



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

APPEAL NO: AA/09911/2014

THE IMMIGRATION ACTS

**Heard at: Field House
on 14 October 2015**

**Decision and Reasons
promulgated
on 20 November 2015**

Before

Deputy Upper Tribunal Judge Mailer

Between

**GT
ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

**For the Appellant: Ms R Francis, counsel, instructed by JD Spicer
For the Respondent: Mr S Kandola, Senior Home Office Presenting
Officer**

DETERMINATION AND REASONS

1. I continue the anonymity direction made. This direction is to remain in place unless and until this Tribunal or any other appropriate court, directs otherwise. As such, no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. Failure to comply with this direction could amount to a contempt of Court.

2. The appellant is a national of Albania, born on 12 February 2001. His appeal against the decision of the respondent dated 20 October 2014 to refuse to grant him asylum was dismissed by First-tier Tribunal Judge Colvin in a decision promulgated on 21 March 2015.
3. The appellant submitted two written statements in support of his appeal, which formed the basis of his claim.
4. His evidence has been summarised by Judge Colvin. The appellant made his journey to the UK when he was 13 years old. He claimed that his grandparents and father originated from Kukes in the north of Albania which practises strict Kanun law. His grandparents moved to Arapaj about 20 years ago and purchased land on which they built the family house. The appellant attended school until 2013 and his father worked as a farmer and his mother in a market stall.
5. In 2008 his grandfather died. In December 2013 a private company wanted to build on their land, claiming to have papers from the L family, their neighbours, showing that the land belonged to them.
6. His father disputed this as they had the legal documents. He spoke to the head of the L family who claimed that the land had been sold to his grandfather using false documents. The person became aggressive and insisted that they leave the farm within 24 hours. A fight ensued in front of the appellant where his father was beaten up and the appellant himself was kicked and punched by his son, I. The appellant's father then struck I, rendering him unconscious.
7. The father then returned home and took the appellant to a friend's house. He was afraid that the L family might take revenge. The following day the appellant's mother told his father that the L family had sent intermediaries to the home, stating that they had declared a blood feud. They could not go to the police for protection as they do not get involved in blood feuds and are known to be corrupt.
8. In the circumstances, his father arranged for an agent to take him to a safe country. He left on 15 April 2014 with an agent, staying in Macedonia for four days, after which he was put in a lorry bound for the UK. The appellant's asylum claim was refused by the respondent on 20 October 2014 but he was granted discretionary leave to remain until 20 April 2017 as an unaccompanied minor.
9. Judge Colvin acknowledged that on account of the appellant's young age extreme caution needs to be taken before drawing any adverse inferences from any omissions or discrepancies in his evidence [16]. She had regard to the President's Practice Statement dated 30 October 2008 regarding child witness, the provisions of paragraph 351 of the Immigration Rules, and the respondent's own guidance on assessing credibility of children which is reflected in the joint Presidential Guidance Note No. 2: Child,

vulnerable adult and sensitive appellant guidance [16]. The appellant did not give evidence at the hearing.

10. Judge Colvin considered the background information contained in the appellant's bundle including the COI report on Albania (2012) at [20]. She also had regard to the most recent information on the extent of blood feuds set out in the country information dated June 2014.
11. She found that in general the information in the background evidence corroborates the findings of the Upper Tribunal in the country guidance case of EH (Albania) CG [2012] UKUT 00348, which she set out as follows: Whilst there remain a number of active blood feuds in Albania, particularly in the northern areas, they are few and declining. The Tribunal in EH required that an appellant must produce satisfactory individual evidence of the existence of the blood feud, his profile as a potential target and whether he has been in self confinement [21].
12. Judge Colvin noted that the respondent rejected the appellant's account "... because he is not aware of anyone being killed as part of the feud". She also noted the respondent's assertion that the appellant's family did not report the declaration of the blood feud to the police [21].
13. Judge Colvin considered the submissions of Ms Francis as set out in her skeleton argument, namely, that it is possible that there has been a killing but that the appellant is not aware of this because his parents did not speak to him in detail about the feud because of his age. She also noted the contention in the relevant country evidence that law enforcement is poor in Albania [21].
14. Judge Colvin concluded that even applying the lower standard of proof, the appellant's account whilst internally consistent, was not externally consistent with the background information on blood feuds. First, the appellant did not live in the northern areas where blood feuds mainly occur. The claim made that his grandfather in the L family originated in the north many years ago was a mere assertion. Secondly, there is no evidence that a killing occurred and it is merely speculation that it may have but the appellant was not told [22].
15. She noted that the background information refers to Kanun law being a system of reciprocal killings - that is, blood for blood [22]. Moreover, the FCO letter from the British Embassy, Tirana, dated 12 June 2014, referred to the fact that the police consider that some families are involved in general fighting which cannot be genuinely classified as blood feuds. Whilst the background information refers to shortcomings in the police and judiciary, there is the additional factor that the appellant's family did not attempt to report the matter [22].
16. In the event, Judge Colvin found that the appellant had not shown that he is involved in an active blood feud and was not at risk of persecution as being a member of a social group [23].

17. On 22 June 2015, Upper Tribunal Judge Blum in granting the appellant permission to appeal referred to the contentions in the grounds of appeal that the Judge erred in law in her consideration of the background evidence relating to whether blood feuds can arise from land disputes in the absence of a killing. He noted that the appellant relied on country evidence contained in counsel's argument which arguably indicated that a blood feud can arise in such circumstances. Moreover, the second ground relating to the Judge's conclusion that the appellant's family did not originate from northern Albania was also arguable.
18. Following the error of law hearing on 14 October 2015 the parties were given permission to file further written submissions. Ms Francis alone has produced further written submissions regarding two issues that were raised: Is the threat of a killing capable of constituting a blood feud, or does there have to be a killing? Further, does adherence to Kanun law depend upon the area in Albania in which a family is living or the traditions of that family? I have considered all of Ms Francis's submissions including those developed and set out in her recent written submission.
19. In relying on her grounds and skeleton argument before First-tier Tribunal, Ms Francis submitted that the Judge failed to give reasons or any adequate reasons for findings on material matters, and in particular that there is no evidence that a killing occurred and that it is mere speculation that it may have occurred, but that the appellant had not been told. That led to the finding that the plausibility of the appellant's account was undermined by the lack of an account of killing.
20. Ms Francis submitted that in so doing the Judge erred in law in failing to consider the country evidence as set out at paragraph 28 of her skeleton before the First-tier tribunal, namely, that blood feuds are commonly caused by land disputes rather than killings. I shall refer to this submission in my assessment.
21. In the alternative, she submitted at paragraph 5 of the grounds, that the Judge erred in failing to give adequate reasons for attaching 'such weight' to the absence in the appellant's account of a killing given the relevant country evidence.
22. She also contended that the Judge failed to give adequate reasons for her findings relating to the assertion that the appellant's family originates from the north of Albania. In that respect she also erred in requiring corroborative evidence and applied the wrong legal test to the assessment of the appellant's evidence.
23. In the course of her submissions, Ms. Francis referred to paragraph 28 of her skeleton before the First-tier tribunal and paragraph 10 of the grounds of appeal, noting that the respondent rejected the appellant's account of the blood feud as she was not aware of anyone having been killed as part of the feud. She repeated her contention that it is possible that there has

been a killing but that the appellant is not aware of this because his parents did not speak to him in detail about the feud because of his age.

24. She further submitted with reference to paragraph 28 of her skeleton before the First-tier Tribunal that it is in any event clear from the country evidence that land disputes are common in Albania and can cause blood feuds. She referred to the Home Office's 'latest' Country of Origin Information and Guidance titled 'Albania: Blood Feuds' from pages 126 in the appellant's bundle.
25. Ms Francis noted that current country guidance case, EH, was expressly referred to in the Country of Origin information report, in Annex D at page 160¹.
26. She submitted that the requirement by the Judge that there be "a killing" was an error of law. In any event there was the possibility of such killing having regard to the finding that the appellant had been internally consistent in his evidence. It is entirely credible that the appellant would not have been told about the feud in detail, given his young age – he was aged 13 at the time. He had been subsequently informed by his mother that the L family had mounted a blood feud against his family which could not be reconciled.
27. In her recent written submissions Ms Francis identified and relied on the following paragraphs in EH:

"5.

... (v) Gjakmarrja ('Blood-taking'). A vendetta, or blood feud, which may have lasted for decades, or may be recent in origin. It is closely linked to collectivist notions of family, or clan solidarity and reliability. A blood debt carries a related loss of honour, which can only be restored by the taking of blood from the other family. It is generally borne by the males of the nuclear family, parents, grandparents, children and grandchildren.

Typically, a feud begins with a killing or offence by an individual from Clan A, which must be revenged by a senior male figure from Clan B. When revenge has been carried out by Clan B, Clan A is required to retaliate by killing a Clan B member, and so on, potentially to the extinction of all male members of both clans. Children under 15 and women are not usually required either to kill or be killed, except perhaps where a woman is the cause of the feud, or the last surviving member of the target clan.

...

42. Professor Philip Alston's report on blood feuds in Albania for the UNHCR noted the 'deep discrepancies' in statistics regarding blood feuds, ranging between the government view that there were less than sixty killings a year, of which 29-45 were in Shkodra, with about 130 families in self-confinement nationally, and the view propounded by the CNR and other non-governmental organisations, that there were hundreds of deaths and

¹ In fact the decision was referred to and considered in some detail as part of the report at paragraph 1.3.

thousands of self-confined children. The problem was partly one of language, with some analyses using a broader definition including any revenge killing between families and others a narrower, traditional definition of premeditated 'taking of blood' by the victim family at the other. Non-governmental organisations had an incentive to overstate the figures for funding purposes; rural Albanians probably underreported instances of crime in their area; and the records of government programmes might be incomplete. Overall, he tended to think that the lower government figures were likely to be more accurate and that blood feuds were a small and diminishing problem for the Albanian authorities.

...

57. In the light of the problems with corruption in the Albanian press, and the influence and involvement which Mr Marku has in all of the international press reports before us, we also do not consider that a press report concerning a death or feud will normally add much weight to an appellant's account of a blood feud. In some cases, however, consistent local or national press reports published promptly after the events relied upon may add weight to an oral account provided that they are factual. The involvement of Mr Marku or the CNR in a national or international press report will affect its weight because of the intensely problematic nature of his evidence. Albanian press reports will carry limited, if any, weight because the evidence is that stories can be freely inserted in both the national and local press, whether or not there is any substance to them.
58. We accept that there remain a number of active blood feuds in Albania, but we prefer the evidence of Professor Alston that they are few and declining. The reliable evidence before us supports a finding that there are a small number of deaths annually arising from ongoing feuds and that a small number of adults and children are in self-confinement for protection. The Albanian government has residential programmes to educate self-confined children, but very few children are involved in them and those who are do not always take up the option of living away from home in residential units for this purpose. A vendetta, or blood feud, which may have lasted for decades, or may be recent in origin. It is closely linked to collectivist notions of family, or clan solidarity and reliability. A blood debt carries a related loss of honour, which can only be restored by the taking of blood from the other family. It is generally borne by the males of the nuclear family, parents, grandparents, children and grandchildren."
28. Ms Francis also referred to Appendix C - Country expert evidence.
- "15. Where a potential victim, including a pre-emptive victim, submitted to the other family by self-confinement that action could suspend revenge-taking, perhaps for generations. Fleeing abroad might have the same effect, but the aggressor would continue to be concerned that on return, the senior male from the attacked clan might revive the feud or seek criminal prosecution of the killer. The patrilineal line was at the core of blood feud practice."
29. She referred to paragraphs 20,21,22 and 39, Appendix C of EH, regarding evidence on adherence to Kanun law based on family tradition.
30. Ms Francis submitted that it is clear from EH that blood feuds commonly but not exclusively begin with a killing: References to blood feuds and

killings are frequently expressed in the alternative: “a press report concerning a death or feud” EH at [57]. The Tribunal also noted at [42] that there are particular linguistic difficulties with the classification of blood feuds and/or killings creating a variation as to what constitutes a blood feud.

31. At paragraph 10 of her recent written submission Ms Francis relied on the UN Human Rights Council report to which I have referred in support of the appellant's claim that blood feuds commonly arise from land disputes and that no killing is required for a blood feud to begin. She submitted that this document was not before the Upper Tribunal in EH and was “plainly” not considered by the Tribunal when reaching its country guidance on blood feuds.
32. Accordingly, she submitted that a threat of killing is capable of constituting a blood feud and such feud exists between the appellant’s family and the L family. There must be a first killing in any blood feud. He would be the primary target of the blood feud if he were returned to Albania.
33. She finally submitted that adherence to Kanun law is a way of thinking and living. Such adherence is not confined to the area of Albania where a family is living – Appendix C [20] in EH.
34. Mr Kandola submitted that despite the assertions by Ms Francis in her written argument, the Judge has properly addressed the issues. However, the dispute still needs to escalate. It is moreover wholly speculative to say that there will be a killing. Nor is it clear that the appellant is the primary target. Kanun rules restrict killing of children in any event.
35. Moreover there was nothing in EH to support the argument that a killing need not have occurred.

Assessment

36. Judge Colvin had regard to some of the 'findings' in the country guidance case of EH, which she set out out [21] as follows: “Whilst there remain a number of active blood feuds in Albania particularly in the northern area, they are few and declining. The appellant must produce satisfactory individual evidence of the existence of the blood feud, his profile as a potential target and whether he has been in self-confinement.”
37. The Tribunal in EH set out in the headnote, the matters that the fact-finding Tribunal should consider in determining whether an active blood feud exists:
 - “6. In determining whether an active blood feud exists, the fact-finding Tribunal should consider:

- (i) the history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud;
- (ii) the length of time since the last death and the relationship of the last person killed to the appellant;
- (iii) the ability of members of the aggressor clan to locate the appellant if returned to another part of Albania; and
- (iv) the past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek protection from the Albanian authorities.

7. In order to establish that there is an active blood feud affecting him personally, an appellant must produce satisfactory individual evidence of its existence in relation to him. In particular, the appellant must establish:

- (i) his profile as a potential target of the feud identified and which family carried out the most recent killing; and
- (ii) whether the appellant has been, or other members of his family have been, or are currently, in self-confinement within Albania.

38. As already noted, Ms Francis sought to rely on paragraph 2.1.1 of the Country of Information and Guidance citing a UN Human Rights report: Albania: Blood Feuds, at page 134 of the bundle.

39. Paragraph 2.1 of this report is headed "Overview". At paragraph 2.1.1 there is reference to a UN Human Rights Council report, Report of the Special Rapporteur on Extra Judicial, summary or arbitrary executions, Addendum: Preliminary Note on the Mission to Albania in a section headed "What is a Blood Feud?" dated 20 May 2010, which stated that

"A blood feud generally begins with an argument, usually between two men whose families are neighbours or friends. The argument may have any cause: an accident, a perceived insult, a property ownership disagreement, a conflict over access to electricity, water or fuel, and so on. The argument escalates into a physical fight and one man kills the other. The victim's family then feels that it is 'owed blood' by the killer's family. This debt and the related loss of honour can only be satisfied by taking the life of a member of the killer's family."

40. At paragraph 28 (a) of her skeleton argument before the First-tier Tribunal the full contents of paragraph 2.1.1 were not set out but only the first part of paragraph 2.1.1, as follows:

"... A blood feud generally begins with an argument, usually between two men whose families are neighbours or friends. The argument may have any cause: an accident, a perceived insult, a property ownership disagreement, a conflict over access to electricity water or fuel, and so on."

41. At paragraph 28 of her skeleton Ms Francis also referred to paragraph 22 of the latest report of the UN Special Rapporteur on extrajudicial, summary or arbitrary Executions (dated 23 April 2013). The Special Rapporteur referred to the need to collect data and analyse the correlation between property disputers and blood feuds. The Special Rapporteur reiterated the need to research this aspect: "... Given the potential link between the situation of property rights and blood feud *killings*, the Special Rapporteur encourages the government to continue with firm steps to reform this area" (emphasis added).
42. It is evident from these passages that the context in which a blood feud arises can thus include an initial argument over property; but the argument then escalates into a physical fight resulting in one man killing another. A resulting killing is a necessary component of the blood feud.
43. I do not consider that the passages referred to in EH, which have been relied on in Ms Francis's written submissions, show that a threat of killing in itself is capable of constituting a blood feud. The facts arising in EH involved an earlier killing. In EH the appellant's father had been shot and killed by a local police officer, a cousin of the person who had warned his father to desist from politics: at [6] and [7].
44. The evidence before Judge Colvin was that following the fight, the appellant was taken by his father to a friend's house, fearing for revenge against them. The following day his mother told his father that the L family had sent intermediaries to the home stating that they had declared a blood feud [6]. He and his father went into hiding at Diber. His father did not approach the courts as the judiciary are corrupt. He has been unable to have any contact with his family in Albania as the telephone number is not working [7].
45. Judge Colvin found at [22] that there was no evidence that a killing occurred and it is mere speculation that it might have occurred but that the appellant had not been told. It is contended by Ms Francis in paragraph 10 of her grounds of appeal seeking permission that the Judge erred in law in failing to consider the country evidence, as set out at paragraph 28 of her skeleton, that blood feuds are commonly caused by land disputes rather than killings.
46. I have however rejected that contention for the reasons set out above. Accordingly, the Judge's finding that it was mere speculation that the killing may have occurred and that the appellant might not have been told, is sustainable.
47. Judge Colvin had proper regard to the background information where Kanun law constituted a system of reciprocal killings – that is, blood for blood [22]. The FCO letter referred to by her noted that the police consider that some families are involved in general fighting which cannot be genuinely classified as blood feuds. She noted that while the background information refers to shortcomings in the police and judiciary, there is the

additional factor that the appellant's family did not even attempt to report the matter.

48. In the circumstances the Judge's conclusion on the evidence before her that the appellant had not shown to the lower standard of proof that he is involved in an active blood feud so as to be at risk of persecution as a member of a social group under the Convention, is sustainable.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. It shall accordingly stand.

Anonymity direction made.

Signed

Date 16 November 2015

Deputy Upper Tribunal Judge Mailer