IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos.: UI-2023-002178

First-tier Tribunal Nos:
PA/55336/2022; LP/00657/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1st of December 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

R A
(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr J Collins, Counsel instructed by Marsh & Partners
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on Wednesday 15 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. Although the First-tier Tribunal did not make an anonymity order, this is an appeal on protection grounds and it is therefore appropriate to make one. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Cary promulgated on 28 May 2023 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 11 November 2022 refusing his protection and human rights claims.

2. The Appellant is a national of Albania born in December 2002. He came to the UK clandestinely on or before 25 June 2019. He claimed asylum on that date. His claim is based on a blood feud which he says exists between his family and another family or families, dating back to 1997. The feud began when his uncle (BC) murdered his sister and her boyfriend, whose family (Y) then initiated the blood feud. Another uncle (AC) sought reconciliation but that was rejected. AC was a friend of another man (LC) who was in a feud with another family (C) and by reason of that association, it is said that AC was also drawn into that feud.

3. The Appellant claims that, as a result of those feuds, he was beaten by members of one of the families and both families attempted to abduct him. The Respondent did not accept the claim. He pointed out that the Appellant does not share the same name as BC or AC. Nor was there evidence of an ongoing blood feud. The Respondent pointed to the case of EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) ("EH") and the guidance given about how blood feud claims are to be considered.

4. The Respondent also relied on there being a sufficiency of protection. It was pointed out that BC was extradited from the UK to Albania to face prosecution and AC was convicted of murdering members of Y family. The Respondent also said that the Appellant could relocate within Albania and suggested that he could move either to another part of Tirana or to Sarande or Vlore.

5. Judge Cary similarly did not accept the Appellant's claim. He accepted that the Appellant was related as claimed to BC and AC. He also accepted that BC and AC had been responsible for killing various members of Y family. However, he did not accept that these killings had been shown to be part of a blood feud. He pointed out that the court documents did not mention a blood feud. Based also on elements of the Appellant's claim which the Judge said were not consistent with there being a blood feud, the Judge found that there was not an active blood feud in existence. Nor did he accept that the Appellant had been attacked as claimed or that there was an attempt to kidnap him.

6. The Judge considered the background evidence about blood feuds, noting that those had been declining and that there was no official evidence of an active blood feud. The Judge referred to EH, noting that such evidence ought to be available.

7. In the alternative, the Judge found that, even if there had been a blood feud, there was insufficient evidence that it was continuing. The last death even on the Appellant's own account was some fifteen years ago. He also went on to find that the Appellant could internally relocate and that there would be a sufficiency of protection. He therefore dismissed the appeal. He also dismissed it on human rights grounds.

8. The Appellant's challenge to the Decision is confined to the dismissal of the appeal on protection grounds. He puts forward four grounds of challenge as follows:

Ground one: the Respondent failed in his duty of disclosure regarding the documents relating to the extradition of BC (which were publicly available but produced by the Respondent only on the day before the hearing).

Ground two: the Judge's approach to the evidence was flawed and irrational.

Ground three: the Judge's approach to the evidence about blood feuds more generally was similarly flawed and irrational.

Ground four: the Judge unduly and irrationally focussed on the need for corroborative evidence.

9. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 20 June 2023 in the following terms so far as relevant:

> "..2. As to the substantive Grounds as pleaded. It is acknowledged that to establish a ground of appeal on the basis of irrationally [sic] (which is essentially the thrust of the matters raised) involves clearing a high hurdle. Nevertheless, in the circumstances of this case, although it is clear that the FtT Judge has considered the case with care, I am satisfied that it is arguable that he erred in his interpretation of the evidence before him when concluding that the various activities that it was accepted had taken place had not amounted to an ongoing blood feud. I am also satisfied that it is arguable that the FtT Judge erred in failing to have sufficient regard to external evidence relating to when (at what age) a person may be considered a legitimate target and/or whether, in the context of this case sufficiency of protection or internal relocation would remove or mitigate any risk.
>
> 3. Consequently permission to appeal is granted. As all Grounds appear to be interrelated to some extent at least no restriction is placed on which of the matters as pleaded may be argued."

10. I had before me an indexed bundle of documents relevant to the appeal, and the Appellant's and Respondent's bundle before the First-tier Tribunal ([AB/xx] and [RB/xx] respectively). I also had the Appellant's skeleton argument before the First-tier Tribunal and the Respondent's review.

11. The matter comes before me to determine whether the Decision contains an error of law. If I conclude that it does, I must then consider whether to set aside the Decision. If I set aside the Decision, I must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

12. Having heard submissions from Mr Collins and Mr Terrell, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

DISCUSSION

13. I take the Appellant's grounds in order. However, at the start of the hearing, Mr Collins indicated that he was not pursuing the first ground. He accepted that, although the Appellant still contended that the Respondent was in breach of her duty of disclosure, this could not amount to an error of law made by the Judge. He was right to make that concession. The Judge had the transcript of the judgment concerning BC's extradition and took it into account. Since that transcript was publicly available, the Appellant had as much access to it as the Respondent and there is no explanation why he could not have submitted it as readily as the Respondent. In light of the concession, I need say no more about the first ground.

Ground two: Flawed and irrational approach to the evidence

14. This ground focusses on the Judge's treatment of the court documents regarding BC's extradition and the prosecution of AC. The Judge dealt with these at [50] of the Decision as follows:

> "…I am also prepared to accept it is reasonably likely that [BC] and [AC] have been responsible for killing members of the [Y] family in view of what is said in the court documents from Albania and the United Kingdom. However, that does not necessarily mean that there is an ongoing blood feud between the [Y] and [BC/AC] families or whether the [Y] family is assisted by the [C] family or not. The lengthy decision of the Court of First Instance in Fier dealing with the prosecution of [AC] for killing various members of the [Y] family does not make any mention of an ongoing blood feud. All that is said is that "since May 1997 the families of these defendants have been at odds with the families of the [Y] tribe residence of the same village. This is due to the fact that during this period a citizen, [LY] was killed by the brother of the Defendant [AC], [BC]". There is also nothing in the decision relation [sic] to the extradition of [BC] from the United Kingdom to suggest that he attempted to resist the removal on the basis that he might be the victim of a blood feud as and when he was returned to Albania."

15. The pleaded grounds make reference to the court documents relating to AC's prosecution at [RB/135-164]. It is submitted that when one looks at various references in that judgment, the Judge's finding that this was not evidence of a blood feud was irrational.

16. It is worthy of note that the prosecution was not of AC alone. Thre were four defendants albeit all from the same family. They were all charged with a number of premeditated murders or attempted murders involving various members of family Y. I accept that in general that might be evidence of a blood feud. However, this is a judgment of a court in Albania, well aware of the existence of blood feuds and yet nowhere in the judgment is there any reference to a blood feud. There is, as the Judge noted, reference to the families being "at odds". There is as the grounds note reference to "conflicts", "hostilities", "revenge" and "enmity". However, if the court had considered that there was an ongoing blood feud, it would have said so.

17. Moreover, as the Judge pointed out, BC was extradited to Albania in 2012. He did not claim that he would be at risk in Albania due to a blood feud at that time, notwithstanding that, on the Appellant's account, he was the instigator of the blood feud. The pleaded grounds do not take issue with that part of the Judge's reasoning.

18. Mr Terrell also drew my attention to what is said at [44] of the Decision as follows:

> "The current Home Office guidance on blood feuds is to be found in a report issued as recently as January 2023 ('Country Policy and Information Notes – Blood Feuds – Albania') ('2023 CPIN') which replaces the February 2020 CPIN referred to in the refusal letter. The Appellant also relies on that report. The Respondent had previously carried out a fact finding mission to Albania between November 21 and 25 2022 and the results can be found in a 'Report of a fact-finding mission Albania: Blood feuds' also published in January 2023. The current view of the Respondent on blood feuds in relation to international protection is to be found in the section 'Consideration of issues' of the 2023 CPIN. It is her view that in general a person fearing an active blood feud is not likely to be at risk of persecution or serious harm. Whether they face such a risk will depend on their particular circumstances with the onus on the person to credibly evidence this (2.4.1). In general, the state is said to be willing and able to offer effective protection to persons affected by an active blood feud. The onus is on the person to demonstrate otherwise (2.5.1). It is also important to distinguish blood feud conflicts from other crimes. Some revenge murders are portrayed as blood feud killings when this may not be the case, and criminals at times use the term to justify their crimes."

19. I will return to the theme of sufficiency of protection below when dealing with the final ground. For current purposes, Mr Terrell relied on the last two sentences of this paragraph which provide support for the Judge's view that not all murders or conflicts amount to blood feuds.

20. As the Appellant accepts and Mr Terrell emphasised, irrationality is a high hurdle. It is a submission that no Judge properly directed could have reached the conclusion which this Judge did. On all the evidence, which

the Judge had, however, and also having regard to background evidence, I am not persuaded that the finding was irrational.

21. Ground two for those reasons fails.

Ground three: Flawed approach to blood feuds more generally

22. Paragraph [8] of the grounds appears to be in part a repetition of the second ground concerning the Judge's finding that the court documents did not mean that there was a blood feud. Reliance is also based on the Judge's focus on the Appellant not being in the north as (it is said) reason for disbelieving the Appellant's claim.

23. The Judge's reference to the Appellant not coming from the north appears at [45] of the Decision as follows:

> "However the Respondent accepts that blood feuds continue to occur and I agree with that conclusion. It is not clear how many of these are existing or new feuds – with the phenomenon stemming from Kanun (customary) law. They are said to be most prevalent in the northern areas of Albania, in particular Shkodra (Shkoder), Lezha, Kukes and Diber. Those that occur in areas where blood feuds are not culturally ingrained are likely to be due to families moving into these areas bringing the blood feud with them (2.4.2). In his statement of February 6 2023 the Appellant confirmed he was born in the city of Frier and in his asylum interview confirmed that he had spent most of his life in Rurez Kumrak (where his grandparents lived) between Frier and Berat in the Berat Municipality (AS Q39). It follows that the Appellant spent his entire life living south of Tirana and not in the north of Albania."

24. Contrary to what appears to be suggested in the pleaded grounds, the Judge did not find that the Appellant's claim could not be true just because he was not from the north. The Judge there and in that section of the Decision was merely considering the claim against the context of the background evidence to judge its consistency with that evidence or otherwise. That is an entirely appropriate course. Nor can it be said based on the background evidence that the Appellant's place of residence and that of his family is irrelevant to consideration of whether a blood feud exists. It is clearly a relevant factor. I observe that whilst the pleaded ground asserts that "the background material showed blood feuds also prevalent in Tirana and the south of Albania" no reference is given to any of the background material which is said to show this and nor was I taken to any by Mr Collins.

25. The other aspect of the Judge's reasoning which is challenged concerns the Appellant's age when he left Albania. This was mentioned in the grant of permission to appeal. The Appellant was on his account aged fifteen or

sixteen years when he left. This challenge to the Decision focusses on what is said at [52] to [54] of the Decision as follows:

> "52. I am also troubled by the decision of the Appellant's family to allow him to continue to attend the local school despite being attacked on a number of occasions by other children. It also appears from what was said in **EH** that children over the age of 15 (not 16) are potentially at risk so if that is right and there was an ongoing blood feud involving the [Y] family it would make no sense to allow the Appellant to continue to attend school and to do anything other than self-isolate.
>
> 53. The Appellant also claims that an attempt was made to abduct him and in his statement of August 14 2019 said that was in June 2018 when he would have been well over 15. In his asylum interview he said he was near the school at the time on his way to his grandmothers from a shop and that the attempt was made by some of the [Y] members and nephew of the [C] family (AS Q84). He said he saw 3 people in the van one of whom was armed and although they tried to grab him he was able to escape and run away. He said he managed to go through an area where a vehicle would not be able to access [AS Q90). He gave none of that detail in his statement of August 14 2019 where he simply said that an attempt was made to kidnap him but he managed to escape due to the fact that too many people were there.
>
> 54. Giving the Appellant due allowance for his age I do not consider it reasonably likely that the Appellant was ever caught up in what was said to be an ongoing blood feud in which the [Y] family are determined to seek revenge on male members of the [BC/AC] family. In particular I do not consider it is reasonably likely that he was repeatedly assaulted at school as claimed over a period of some years by older boys. Either the school would have stepped in to prevent such attacks continuing or the Appellant could have returned to live with his parents in the city of Fier. Similarly I do not consider that he was the target of a botched kidnap attempt as if the Appellant was the intended target it is difficult to accept that he would not have been seriously harmed particularly if one of those involved was armed."

26. The ground as pleaded refers only to [54] of the Decision and takes issue with the finding that the Appellant was never "caught up" in the blood feud. It is submitted that the Appellant was not of an age where he would have been involved as it is said is clear from the guidance in EH.

27. There are two difficulties with this submission. First, even on the extract from EH which is cited in the grounds (by reference to the definition of "Gjakmarrja") the age at which a child may become involved in a blood feud is fifteen (as the Judge noted at [52] of the Decision). The Judge was therefore entitled to take into account that the Appellant was not, on his own account, self-confining at an age when he might have been at risk if the blood feud existed as he claimed.

28. Second, what is said at [9] of the grounds is in any event inconsistent with the Appellant's case. His claim was to have been beaten up at school on several occasions due to his association with his uncles and prior to the attempted abduction which took place when he was just under sixteen. The Judge was entitled to take into account that the Appellant was on his own case just under sixteen when the attempted abduction is said to have happened, and to point out as he did that, based on the guidance in EH, only "children under 15" are excluded from being killed. He was entitled to rely on that as a reason why the Appellant's account was not to be believed.

29. Mr Collins said in his oral submissions that the complaint was the use of the words "caught up". He said that the Appellant had never claimed to be involved because he was a child. However, that is not consistent with the Appellant's claim to have been targeted at the very least by the attempted abduction. It is also not consistent with what is said in EH about the age when a child may become a target.

30. For those reasons, there is no error disclosed by the third ground. The Judge did not adopt a flawed approach to the evidence about blood feuds more generally. He took into account factors which, based on the background evidence and country guidance, were clearly relevant.

Ground four: Undue and irrational focus on what was not proved by corroborative evidence

31. The pleaded grounds rely on MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216 ("MAH"). It is submitted that the Judge's findings involved "quibbles about evidence which was not before him". The grounds as pleaded do not say where this has occurred. If and insofar as reliance is placed on the Judge's approach to the Appellant's case and the challenges made in the second and third grounds, I have explained why those grounds are not made out.

32. Mr Collins in his oral submissions drew my attention to [51], [54] and [56] of the Decision which he said were the focus of this challenge. Those read as follows:

> "51. In his asylum interview the Appellant said that the last victim of the blood feud was [NC] in about 2008 (AS Q98). I have not seen anything relating to his death so cannot say if indeed he was killed or if he was that it is reasonably likely that he was killed by a member of the [Y] family. In his asylum interview the Appellant said that he did not know who had carried out the killing (AS Q98). No death certificates for any of the alleged victims of the blood feud including [NC] have been produced. [NC] is not named in any of the Family Certificates although the Appellant said in his interview that he was his 'brother and uncle's cousin' (AS 99). He made no mention of [NC]'s death in his statement of August 14 2019 and none of the press articles produced make any reference to his death. I also have nothing from

any reliable official source or the Appellant's family dealing with his alleged death.

…

55. There has undoubtedly been a significant decline in the incidence of blood feud cases in Albania. The Appellant and his family were based in the southern part of Albania where blood feuds are said to be even less prevalent. In those circumstances, I am not satisfied that it is reasonably likely that if the Appellant is returned to Albania he faces the possibility of being harmed by reason of an active blood feud. None [sic] the Albanian court documents from Albania make any reference to a blood feud and there is no evidence that [BC] sought to avoid extradition on the basis that he might be at risk from the [Y] family. There is no evidence that any of the [BC/AC] family have been killed as I do not accept the Appellant's claim that [NC] has been the victim of any feud. I have no statements or letters from any members of the Appellant's family in Albania confirming his account of the feud. Although members of the [Y] family may have been killed by the Appellant's uncles as evidenced by the court documents that does not mean that this automatically led to a blood feud. If that was right then every unlawful killing in Albania would lead to a blood feud which it clearly does not.

56. The Appellant has not produced anything for any official source confirming it is reasonably likely that he is a potential victim of a blood feud. The General Prosecutor's Office ('GPO') reported in 2022 that documentation relating to blood feuds can be issued by district prosecution offices (2.1.6 2023 CPIN). The GPO in Tirana told the Respondent's Fact Finding Mission in 2022 that it is only the district prosecution office that releases a document relating to a blood feud. The document would say that '…the complaint was filed and an investigation initiated.' (11.1.3) noting that there is a difference between a document saying that they have filed a complaint, to one confirming that a person is in a blood feud (11.1.4). The GPO said that host countries should not accept documents issued by civil servants/local government and police officers. If the Prosecution office has not issued the document attesting to the existence of a blood feud then it should not be accepted(11.1.7)"

33. I begin by observing that the judgment in MAH has to be considered as a whole. As Singh LJ said at the outset, MAH involved a challenge to credibility findings. This was an unusual case because those findings were not made based on an inconsistency in the evidence but rather wholly on the basis that the appellant could have taken steps to obtain further evidence to corroborate his account but did not do so.

34. The paragraph cited in the grounds from MAH ([37]) similarly does not substantiate the submission made in this case. That concerns the Tribunal's analysis of the background evidence in the case and the standard of proof applied.

35. I accept Mr Terrell's submission that MAH does not apply to the circumstances of this case for the following reasons.

36. Dealing first with the Judge's finding about [NC]'s death, the Judge considered this aspect of the claim on the evidence before him looked at as a whole. First, this was not something which the Appellant had mentioned in his earlier statement. There was therefore an inconsistency in the Appellant's own evidence. [NC] was not mentioned as part of the family in the Family Certificates. The press reports did not refer to his death. There was therefore an inconsistency or omission when the documentary evidence was considered. The Appellant had not produced the death certificate so the Judge pointed out that he could not assess whether [NC] had been killed and if so who had killed him. The Judge also pointed out that even on the Appellant's own case he did not know who had killed [NC]. That analysis involves an appropriate holistic approach to all the evidence the Judge had. The Judge was entitled to point to gaps in the evidence and to assess this aspect of the claim based on all the evidence.

37. That then was relevant to whether the Appellant had established the existence of a blood feud. The court documents established the killing by BC and AC of members of the Y family. However, there were no documents or consistent testimony establishing any killings by the Y family of members of the Appellant's family.

38. The Judge was also entitled to refer to the background evidence about the existence of documents relating to blood feuds. That such evidence might be expected to exist comes from the country guidance in EH. Mr Collins said in his oral submissions that a feud dating back to 1997 as here would not be recorded in any official document. Leaving aside that he did not take me to any evidence about that (and none before Judge Cary), I do not read [56] of the Decision as being a central part of the Judge's reasoning about the existence or otherwise of a blood feud in the Appellant's case.

39. The Judge did not rely on an absence of evidence. He considered the evidence and made findings which were open to him on that evidence. MAH has no relevance to this case.

40. I also drew to Mr Collins' attention that, leaving aside any of the other grounds, the Appellant could not succeed if the Judge's findings in relation to sufficiency of protection and internal relocation were open to him on the evidence. The Judge's findings would be a complete answer to the Appellant's case even if there were an ongoing blood feud.

41. Of course, if the Judge was entitled to find that there was no blood feud or no active blood feud, then the issue of sufficiency of protection and internal relocation does not arise at all. However, in case I am wrong in

my conclusions on the Appellant's other grounds, I deal with the Appellant's case in relation to sufficiency of protection and internal relocation.

42. The Judge's findings in relation to sufficiency of protection and internal relocation are at [58] of the Decision as follows:

> "It therefore follows that the Appellant will not be at risk on return to his home area. However, if I am wrong about that there is no reason why the Appellant should not be able to relocate. The possibility of relocation is dealt with in Section 12 of the 2023 CPIN. Freedom of movement exists in Albania and relocation is said to be an option for those who are said to be involved in a blood feud. The Respondent's 2022 fact finding mission were told that there had been cases where families could relocate within Albania (12.1.10). In addition, there is a sufficiency of protection as the Albanian authorities are willing and able to offer effective protection to persons affected by an active blood feud. According to the Respondent the Albanian authorities have since the promulgation of **EH** taken a number of steps to strengthen its legal system for the detection, prosecution and punishment of acts constituting persecution which is accessible to persons fearing harm generally – 2023 CPIN (2.5.3). The CPIN sets these out in some detail. It is said that in general protection is available in all areas of the country for persons involved in active blood feuds (2.5.5)."

43. The Appellant's pleaded challenge at [11] of the grounds is only that the Judge was wrong to find that there would be a sufficiency of protection and an availability of internal relocation. It is said that the Judge's findings are contrary to the guidance in EH. The only reference to that guidance is to [5] of the headnote as follows:

> "Where there is an active feud affecting an individual and self-confinement is the only option, that person will normally qualify for Refugee status."

44. Mr Collins first submitted that the Judge's findings at [58] of the Decision were not in the alternative. On a plain reading of the first two sentences of that paragraph, that is not sustainable. The Judge was clearly considering the Appellant's case on the alternative basis of an active blood feud being in existence.

45. Mr Collins also submitted that if the Judge intended to depart from existing country guidance, he had to point to evidence which had overtaken that guidance. However, although the Judge has in any event explained on the basis of later evidence why the position in Albania may have improved, nothing which the Judge says is inconsistent with the guidance in EH.

46. In particular, at [3] of the headnote, the Tribunal found that "[t]he Albanian state has taken steps to improve state protection, but in areas where Kanun law predominates (particularly in northern Albania) those

steps do not yet provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant. Internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan".

47. The Judge's findings are not inconsistent with that guidance. This Appellant is from the south not the north. The guidance in EH indicates that protection in that area which is less dependent on Kanun law is likely to be sufficient. That is also the answer to Mr Collins' submission that the Appellant could not internally relocate as he was already from the south. As someone from the south, however, he could rely on a sufficiency of protection in that area.

48. It is also worth repeating that the Appellant himself relied on court documents showing that his uncles had been prosecuted for killings of members of family Y which if anything supports the Judge's conclusion as to sufficiency of protection.

49. The Appellant did not claim that he had to self-confine before coming to the UK (he says only that "he stayed at home 'or in the vicinity' ([30] of the Decision). Paragraph [5] of the guidance in EH did not therefore apply.

50. The Judge's findings are for those reasons not inconsistent with the guidance in EH. The Judge was entitled to find that there would be sufficiency of protection available in the south of Albania. The Appellant is not from the north.

51. The fourth ground is for those reasons not made out.

CONCLUSION

52. In conclusion, the grounds and Mr Collins' submissions do not disclose any error in the Decision. Judge Cary was entitled to reach the findings he did for the reasons he gave.

53. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

NOTICE OF DECISION

The Decision of Judge Cary promulgated on 28 May 2023 did not involve the making of an error of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 November 2023