined to consider the issue of a blood feued, because that was a new matter, and declined to admit related documentary evidence. She went on to find that although the appellant had a partner, their relationship did not meet the terms of the rules; there were no insurmountable obstacles to carrying on their family life in Albania; there were no exceptional circumstances to make that unduly harsh; and that removal would be proportionate, taking account of the

possibility that the appellant might, in due course, apply for entry clearance as a partner.

3. The appellant sought permission to appeal to the UT on 4 grounds, headed:

   [1] Denying admission of new evidence to establish insurmountable obstacles as a new matter.

   [2] Failing to consider an expert report "detailing the risk [to the appellant's partner] being Shia Muslim in the context of ISIS activities in Albania".

   [3] Attaching no weight to credible evidence of a durable relationship [of over 2 years].

   [4] Error on possibility of success in an entry clearance application; FtT should have held financial requirements were met.

4. On 2 April 2020, FtT Judge Gumsley granted permission, on the view that ground [1] was arguable, but without restriction to that ground.

5. By a note and directions issued on 12 May 2020 the UT took the provisional view that it would be appropriate to determine without a hearing whether the FtT erred on a point of law and, if so, whether its decision should be set aside. Parties were also given the opportunity to submit on whether there should be a hearing.

6. In a response, received on 26 May 2020, the appellant relies on his grounds and asks for a "full" further hearing in the FtT.

7. In a response, received on 3 June 2020, the SSHD accepts that ground [1] shows error by the FtT; contests the other grounds; and asks for "a re-hearing in the UT solely to consider the alleged blood feud and its potential application to appendix FM of the immigration rules".

8. Neither party seeks a hearing.

9. In terms of rules 2 and 34, the above issues may now fairly and justly be decided without a hearing.

10. The SSHD's concession on ground [1] is correct.

11. The other grounds disclose no error:

[2] The appellant has not cited anything in the report to support his case. On reference, it is a general paper, by an expert qualified in the field, concluding that attempts by foreign extremists to impose a different brand of Islam have been successfully resisted, that religion plays a sensible and moderate role in Albanian life, and that peaceful inter-faith co-existence is not threatened; pp. C22-23, FtT bundle.

[3] This ground is only disagreement with a finding of fact, not involving any error on a point of law, and which would not have changed the outcome.

[4] There was no evidence before the FtT by which it might rationally have held that the requirements of the rules for entry clearance (apart from the requirement to apply from outside the UK) were met. Rather, the evidence showed that such an application could only have failed, because the financial and evidential requirements of the rules were not met. The evidence indicated a possibility that might change in the future, as the FtT said; but that is beside the point.

12. The decision of the FtT is set aside on ground [1] only.

13. The presumption is that decisions are retained in the UT for re-making. The extent of further fact-finding required is not so extensive that this appeal should be remitted.

14. The appellant was legally represented in the FtT, but not presently. The SSHD's submission says that his remedy on the alleged blood feud should be to raise a protection claim, "and a strong inference as to the credibility of his account should be inferred by his failure to do so". The matter is not for decision at this stage, I draw no such inference, and further procedure is up to him; but he should be aware of the point.

15. The case will be listed in the UT for further decision, by way of remaking the decision of the FtT, limited to ground [1], matters arising from an alleged blood feud, in due course.

16. Within 14 days of the date this decision is issued, the appellant is to advise the UT whether he requires an interpreter for the further hearing.

17. Any further evidence on which parties seek to rely must be filed with the UT, and served on the other party, not less than 7 days before the hearing.

18. Communications to the UT may be sent by, or attached to, an email to [***] using the appeal reference number (as at the top of this decision) as

the subject line. Attachments must not exceed 15 MB. (This address is **not** generally available for the filing of documents.)

19. Service on the SSHD should be made to [***]

20. The appellant sent his submissions from [***]

21. No anonymity direction has been requested or made.

22. The date of this decision is to be taken as the date it is sent to parties.

UT Judge Macleman