Case Nos: UI-2023-003643
UI-2023-003646

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal Nos: PA/56135/2021
PA/56139/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th of December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

F. R.
Z. K.
(ANONYMITY ORDERS MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Radford of Counsel, instructed by Oliver & Hasani Solicitors
For the Respondent: Mr A Melvin, Senior Home Office Presenting Officer

Heard at Field House on 20 October 2023

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

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. These are appeals against decisions of First-tier Tribunal Judge Bartlett signed on 20 June 2023 refusing on protection grounds and human rights grounds each of the linked appeals of the Appellants against decisions of the Respondent dated 17 December 2021 refusing leave to remain in the United Kingdom.

2. The Appellants are citizens of Albania. Their personal details are a matter of record on file and are not repeated here in keeping with the anonymity direction that has been made in these proceedings, and is hereby continued. The Appellants are related through marriage: FR was married to ZK's son, 'SK'.

3. Applications for protection were made on 26 November 2019 based on a blood feud said to be rooted in a road traffic accident involving SK that occurred in 2010. It was said that SK, whilst driving, had knocked over a pedestrian, a young girl, who later died of her injuries. He was subsequently convicted and sentenced to 2 years in prison.

4. In June 2019 FR's son (ZK's grandson), then about 11 or 12, was found lying on the road with a head injury. The Appellants state that they believe that he had been targeted by the family of the deceased girl taking action in respect of a blood feud. Shortly thereafter the Appellants, together with FR's two children, left Albania for the UK, entering illegally in November 2019.

5. The First-tier Tribunal, having heard oral evidence from FR and a witness, 'SM', found that there was no blood feud and consequently refused the appeals on protection grounds [paragraphs 10-14]. The Judge also considered, and rejected, an Article 3 claim based on medical grounds in respect of ZK [15-16]. Yet further the Judge refused the appeals with reference to Article 8 family/private life [17-18].

6. The Appellants applied for permission to appeal to the Upper Tribunal, which was granted on 29 August 2023 by First-tier Tribunal Judge Landes.

7. The Grounds of Appeal in support of the application for permission to appeal raised three bases of challenge, summarised at paragraph 2 in these terms:

> "*a. There was procedural unfairness, in that the truthfulness of a key witness was not questioned in cross examination, but his evidence has been rejected as a fabrication;*
>
> *b. FTTJ erred in fact, amounting to an error of law, as to what the witness said in his written statement. This is uncontroversial and can be verified by reference to the statement. The mistake is not the As' fault, and the error has materially affected the FTTJ's assessment of the evidence;*
> *c. FTTJ failed to consider the evidence 'in the round' as she was required to do, before concluding on its reliability. In particular, she considered and rejected the evidence of the First Appellant in isolation from that of the witness, relevant background evidence and the relevant country guidance determinations.*"

8. The grant of permission to appeal did not restrict the terms of the grant, but it was observed that a note of cross-examination appeared to indicate that the Respondent did challenge the witness as not being truthful: "*it appears to have been put to the witness that he was not part of the process of asking forgiveness from the family (i.e. that he was not telling the truth) and the respondent's submissions were on the basis that he was probably not involved*" (grant of permission to appeal at paragraph 4).

9. Judge Landes' observations in this regard are based on Ms Radford's own note of cross-examination (not challenged by the Respondent) which includes "*Q. Yet [FR] doesn't remember you being involved? A. Maybe she did not know that I was part of the process but I was*", and notes as part of the Respondent's submission – "*[SM]'s name would have come up if he had been there. He probably wasn't involved*".

10. Before me Ms Radford indicated that notwithstanding the observations in the grant permission to appeal, this ground was not abandoned, submitting that any allegation of dishonesty should have been put plainly to the witness.

11. It may be seen that the Grounds draw very heavily on the First-tier Tribunal's approach to the evidence of the witness SM.

12. In this regard, in the premises, I make the following observations:

> (i) When the Appellants presented their claim their evidence for the existence of a blood feud was essentially circumstantial. They relied on no more than the fact that SK had been responsible for the death of a girl, and years later his son was found with unexplained injuries. Their case was, no more and no less, that as a matter of inference

FR's son must have been targeted in an act of revenge by the family of the deceased girl.

(ii) For the avoidance of any doubt, I note that in this context it was claimed that the girl's family's attempts to ensure the prosecution of SK were also indicative of a feud; but as both the Respondent and the First-tier Tribunal in substance observed, this is no more than evidence of an insistence on due process and not remotely in itself evidence of an intent to exact extrajudicial revenge.

(iii) Whilst country information was filed as to blood feuds generally - and thereby supporting the theoretical possibility of the existence of a blood feud - nothing in the country information evidence provided any sort of direct corroboration.

(iv) Nor, up until the introduction of SM's testimony, was there any other evidence to support the notion of a blood feud. In particular it was FR's evidence that she had never received any sort of threat from the girl's family, and that there had been no sort of incident or problem between the death of the girl and the injury to her son years later. Further, in the absence of any witness, even on the Appellants' own case there was nothing to indicate how the injuries to FR's son had been sustained: the highest the case is put in this regard is that the son said that he recalls seeing a large car and then waking up in hospital (interview, Q.131).

(v) SM's evidence provided, for the first time in the application and appeal proceedings, testimony as to specific threats that might support the notion of the existence of a blood feud and/or an intent on the part of the family of the deceased girl to exact revenge.

(vi) SM's evidence was not introduced until his witness statement, signed on 9 June 2023, was filed in a Supplementary Appellant's Bundle.

(vii) It was said that SM was "*an old family friend of [SK], and his father*" whom FR had recently encountered in the UK (paragraph 6 of FR's additional witness statement, 9 June 2023). SM's statement spoke as to spotting the Appellants whilst driving through Dulwich, and stopping to speak to them (paragraphs 2-4).

(viii) SM offered evidence to the effect that: after the incident and whilst SK was under arrest, at the request of SK's father he had visited the hospital where the injured girl had been taken and had spoken to the father of the girl (paragraphs 6-12); following the girl's death he went with SKs father and others to the girl's house to "*try and pay our respects*", but they were told by a family member that

> they were not welcome and would not be allowed to attend the funeral (paragraphs 14-16); during this encounter he claims that the family member – an uncle of the girl – stated "*We will never forget this. [SK] took away a child from our family and I will take away one of his even if it takes a lifetime*".

13. I pause to note that there is seemingly a very significant discrepancy between SM's narrative and the earlier testimony of FR. In FR's witness statement of 16 February 2021 she clearly indicates that she was unaware of the incident until 7 days later when SK was released on bail: see paragraph 8. In this context see also the interview notes at questions 113-124, which indicate that the child died 7 days after the incident. Although during this period FR's marital relationship with SK had essentially broken down, she continued to live in SKs family home – by implication with ZK and her husband, SKs father. It is difficult to see how the notion of the family only becoming aware 7 days after the incident (by which time the child had died), is reconcilable with SM's testimony to the effect that he went to the hospital at the request of SK's father, (ZK's husband and FR's father-in-law), shortly after the incident whilst SK was under arrest and the child was still alive.

14. In this context I note that in her subsequent witness statement dated 9 June 2023, made after having encountered SM, FR now refers to having been told by SM that he (SM) had been involved in an attempt to reconcile with the girl's family "*asked by my ex-father-in-law*" whilst SK "*was in prison the first time*". There is no attempt here to reconcile this version of events with her previous statement – "*We actually had no idea what happened until [SK] came to our house to tell us.... This was after he had been released following his first 7 days detention at the police station...*".

15. However, this apparent discrepancy does not appear to have been noticed in the proceedings before the First-tier Tribunal, and therefore not explored by way of questions to the witnesses. Although I brought it to the attention of the representatives at the hearing, it is inescapably the fact that the Appellants – and indeed their witness – have not yet had the opportunity to address this matter directly.

16. Be that as it may, I agree with the basis of the grant of permission to appeal: the merit in this challenge lies in Ground 2.

17. The First-tier Tribunal Judge, at paragraph 12, purported to identify "*an inconsistency*" between the evidence of SM and the evidence of FR with regard to the number of approaches made to the family of the deceased girl.

18. Paragraph 12 is in these terms:

> "*[SM]'s evidence is the only evidence first hand evidence that any threats were made. His witness statement has an inconsistency with the first appellant's. In his witness statement he says there was only that one attempt made to resolve the situation. However, the first appellant's supplementary witness statement which states that he took part in attempts by her ex-father-in-law to get in touch with the [girl's] family after the accident and after [SK] was in prison the first time. [SM]'s evidence was that this was an extremely serious situation and that he had great fears for the appellants and the children. I find this claim is undermined by the fact of his own evidence which states that he left Albania shortly after the events in question and had no further contact with the appellants or their children until he drove past them in a park in London. When I have considered this evidence with all the other evidence, I consider that at best there is an exaggeration in it to support the appellant's claim of a blood feud. I accept that his presence was unwanted at the hospital and funeral but I do not accept that words were uttered which indicated that a blood feud had started.*"

19. Criticism is made of this passage in that SM's statement refers to two approaches to the girl's family, not one: his visit to the hospital at the request of SK's father "*to find out what had happened to the girl and to offer any help possible*" (witness statement at paragraph 8); a subsequent delegation to the girl's house "*to try and pay our respects*" following her death (paragraph 14). (Although the pleading in the Grounds suggests that this second event was the funeral, it seems to me that it is not clearly apparent that this was an attempt to attend the funeral, so much as it had been indicated that SK's family would not be welcome at the funeral.) The Judge's reasoning appears to be premised on SM not having referred to the attempt to get in touch with the family whilst SK was in prison ("*However, the first appellant's supplementary witness statement…*"), but he manifestly refers to this at paragraphs 6-12 of his witness statement.

20. Moreover, the Judge appears to contradict her own reasoning in the final sentence, where she appears to accept that SM was present at the hospital and funeral.

21. The reasoning is muddled, and the reader is left in uncertainty.

22. In such circumstances it seems to me that the Grounds accurately identify a factual misconception on the part of the Judge as to the contents

of SM's witness statement that has been relied upon, erroneously, in identifying a discrepancy between his evidence and the evidence of one of the Appellants.

23. In my judgement the Judge's perception of discrepancy in this regard was plainly a material consideration to her evaluation of the reliability and credibility of SM's evidence. The other matter referred to at paragraph 12 is of no real consequence to credibility: it is difficult to see why SM's fears for the Appellants and the children are undermined by the fact that he himself left Albania shortly after.

24. Moreover, as the Judge noted, and as consistent with the matters I have set out above, SM's evidence was significant because it was "*the only … first hand evidence that any threats were made*".

25. The error is sufficient that, in the ordinary course of events, the Decision should be set aside.

26. The only basis for any hesitation in this regard is the apparent – seemingly very significant – discrepancy that I have identified above. However, this was no part of the First-tier Tribunal Judge's reasoning, and so it seems to me that it cannot be said that but for the material error identified the Judge would have reached the same conclusion. More particularly, as I have indicated above, the Appellants have not had an opportunity to address this issue. It would be in breach of natural justice were I in effect to summarily conclude against them on this issue by declining to set aside the Decision of the First-tier Tribunal in exercise of the discretion under section 12(2) of the Tribunal's, Courts and Enforcement Act 2007.

27. In all the circumstances the Decision of the First-tier Tribunal requires to be set aside, and the decision in the appeal should be remade pursuant to a new hearing before the First-tier Tribunal with all issues at large.

28. In the circumstances it is unnecessary for me to reach any conclusion in respect of the other two grounds of challenge.

Notice of Decision

29. The decision of the First-tier Tribunal contained a material error of law and is set aside.

30. The decision in the appeal is to be remade by the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Bartlett, with all issues at large.

Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

4 December 2023