Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000215
IA/03034/2021
PA/51318/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 May 2022	**On 22 July 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

I X
(ANONYMITY IN FORCE)

Respondent

Representation:
For the Appellant: Mr E Tufan Senior Home Office Presenting Officer
For the Respondent: Ms E Daykin, Counsel instructed by Rashid and Rashid, Solicitors

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent (hereinafter the claimant) is granted anonymity. No one shall publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the claimant. Failure to comply with this order could amount to a contempt of court. I make this order because the claimant seeks international protection and publicity revealing his identity might create a risk to his safety in the event of his return.

2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing, on human rights grounds with reference to Article 3 of the European Convention on Human Rights, the claimant's appeal against a decision of the Secretary of State giving him international protection. The claimant is a citizen of Albania and he says, in outline, that he is entitled to international protection because he would otherwise fall victim to a blood feud. The Secretary of State's grounds are quite lengthy and thorough but in outline maintain that the First-tier Tribunal misdirected itself in law, failed to give adequate or any reasons for its decision and failed to resolve the conflict in the evidence.

3. In order to consider this contention I have found it necessary to set out in some detail the First-tier Tribunal's reasons for reaching the decision that it did.

4. The judge noted that the claimant identifies himself as a citizen of Albania who was born in 1979 and is so now almost 43 years old.

5. The claimant says that he entered the United Kingdom clandestinely in 2013. He was encountered by the police in June 2018 and claimed asylum a few days later. His application for protection was refused on 2 March 2021 and he appealed against that decision. He said that he feared a named family because members of the family had declared a blood feud against him because he had killed his wife who was a member of that family and in so doing he had dishonoured them.

6. It is the claimant's case that he was convicted of murder in early 2004 and was later sentenced to twelve years' imprisonment. He said the killing was an accident during a dispute when his wife attacked him with a knife. He claimed that his wife's family influenced improperly the criminal investigation and that family members had refused to reconcile the feud.

7. He says that if he returned to Albania he would be ill-treated by members of the family who want to kill him. They have previously attacked and threatened close relatives of the claimant and he would not be safe in Albania because there is no network of support for him in Albania.

8. Additionally he maintained that he had established a private life in the United Kingdom that should be respected and he should be allowed to stay.

9. It was the Secretary of State's case that the claimant was not entitled to protection under the Refugee Convention. He was disqualified from protection under Article 33 of the Convention because there were "reasonable grounds" for regarding him as a person convicted of a serious crime who constituted a danger to the community in the United Kingdom.

10. The judge noted too that the claimant was excluded from humanitarian protection under paragraph 339D of the Immigration Rules. I have checked and the refusal letter makes it clear that the Secretary of State was satisfied that there are serious grounds for considering that he had committed a serious crime.

11. Additionally it was the Secretary of State's case that, in any event, the claimant was untruthful. The Secretary of State accepted that the kind of ill-treatment the claimant said that he had received from his late wife's family was the kind

of ill-treatment that the background evidence indicated can be expected but the Secretary of State found internal inconsistencies within the account which undermined his credibility to the point that his story was not believed.

12. The Secretary of State had considered a letter from the mayor of an important town attesting to the blood feud but decided to place little weight on the document.

13. The claimant was also said to be incredible because of the provisions of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The claimant had travelled through several safe countries and had stayed in France for a month before coming to the United Kingdom. This, in the opinion of the Secretary of State, undermined the credibility of the claim in accordance with statute.

14. Additionally it was said that in the event of the claimant's return to Albania there was sufficient protection available and that internal relocation was a viable option.

15. The claim was also refused on Article 8 grounds.

16. The judge then reviewed the evidence, noting that the claimant by his representative asked to be treated as "vulnerable".

17. The claimant adopted a statement in the bundle. The gist of that was that he had entered the United Kingdom in October 2013 and claimed asylum in June 2018. He admitted killing his wife but said it was "an accident". He repeated his claim that his wife's family controlled the police investigation unfairly to his disadvantage. Nobody wanted to listen to his claim that the killing was an accident and he said the judgment of the Albanian court should not be given any respect because it was based on an investigation by a corrupt police force.

18. He claimed that he was very worried and unsettled when he entered the United Kingdom, suffering from depression and anxiety with suicidal ideation. He twice tried to kill himself and had been saved by friends and was currently on medication and prescription drugs. He claimed to have established a strong private and family life in the United Kingdom. He claimed he would be destitute in the event of his return to Albania and his condition would be exacerbated by his poor mental health.

19. He was cross-examined and said that his mother, brother and three sisters all live in Albania and had contact with close family members several days before the hearing. He had children who live with the family of his late wife. He had no contact with that family and neither did his relatives. His wife's family had taken no action against the claimant's family in Albania. Their interest was in the claimant.

20. He claimed that if he returned to Albania he could not return to his family and obtain assistance from them but would have to hide. He believed that he would be found but in any event he would need help from somewhere for his mental health problems and he repeated his claim to have twice attempted to commit suicide.

21. The judge then directed himself concerning the law. His directions about the burden of proof, grounds of appeal and qualifying reasons for protection are, I think, wholly uncontroversial.

22. He also directed himself expressly to the country guidance case of **EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC)**. This directed him that blood feuds do happen in Albania but they were few of them and the numbers were declining. Further, the state of Albania had taken steps to improve state protection but there was not a sufficiency of protection in areas where the Kanun law predominated, that is particularly in northern Albania. The general guidance was that internal location may provide sufficient protection depending on the reach, influence and commitment to the persecution by the aggressors.

23. The judge also noted guidance on how to determine if an active blood feud existed and this required regard to the history of the alleged feud, including the notoriety of the original killings and the length of time since the killing and the ability of the aggressor to locate the person seeking protection and the likelihood of the police being involved.

24. Other points were noted and set out fully from the headnote in the guidance case.

25. The judge confirmed that he is familiar with the CPIN Report Blood Feuds (February 20) in Albania and noted the conditions that provide for a person to be excluded from protection under the Convention.

26. The judge then went on to set out findings. The judge accepted that the claimant was “vulnerable”.

27. The judge directed himself to the issues and also reviewed the evidence in outline. The judge indicated in general terms that he accepted some of the claimant’s account but not all of it and found that the claimant had embellished his account to bolster his claim. He explained this later in the decision.

28. The judge outlined the documentary evidence and said that he found particularly helpful a document from the British Embassy in Tirana. The embassy indicated that the claimant had left Albania in October 2013 and was not known to have returned. The embassy further confirmed that the claimant had been convicted of the murder of his spouse and had been initially sentenced to eighteen years’ imprisonment but it was reduced to twelve years, presumably on appeal.

29. The judge found that the claimant had killed his wife and although noting the claimant’s contention to have been an accidental killer the judge noted the sentence following conviction in a court and found that the claimant had not killed his wife by accident or at least not in circumstances that provided any kind of lawful excuse for his behaviour.

30. The judge did not believe that the alleged “aggressor family” had sufficient power over the police to manipulate the criminal justice system to procure a conviction. The claim was made but lacked detail and the judge was particularly impressed by the fact that the case had been considered by the Supreme Court in Albania and did not accept that corrupt or similarly improper

behaviour would have been unchallenged or unnoticed before the Supreme Court.

31. The judge accepted that the claimant had been properly convicted of murder and also noted that the murder might be a reason for there to be an active blood feud. The judge found that the blood feud was provoked, particularly because there had been a conviction in a court of law and that the murder offended the honour of the claimant's late wife's family. The judge found unequivocally at paragraph 40(vi) that there was a blood feud between the claimant's wife's family and the claimant. The judge also found that members of the claimant's family, particularly his brother, were targeted when the claimant was in prison and when the claimant came out of prison the family turned their attention on the claimant. The judge said that he had arrived at that conclusion after noting the concerns raised by the Secretary of State concerning the anomalies in the claimant's account. He also found that there were points, properly recognised by the Secretary of State, that were consistent with the background evidence about what tended to happen in a blood feud. The judge was not inclined to disregard the letter from the mayor and concluded that the claimant had fled to the United Kingdom in 2013 because of a blood feud. Nevertheless the judge felt the credibility of the claimant's claim was damaged by the delay in claiming asylum.

32. The judge found that that the claimant had committed a serious non-political crime, namely the murder of his wife, and found that the claimant was outside the scope of the protection of the Refugee Convention or humanitarian protection.

33. The guidance given in **EH** indicated that the person who was the victim of a blood feud may very well face a real risk of serious harm. The judge accepted that after the claimant came out of prison the aggressors had interest only in the claimant. It followed that the blood feud had been ongoing for twenty years. The judge was not persuaded that the aggressor family was sufficiently strong to interfere with the criminal justice system but did accept evidence that there had been attempts that had proved unsuccessful to resolve the blood feud. The judge then found, particularly in the light of the claimant's conviction that there was not sufficiency of protection in his home area.

34. The judge came to the overall conclusion that the claimant was a target of a blood feud and would not be safe in his home area. The judge also was satisfied that there was not sufficient protection available in Albania, at least not in the part from where the claimant originated.

35. The judge then asked himself expressly if it was reasonable to expect the claimant to go to another part of Albania.

36. Then the judge took a note of Counsel's arguments concerning the claimant's mental health from traumatic experiences, particularly a psychiatric report from a Dr A K Hameed dated August 2021. The judge accepted that the claimant had mixed anxiety and depressive reaction, described as Adjustment Disorder and that he was treated with medication from his general medical practitioner. The judge noted medical evidence that his condition was expected to worsen in the event of his going to Albania and noted how the

claimant benefited from the support community he had developed in the United Kingdom.

37. The judge noted medical opinion that the claimant was not fit to travel because of his poor health and that removal from the United Kingdom might lead to a marked deterioration in his health. The judge was perfectly plain at paragraph 47 that, had the claimant been in sound health, he would be able to relocate to a part of the country away from the enemy family and also away from the family support network and, although that would be disagreeable it would not be unduly harsh. At paragraph 48 the judge referred to the claimant having "very strongly relied" on the psychiatric report and the judge distinguished between mental health services being available, which they are, and accessible which, he decided, they were not. At paragraph 49 he repeated that he had found that the claimant had been the target of an active blood feud and that he could not return to his home area because sufficiency of protection would not be available. He did not accept that the aggressor family would have the power to find him anywhere in Albania but did find it would be unduly harsh to expect the claimant to go to another part of Albania without family support and he allowed the appeal with reference to Article 3 of the European Convention on Human Rights.

38. I consider now the detailed grounds of appeal to the Upper Tribunal on which Mr Tufan substantially relied. These begin by noting that it is established that the claimant is not entitled to protection as a refugee or to humanitarian protection and, unsurprisingly, given the findings, that part of the decision has not been challenged.

39. In response to the finding that there was an active blood feud the grounds assert:

> "it will be argued that the judge's findings on the issue of the existence of a blood feud are very scant and the assessment fails to engage with the evidence submitted by the respondent or binding case law that shows blood feuds are significantly few (***EH (blood feuds) Albania CG [2012] UKUT 00348***)."

40. According to the grounds the judge accepted the claimant's account that his family was targeted while he was in prison but the judge does this without making any comment on the lack of evidence, such as police reports on the issue. The grounds also note that corroboration is not required and then assert that the judge made no findings on the absence of support even though this formed "a central part of the Secretary of State's case". There is then a reference to paragraphs 32 to 36 of the reasons for refusal letter which I now consider.

41. Paragraph 32 refers to there being one letter on the existence of the blood feud coming from the local mayor. Paragraph 36 notes that the Secretary of State did not make any assertion about the authenticity of the letter from the mayor but decided to give it little weight because it was a document that was easily obtainable and not recognised by the government. The grounds assert that the judge accepted the claimant was in contact with his family and asserted that the family were in a position to obtain the kind of evidence that would have supported his claim that there were alleged threats to the family.

42. The grounds then assert that the judge's finding of lack of interest in the family members after the claimant was released from prison does not support the conclusion that the aggressor family are still interested in pursuing the feud. The judge does not explain why the claimant's family appear to have been living freely after the claimant's release from prison and escape to the United Kingdom. This is said to be difficult to reconcile with paragraph 74 of the decision in **EH**. Paragraph 74 is a long paragraph, marked in sub-paragraphs (a) through to (l). Paragraph 74(h)(i) states:

> "documents originating from the Albanian courts, police or prosecution service, if genuine, may assist in establishing the existence of a blood feud at the date of the document relied upon, subject to the test of reliability set out in **A v Secretary of State for the Home Department (Pakistan) [2002] UKIAT 00439, [2002] Imm AR 318 (Tanveer Ahmed)**"

43. The assertion is that reports from the police or prosecuting services may assist if they are genuine. It is plainly something that might have been considered and it may be that if the judge had chosen to comment on the absence of such evidence, which is only described as something that may assist, then the judge would have been lawfully entitled to rely on the absence of such documents as a reason to disbelieve the claimant. This is not the same as saying that the absence of evidence that members of the claimant's family was attacked is such a striking feature of the case that it is an error of law not to comment on it expressly.

44. However, I have considered carefully paragraphs 32 to 36 in the reasons for refusal letter. Paragraph 33 is more illuminating. It refers to a CEDOCA Report of 2017 which is critical of so called "fake blood feud attestations". There are no official certificates recognised by the state authorities in Albania but every complaint to the police is written down and a copy provided to the complainant as part of the standard procedure. It also said the prosecutor's office had declared that copies of complaints about incidents which are registered showing the named victim and the alleged perpetrator are available.

45. Paragraph 35 refers to a CEDOCA Report, again of 2017, says how some heads of villages had benefited from issuing false documents. There have been successful prosecutions of people doing precisely that. There is also reference at 35 to the "commitment to zero tolerance on corruption" as essential preconditioning for European Union membership leading to the government no longer recognising blood feud certificates. Such certificates are available dishonestly for a price.

46. It was against this background that the Secretary of State made her observations about not giving much weight to the letter from the mayor.

47. I have re-read paragraph 40 of the First-tier Tribunal's Decision and Reasons and the point identified above from the reasons for refusal letter does not seem to have been considered.

48. Against the background evidence it is hard to see how the letter from the mayor can properly be given much weight. However the existence of such a letter does not mean that nothing has happened or that there is not a blood

feud; the point is that a supporting letter from a mayor is not usually of much value in determining if there is a blood feud.

49. I am always uneasy about complaints based on the judge not considering the *absence* of evidence. Trials generally are better decided on the evidence called but the Secretary of State's point is more subtle than that. In a paragraph in the refusal letter that makes it plain that certificates attesting to a blood feud are generally not reliable, at least in the Secretary of State's view, it also makes clear that the police do have an obligation to give copies to reports made to them about criminal behaviour and, as I read that letter, have duties to provide copies later if they are requested. I find the Secretary of State has a proper point here. There is not only a surprising omission in the evidence but it is an omission expressly drawn to the attention of the claimant in the refusal letter and not addressed. He may have been too poorly to understand completely the point that was being made but he was represented and his solicitors could have been expected to have made inquiries. This is not by any stretch of the imagination a determining issue but it is a problem in the way of finding the decision to be sound. The substantial problem in ground 1 is there is no challenge to the assertion in the refusal letter that police reports could be expected.

50. Ground 2 deals with the finding that internal relocation is not available. The Secretary of State noted and understandably did not challenge, the judge's finding that the claimant's ex-wife did not have power throughout Albania. The judge did not explain why there would be any interest after so long (twenty years) when there had been no continuation of interest against the family or the claimant not having problems when he lived in Durres immediately after his release. It is complained that the judge had not explained why the claimant could not move. Clearly there is reference to the claimant's mental health but no attempt to show why that could not be addressed adequately in Albania.

51. Ground 3 complains that no explanation to support the conclusion that there could not be effective protection away from home.

52. Grounds 2 and 3 slightly miss the point. The judge found that the claimant would be at risk and he was concerned thereafter with the reasonableness of the finding that the claimant could not be expected to relocate apparently without family support and with ill health. It is not a question of whether the claimant would be persecuted in a different part of the country. Nevertheless I find merit in the suggestion that, following **AM (Zimbabwe) [2020] UKSC 17** some detailed examination was necessary before it could be concluded that it would be unreasonable to require the claimant to live in a different part of the country.

53. As indicated Mr Tufan did not really say very much beyond relying on the very full grounds. In a case such as this that was, with respect, an entirely appropriate approach.

54. Miss Daykin submitted that the Decision and Reasons was reasoned adequately and the conclusion was open to the judge. She said that the structure could not be criticised at all and thirdly the self-directions were correct.

55. There is a great deal of merit in that.

56. I also agree that there was some confusion in the grounds because the judge was not dealing with an Article 3 ill health test but just looking at what was unduly harsh in the context of available treatment.

57. I have reflected on the seriousness of interfering with the decision allowing an appeal. I remind myself that from the point of view of a hitherto successful claimant it is disturbing to find that the decision which meant so much to him has been set aside. I also remind myself that I can only interfere with the decision if I can explain why it is wrong in law and interference for any other reason is to be avoided.

58. I accept the comments made about the structure of the decision and the self-directions but for all that I cannot see a way around what I think is the central point in this case, namely that the Secretary of State advanced rather detailed reasons for explaining what sort of evidence would be necessary and available to support the contention that the claimant's family had trouble in Albania. Such evidence was not produced and the judge has not explained why its absence is unimportant. Rather the point does seem to have been ignored.

59. This is not an appeal where the decision is obvious. I can think of a variety of possible reasons that can determine the matter either way but I have no basis for making any findings in substitution for the judge's omission. It has to be heard again. It has been established that the claimant is not a refugee because he is excluded by reason of committing a serious crime. This was not challenged in any way and that finding stands. The issue will be whether the claimant is entitled to succeed on human rights grounds. That is essentially a matter of credibility and I find it ought to be determined again in the First-tier Tribunal where it is to be hoped that the Tribunal will pay particular attention to the Secretary of State's reasons and make findings on them.

Notice of Decision

60. The First-tier Tribunal erred in law. I set aside this decision and direct the case be heard again in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 13 May 2022