



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03737/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 7th November 2017**

**Decision & Reasons Promulgated
On 28th December 2017**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR E R
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Foot, Counsel, instructed by Slade & Fletcher Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania born on [] 1988 and he entered the United Kingdom on 17th May 2016. In his asylum interview he confirmed his problems began on 26th December 2009 when his cousin M I stabbed and killed K G in a nightclub in Greece. M I handed himself in for the murder and was imprisoned but the killing initiated a blood feud between his family and the G family, who vowed to kill the assailant “and other members of your family”. The appellant went into hiding and between 2009 and 2015 he lived between Greece and Albania. He had never

encountered any of the G family and on 29th July 2015 he was married to a Greek national who lived in Greece.

2. First-tier Tribunal Judge Baldwin heard the appeal of the appellant against the Secretary of State's refusal of the asylum and protection claim on 9th May 2017 and on the same date recorded that he refused an application for an adjournment on the grounds of in fact inadequate preparation. The refusal decision was dated 12th April 2017. The judge noted at paragraph 2:

"I indicated I was satisfied it would be fair and just to proceed as four weeks had passed since the refusal, the appellant and a witness had made statements which they were both present to adopt and Mrs Gore had been able to provide a skeleton argument."

3. In the event, the First-tier Tribunal Judge dismissed the appellant's claim on all grounds and the appellant's representatives sought permission to appeal on the following basis.

The appellant had sought further time to adduce further documentary evidence, inter alia evidence of the criminal proceedings before the Greek courts. The absence of that evidence was material to the determination of the appeal as at paragraph 24 the judge stated:

"The absence of any such documentary evidence is, I find, both notable and significant. It leaves the 'primary fact' identified by Mrs Gore herself as 'fundamental' wholly reliant on the appellant's word and an attestation letter for which there is no proof of posting, a letter which is in itself odd for the reasons given above, and which refers to a reconciliation of which the appellant clearly had no knowledge. I now address other issues."

It was clear on the judge's own analysis the evidence was critical or capable of making a material difference to the outcome. The judge's decision to refuse the appellant sufficient time to obtain that evidence was irrational in the light of his own subsequent finding and procedurally unfair. The appellant had been deprived of the opportunity to obtain that evidence.

It was not relevant that the appellant had been in the country for very nearly a year and could have made arrangements to obtain that evidence in that time because first, the appellant only discovered the detail in the case against him following receipt of the decision to refuse his protection claim. It was axiomatic that evidential deficiencies were often first identified and sought to be met by appellants at the appeal stage and secondly, the appeal came before the First-tier Tribunal only four weeks after the decision to refuse asylum had been made. That left the appellant very little time indeed to prepare his appeal and obtain the documentation that he sought to rely on. The appellant was in detention.

The primary question for the Tribunal when determining the application to adjourn was whether the evidence the appellant sought time to obtain was important evidence material to the disposal of the appeal and it clearly was, on the judge's own analysis.

4. Permission to appeal was granted on the basis that having placed weight on the absence of evidence from Greece it was arguable that the judge unfairly refused and adjournment. The appellant was only on notice that this was a matter that he would need to prove for a much shorter period.
5. At the hearing Ms Foot made reference to **SH (Afghanistan) v Secretary of State for the Home Department** [2011] EWCA Civ 1284 and **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** whereby the test in granting an adjournment was whether there was fairness.
6. In conclusion, a central issue to the appeal is whether the appellant's family was indeed engaged in a blood feud and that was an aspect which was specifically rejected in the reasons for refusal letter. The judge at the outset refused the adjournment on the basis of inadequate preparation but the reasons for refusal letter was issued on 12th April 2017 whilst the appeal was heard on 9th May 2017, just over three weeks later. The full extent of the case against the appellant was not known until the date of the refusal, specifically that the Secretary of State did not accept that the appellant was involved or engaged in a blood feud and therefore, contrary to the judge's findings, there had indeed been limited time to seek such documents. The judge acknowledged at paragraph 24 that the absence of such documentary evidence was both "notable and significant" and it left the 'primary fact' identified by Mrs Gore herself as 'fundamental', wholly reliant on the appellant's word and an attestation letter for which there is no proof of posting".
7. There was no acceptance of the blood feud and the case was decided on that basis without sufficient opportunity afforded to the appellant to obtain the documents and indeed for the respondent to verify those documents from the Greek courts. I can appreciate that the judge was not responsible for the speed of the listing in this matter which did cause its own complications.
8. Mr Tufan at the hearing conceded that there was indeed an error of law and such I return the matter to the First-tier Tribunal for a hearing de novo. The issue of the blood feud is fundamental.

Notice of Decision

9. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent

of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington
2017

Date Signed 28th November

Upper Tribunal Judge Rimington