IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003552

First-tier Tribunal No: HU/54804/2021
IA/11970/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 19 March 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

EH
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr T Wilding, Counsel instructed by Marsh & Partners Solicitors

Heard at Field House on 10 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. 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 (and/or any member of his family). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction / Background

1. This is an appeal brought by the Secretary of State against the decision of First-tier Tribunal Judge Colvin promulgated on 19 June 2022 in which she allowed the appeal of the claimant, EH, a citizen of Albania, against a decision refusing his protection claim. We shall hereinafter refer to the claimant as 'the appellant' and the Secretary of State as 'the respondent' as they were before the First-tier Tribunal.

Factual and procedural background

2. The appellant arrived in the United Kingdom on 29 March 2015 and claimed asylum. He claimed asylum on the basis that he was at risk of being persecuted as the member of a family targeted in a *Kanun* law blood feud. In refusing the claim the respondent, whilst making no concession, expressly stated that she gave no consideration to the credibility of the claim but considered it as if the claim was accepted as true. The respondent concluded the appellant had failed to establish that he had a well-founded fear of persecution because there was a sufficiency of protection in Albania and the option of internal relocation. She thereby refused and certified the claim as 'clearly unfounded' under section 94(1) of the Nationality, Immigration and Asylum Act 2002 on 28 September 2015. This required the appellant to exercise his right of appeal out-of-country. Evidently, he did not do so.

3. The circumstances in which the appeal came before Judge Colvin were as follows. The appellant made a further application on 21 November 2018 and 8 December 2020. He renewed his claim to be at risk of being persecuted, on account of the same blood feud, and further claimed that he was a target of a second blood feud concerning a different family, which his previous representatives failed to mention in his initial claim. The application was supported by a letter from the Peace Reconciliation Missionaries of Albania ("PRMA").

4. In refusing the claim, whilst the respondent again gave no substantive consideration to the substance of the appellant's claim, she asserted, in general terms, that she did not accept he feared "the Albanian authorities" for the reasons claimed [see: para. 33]. She concluded that 'little weight' could be attached to the documentary evidence and reasoned that the appellant could safely return to Albania and access state protection and internally relocate. She refused the claim on 30 July 2021 with a right of appeal.

5. The appellant appealed, and the First-tier Tribunal issued case management directions on 16 October 2021 and 3 November 2021 respectively. The respondent failed to file a bundle and in order to progress the appeal the First-tier Tribunal issued further directions on 18 November 2021 requiring the appellant to file and serve a bundle and an appeal skeleton argument. The appellant complied with those directions and the respondent subsequently reviewed her decision and maintained it for reasons given in a review letter of 10 January 2022. Therein the respondent *inter alia* advanced a direct challenge to the credibility of the appellant's claim. These are set out in three short paragraphs at [7], [8] and [10] and can fairly be characterised as plausibility challenges. Further, the respondent maintained her challenge to the documentary evidence asserting this time that 'no weight' should be placed upon it.

6. The appeal was first listed for a substantive hearing before Judge Simpson on 14 March 2022. Mr Wilding informed us that the hearing was adjourned because the

respondent sought to raise credibility issues not previously raised. Judge Simpson issued directions permitting the appellant to file further evidence and requiring the respondent to file and serve relevant documentation including documents relating to the appellant's initial asylum claim in 2015. Upon service of those documents, Judge Simpson directed the respondent to file and serve a 'meaningful second review of the appeal taking account of the material obtained'. In particular, Judge Simpson directed that if 'the respondent intends to maintain its challenge to the credibility of the appellant it is to set out full particulars of its case and identify any documents relied upon'. We accept from Mr Wilding, who represented the appellant before the First-tier Tribunal, that the respondent only adduced three documents in response to those directions and no second review was undertaken. We located none on file.

7. The appeal came before Judge Colvin on 7 June 2022. The appellant attended and was represented by Mr Wilding and the respondent was represented by Ms Nwachukwu. Judge Colvin heard evidence from the appellant and summarised his case at [3]-[7] and at [8] referred to the documentary evidence including two letters from the PRMA dated 26 October 2018 and 2 March 2022 respectively.

8. Judge Colvin's operative reasoning in her assessment of the claim was as follows:

> "17. Whilst the respondent's Review submitted in this appeal refers to the appellant's account as not being credible it was accepted by Ms Nwachukwu for the respondent that the issue of credibility had not been raised in the respondent's refusal letter of July 2021 apart from questioning the reliability of the documents submitted. It is also to be noted that the respondent's previous refusal letter issued in September 2015 – which sets out the same account given by the appellant in relation to the […] family as he does now – similarly does not raise credibility issues but instead states that the claim has been considered as if the material facts of the claim have been accepted in their entirety (see paragraph 16). The respondent has not provided the other asylum documents relating to the 2015 claim including the asylum interview record in order to know what the appellant said in detail about the claim at that time.
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> 18. However, Ms Nwachukwu has raised some credibility issues following the oral evidence at this hearing. I consider the most significant being that the appellant's claim is now in relation to blood feuds with two separate families in Albania rather than just the […] which was the subject of his first asylum claim. The appellant accepted that he was told about the first feud with the […] family after he was shot at when he was aged 14 but had not mentioned it directly to the Home Office. It is to be noted that the appellant's solicitors letter dated 21 November 2018 setting out the grounds for the fresh claim refers to the appellant's family being in blood feuds with both the […] and […] family but that "his previous solicitors have mentioned only the […] family." Therefore, at the point of deciding on this fresh claim the respondent had the opportunity of raising this difference with the appellant's previous asylum claim - and thereby raising it as a credibility matter - but did not do so in the refusal letter of July 2021.
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> 19. I do not find the other credibility issues raised by Ms Nwachukwu in her submission undermined the appellant's account to the extent of damaging it. For example, the appellant explained why his father came

> out of confinement and be at risk by taking a driving job after his mother could no longer work in 2009. Whilst I note that there is no evidence of either family involved in the blood feuds making recent inquiries of the appellant as claimed by the appellant in his oral evidence, I also consider on balance that this may well be a slight exaggeration on his part as it was not a matter raised previous to the hearing.
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> 20. Taking all these factors into account I find that the account given by the appellant both in 2015 and in the fresh claim of 2018 was substantially accepted by the respondent as a credible narrative and that this has not been altered following the appellant's evidence at the hearing."
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> [our emphasis]

9. Judge Colvin then turned her attention to the documentary evidence and directed herself to the guidance given in *QC (verification of documents; Mibanga duty)* China 2021 UKUT 00033 and stated thus:

> "23. I accept the submission made by Mr Wilding that these documents give an account that is consistent with the appellant's claim and that the veracity of the most recent document has not been challenged in the light of the additional evidence produced with this second letter. The documents must also be viewed in the context of the appellant's account being considered credible as stated above. When all these matters are taken into account in the round I am satisfied on the lower standard of proof that weight may reasonably be attached to these letters from Peace Reconciliation Missionaries organisation in Albania to confirm that the appellant and his family are the subject of two recognised blood feuds as described in the letters and that both feuds have not been settled with it being specifically stated that the [] family "*seeks for revenge*".

10. Judge Colvin then addressed the issue of risk on return by reference to extant country guidance namely *EH (blood feuds) Albania CG* [2012] UKUT 00348 (IAC); *BF (Tirana-gay men) Albania CG* [2019] UKUT 93 and referred to the background evidence and concluded the appellant had demonstrated that he had a well-founded fear of being persecuted, or would be subject to serious harm for the purposes of the Refugee Convention and Article 3 ECHR and allowed the appeal. For ostensibly the same reasons, Judge Colvin further concluded that if the appellant was required to live in another area of Albania, that he could not do so, as there would be very significant obstacles to his integration into Albania for the purposes of paragraph 276ADE(1)(vi) of the Immigration Rules and further allowed the appeal under Article 8 ECHR.

Grounds of appeal

11. The grounds of appeal upon which permission to appeal was granted is a single point defined as a "material misdirection of law", namely, that Judge Colvin failed to apply the guidance at headnote 8 of *EH* in so far as what that case said about attestation letters when determining the credibility of the claim. It was said that Judge Colvin placed significant evidential weight on the attestation letters and failed to provide cogent reasons from departing from the findings in *EH*.

12. Permission to appeal was granted by First-tier Tribunal Judge Buchanan on 20 July 2022, who expressed "that there may have been [an] error of law in the Decision as identified in the application."

13. The matter comes before us to determine whether the decision contains an error of law and, if we so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties as above. Both representatives filed skeleton arguments and made submissions and our conclusions below reflect those arguments and submissions where necessary. We had before us a court bundle containing *inter alia* the core documents in the appeal, including the appellant's bundle before the First-tier Tribunal and the respondent's bundle. In addition, Mr Wilding helpfully provided us with a copy of the respondent's asylum refusal letter of 28 September 2015 and a copy of Judge Simpson's directions.

Discussion

14. The grounds of appeal primarily seek to target the findings of fact reached by a first instance judge, who had the benefit of considering the "whole sea of evidence" in the case, to adopt the terminology of Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at [114]. Given appeals only lie to this tribunal on the basis of errors of law, rather than disagreements of fact, it is necessary to recall the circumstances in which an error of fact may amount to an error of law. They were notably summarised in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982, at [9]:

> "i) Making perverse or irrational findings on a matter or matters that were material to the outcome ("material matters");
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> ii) Failing to give reasons or any adequate reasons for findings on material matters;
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> iii) Failing to take into account and/or resolve conflicts of fact or opinion on material matters;
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> iv) Giving weight to immaterial matters;
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> v) Making a material misdirection of law on any material matter;
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> vi) Committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;
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> vii) Making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made."

15. The respondent's grounds of appeal take a narrow point and seek to impugn Judge Colvin's findings of fact on the basis identified at (v) above, namely, that she made a material misdirection of law in failing to consider the guidance at headnote 8 of *EH*. It is trite that failure to apply extant country guidance is an error of law: see, for example: *SG (Iraq) v SSHD* [2012] EWCA Civ 940. The

question for us in the first instance is whether Judge Colvin committed such an error.

16. We begin by referring to headnote 8 of *EH* which provides:

> "8. Attestation letters from Albanian non-governmental organisations should not in general be regarded as reliable evidence of the existence of a feud."

17. That headnote originates from paragraph 74 of *EH,* however the panel's conclusions on the subject matter of an attestation letter is at paragraph 56 and states:

> "56. On the totality of the evidence before us, we consider that Mr Marku's claimed expertise is so damaged that an attestation letter from the CNR, or indeed from any of the mediation organisations now under investigation, adds no weight whatsoever to an otherwise unsatisfactory account of an alleged blood feud. We do not go so far as saying that an attestation letter ought to be regarded as detracting from such an account, although such a conclusion may be permissible on the individual facts of a particular case**.** But, as a general proposition, we consider that where an appellant relies on a CNR or other NGO attestation letter to prove the existence of a blood feud from which he would be at risk on return, that is unlikely to be determinative of the appeal in his favour. By contrast, documents found genuinely to originate from the Albanian courts, police or prosecution service may assist in establishing the existence of a blood feud at the date of the document relied upon. However, given the evidence regarding corruption in Albania, the fact that such a document comes from its asserted source will not necessarily be probative of the reliability of the information contained within that document. Judicial fact-finders may, therefore need to assess its reliability on Tanveer Ahmed principles."
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> [our emphasis]

18. By way of preliminary observation, we note, that in *EH* the panel at headnote 8 and at [56] did not go so far as to state that an attestation letter could never be a reliable source of the existence of a blood feud. It took a more nuanced approach, and whilst the panel made it appreciably clear that an attestation letter is not determinative of the appeal, it remains the case that a fact-sensitive approach is required on a case-by-case basis.

19. Bearing that in mind, before we come to the sole ground advanced by the respondent in her grounds of appeal, it is important to take a step back and consider the "sea of evidence" before Judge Colvin upon which she based her factual assessment. That evidence comprised of the respondent's bundle (limited to a copy of the appellant's further submissions and the Asylum Decision letter of 30 July 2021); the respondent's refusal letter of 28 September 2015; the respondent's review letter and the appellant's bundle the contents of which Judge Colvin addressed at [8]. Judge Colvin also had the benefit of hearing tested evidence from the appellant.

20. Judge Colvin's task was to arrive at a contemporary assessment of the appellant's case, taking proper account of all the evidence and the competing

arguments of the parties, and perform an evaluative assessment of risk taking into account any applicable country guidance. As can be discerned from the procedural history we set out earlier, Judge Colvin was not greatly assisted in this task by the respondent who failed to provide relevant documentation relating to the initial asylum claim and who did not, until she reviewed her decision, disclose her stated case on credibility. Hitherto, other than expressly stating that either "little weight" or "no weight" should be attributed to the documentary evidence, the respondent had not expressed a clear view on the credibility of the appellant's narrative.

21. In her assessment, Judge Colvin observed the procedural history and assessed the facts on the evidence before her giving full consideration to the respondent's case at [17]-[19], which included an assessment of the points of contention raised at the hearing by the respondent's representative, Ms Nwachukwu. Judge Colvin then made positive findings of fact in the appellant's favour, properly reasoned, and then turned to address the letters from PRMA at [23] which we cited earlier. Judge Colvin's consideration of that evidence was entirely in-line with the principles in *Tanveer Ahmed* as advocated for at [56] of *EH.* That approach is consistent with the guidance in headnote 8 of *EH* the ambit of which is that attestation letters should not "*in general"* be regarded as reliable evidence of a blood feud.

22. The nub of the respondent's complaint is that Judge Colvin failed to apply *EH* and placed *"significant evidential weight on the attestation letters when determining the credibility of the Appellant's claim and the risk he faces on return",* however, in view of our consideration of Judge Colvin's approach we have difficulty in finding such a flaw. Judge Colvin was clearly aware of the applicable country guidance; there are citations from *EH* in the respondent's refusal letters, it is referred to in the appellant's appeal skeleton argument and was cited to Judge Colvin at the hearing at [12].

23. In her omnibus conclusion Judge Colvin stated:

> "30. After having taken account of the factors which need to be considered as set out in *EH* and the more recent background information referred to above, I have reached the conclusion on the lower standard of proof that it is reasonably likely that the appellant would be at risk on return to Albania at the present time."

24. We recognise that Judge Colvin did not specifically refer to headnote 8 of *EH* or paragraph 56 thereof, but it was not incumbent on her to do so. Whilst she could have expanded on her reasoning and, had she done so the respondent may not have been successful in obtaining permission against her, we are satisfied, upon our holistic consideration of her approach, that her decision demonstrates that she was aware of and applied the guidance in *EH*. What weight to attribute to the attestation letters from PRMA, an organisation we note that was not the subject of consideration in *EH*, was a matter for Judge Colvin in view of her assessment of the appellant's narrative subject to *Wednesbury* principles. It is not asserted and nor do we accept that Judge Colvin offended those principles. We conclude therefore that the ground advanced by the respondent in the grounds of appeal is not made out.

25. Mr Melvin in his skeleton argument for this hearing seeks to impugn Judge Colvin's decision for different reasons than those found in the grounds. Those reasons are essentially three-fold. *First*, it is said Judge Colvin was in error in

stating at [20] that there was an acceptance by the respondent of the appellant's narrative in his initial claim; *second*, that Judge Colvin failed to address two credibility issues raised by the respondent in her review letter and *third,* he invites this tribunal to consider other headnotes in *EH* particularly headnote 6, which is said to "shed light on this appeal"; however no further particulars are given. In his oral submissions, Mr Melvin went further and suggested that Ms Nwachukwu was wrong to accept before Judge Colvin that the respondent's refusal letter of July 2021 did not raise issues of credibility. He referred us to paragraph 21 where, in reference to the documentary evidence, the respondent concluded "they have not been found to assist your credibility."

26. We make the following observations. *First*, Mr Melvin in his skeleton argument, relied upon at the hearing and amplified in submissions, seeks to broaden the scope of the grounds of appeal on matters that were not and should have been raised in the grounds of application. The respondent has not hitherto the filing of Mr Melvin's skeleton argument made an application to amend her grounds of appeal; she does not therefore have permission to argue additional grounds of appeal before us. *Second*, Mr Melvin did not make an application to amend the grounds of appeal in his oral submissions before us and nor has there been any attempt to explain the delay by the respondent in seeking to broaden her challenge on appeal on grounds of credibility. Whilst we accept that the Tribunal has power to permit amendment of grounds of appeal, in view of the history and circumstances of this appeal and in the absence of a specific application we decline to do so.

27. Nevertheless, we bring our own independent scrutiny to bear on the merits of the grounds that Mr Melvin invites us to consider. We find there is no merit in the submission that Judge Colvin failed to consider the credibility issues raised in the respondent's review letter. Judge Colvin gave detailed consideration to the respondent's case at [9] including the contents of her review at [10], which set out her challenge to the appellant's credibility. We accept that the issues raised in the review were not matters raised by the respondent's representative at the hearing (see; [11] & [17]) and, in any event, Judge Colvin was not required to traverse each and every point raised by the respondent or indeed by the appellant.

28. The respondent's representative was correct in her submission that the respondent's refusal letter of July 2021 did not raise issues of credibility concerning the substantive narrative to the appellant's account. We note that much of her energy in that refusal was directed towards a consideration of the documentary evidence and the issue of risk on return. Judge Colvin gave careful and detailed consideration to the evidence relied upon in submissions before her on this issue at [17]-[19]. It is unfortunate, that Judge Colvin at [20] misstates the respondent's refusal of 2015, which did not give any expression either positive or negative to the appellant's credibility, however, her operative reasoning at [17] correctly set out the position and, nevertheless, Judge Colvin has otherwise offered detailed and sustainable reasons for accepting the appellant's account. To that extent the misstatement is immaterial to the Judge's overall evaluation of the appellant's narrative and the supporting evidence.

29. We also consider that the further line of challenge pursued by Mr Melvin that Judge Colvin failed to consider the guidance in *EH* either at headnote 6 or elsewhere is unarguable. As we indicated earlier Mr Melvin's skeleton argument failed to particularise an identifiable error and as we indicated earlier Judge

Colvin stated that she had considered the factors in EH at [30]. We are satisfied that her conclusions were mindful of that guidance and given the position adopted by the respondent before Judge Colvin, we are of the view that her conclusions were open to her on the evidence.

30. We take into account the restraint with which appellate courts and tribunals should exercise in reviewing findings of fact. The principles have been summarised at length in many authorities. A recent summary of the appellate approach to first instance findings of fact may be found in *Volpi v Volpi* [2022] EWCA Civ 464 at [2] to [5]. It is not necessary to recount that guidance here, but we have adhered to it.

31. In summary, although the respondent submits that Judge Colvin reached findings that cannot fairly stand, standing back and reading the decision as a whole, it is in our judgement clear that in reaching her decision, Judge Colvin considered all the evidence before her in the round, and reached findings and conclusions that were open to her on the evidence. The findings reached cannot be said to be unreasonable or findings that were not supported by the evidence.

32. When the additional matters raised by Mr Melvin are consider in context, we agree with Mr Wilding that the respondent's grounds are misconceived. The credibility findings made by Judge Colvin are unchallenged. She gave entirely adequate and sustainable reasons for accepting the appellant's evidence and adequately explained her reasons for attaching weight to the attestation letters. In view of the procedural history, and the position adopted by the parties before Judge Colvin, we do not identify a material error of law in her decision which we find is entirely sustainable for the reasons given.

Anonymity: This is a protection claim which has been allowed by the First-tier Tribunal who granted the appellant anonymity. Bearing in mind the guidance recently given in the Upper Tribunal Immigration and Asylum Chamber *Guidance Note 2022 No. 2 Anonymity Orders and Hearings in Private* at [27] and [28], it is appropriate at this stage to maintain the anonymity direction already in force.

Notice of Decision

The Decision of First-tier Tribunal Judge Colvin does not involve the making of an error on a point of law. The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal shall stand.

R.Bagral

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
Date: 8 March 2023