



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004133

First-tier Tribunal No: PA/53069/2021  
IA/10748/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 12 December 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BOWLER**

**Between**

**MR ARJAN BUSHAJ  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K. McCarthy instructed by Tuckers Solicitors  
For the Respondent: Mr S. Walker, Senior Presenting Officer

**Heard at Field House by Microsoft Teams on 10 November 2023**

**DECISION AND REASONS**

1. The Appellant has claimed protection on the basis of an alleged blood feud in Albania. In a decision (“the Decision”) issued following a hearing on 9 December 2022 First-tier Tribunal Judge Davies (“the Judge”) dismissed the protection appeal of the Appellant. In a decision dated 12 April 2023 First-tier Tribunal Judge Dixon granted permission to appeal on the basis that there were arguable errors of law as it appeared to have been accepted that there was a killing in the Appellant’s family which could give rise to a well-founded blood feud claim.

The FTT Decision

2. The Judge found that a member of the H family had been killed by a cousin of the Appellant, but concluded that the Appellant did not qualify for protection. In reaching that conclusion the Judge considered expert evidence from a country expert, Ms Young, as well as evidence from the Appellant’s wife and mother. It is the Judge’s approach to that evidence which lies at the heart of the Appellant’s grounds of appeal.

### The Appellant's Grounds of Appeal

3. Ms McCarthy made detailed submissions regarding seven grounds of appeal. In short, the grounds can be summarised as follows:
  - a. the Judge failed to give adequate reasons for rejecting the expert report. While it may be the case that the expert strayed beyond her role in her level of endorsement of the Appellant's claim, that should not, without more explanation, mean that her evidence on those matters which were within her expertise should be given no weight. The evidence on those matters informed many of the pertinent issues considered by the Judge.
  - b. the Judge's rejection of the existence of a blood feud on the basis that there had only been one murder was irrational and failed to address relevant evidence, in particular from Ms Young;
  - c. the Judge made findings regarding family members not suffering harm when remaining indoors without taking into account the expert evidence and the country guidance case of *EH (Blood feuds) Albania CG* [2012] UKUT 00348 on self confinement;
  - d. the Judge failed to consider relevant evidence regarding the attack on the Appellant in Greece in 2013 and his subsequent return to Albania from 2014 to 2016: in particular, evidence showing that he was not the eldest male member of his family in Albania when he returned (such that he was not a likely target at the time whereas he would be now given the departure or death of more senior male members) was not addressed;
  - e. the Judge failed to give reasons for rejecting the evidence of the Appellant's mother and wife;
  - f. the Judge failed to consider relevant evidence of the connections of the H family and their influence; in particular, evidence from the expert;
  - g. the Judge placed irrational reliance on the Appellant's medical notes to conclude that there was a conflict in his asylum claim.
4. In her submissions Ms McCarthy emphasised that the Judge's approach to the evidence should be assessed in the context of there being no presenting officer at the hearing (which had proceeded after two previous adjournments for one to attend) and the consequent lack of challenge to much of the Appellant evidence.

### The Response of the Respondent

5. A Rule 24 response had been provided by the Respondent. In that the Respondent opposed the Appellant's application and submitted that the Judge directed himself appropriately. However, after hearing Ms McCarthy's submissions Mr Walker conceded that the Judge had erred in his approach to the expert evidence; in particular, in not addressing that evidence in relation to matters such as self-confinement. This was a material error of law such that the Decision should be set aside.

### My decision

6. The Judge has written a detailed decision over which there has clearly been much care and time taken. The Judge was also correct to identify that the expert had stepped outside her role as an expert and had strayed into expressing her view on the ultimate legal issue - namely the ability of the

Appellant to qualify for protection. It was correct to explain that this was the preserve of the tribunal.

7. However, the Respondent has conceded that the Judge's approach to the expert's evidence otherwise was flawed (in essence by failing to address it in relation to material findings) such that the first, second and third of the grounds listed earlier are made out.
8. I am satisfied that such an error of law means that a rehearing is required. The matters to which the expert's evidence relates go to key elements of the Decision's conclusions, including, in particular: the evidence about self-confinement (a matter also noted in the country guidance of *EH*) and its impact on the Judge's conclusions regarding the self-confinement of the Appellant's uncle and other senior family members; the evidence about the long term nature of blood feuds and the Judge's conclusions about the lack of a killing since 2006; and the evidence that the Appellant was not at risk while there were more senior male members of the family in Albania in the context of the Judge's findings about his return to Albania in 2014.
9. It may be that even having addressed the expert evidence a judge decides that for reasons set out that the evidence is rejected, or that other evidence outweighs it; but a reasoned explanation for so doing is required. Unfortunately, despite the Decision being detailed and analytical in many respects, that reasoning about a core element of the Appellant's evidence was absent.
10. Given the nature of the error of law I am satisfied that the appeal will need to be remitted for a rehearing de novo. Consequently, I do not address the other grounds further.
11. The Appellant should be aware however that a rehearing will not necessarily lead to a different result for him.
12. Both parties asked for the rehearing to be at the level of the First-tier Tribunal given the extent of fact finding which would be required. I have applied the guidance in *Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC)* and have had regard to the extent of fact finding which will be required as well as the extent of the loss of the two-tier decision making process if the decision is retained. In the circumstances I agree with the submission of both parties that remittal is required in this case.

### **Notice of Decision**

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.
2. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Andrew Davies.

**T. Bowler**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**25/11/2023**