



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

Appeal Number: AA/00097/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 December 2014**

**Decision and Reasons
Promulgated
On 12 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**B K
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Wass (Counsel)

For the Respondent: Ms L Kenny (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to remove him from the United Kingdom was dismissed by a First-tier Tribunal Judge in a determination promulgated on 22 April 2014. The appellant claimed to be at risk by reason of his involvement in a blood feud in Albania. In due course, the Upper Tribunal found that the decision of the First-tier Tribunal contained an error of law and set it aside in a determination promulgated on 22 April 2014.

2. In setting aside the decision, certain findings of fact made by the judge were preserved. These included his finding that a blood feud between the appellant's family and the S family existed and that it caused the appellant's father, paternal uncle and elder brother to flee from Albania. The blood feud caused the appellant to become a target and he ceased schooling and attempted internal flight within Albania with relatives. The judge also found that it was reasonably likely that the appellant received indirect threats in the place of his relocation, that the police came looking for his paternal uncle but were unable to locate this relative and that, thereafter, when an attempt to have the appellant excluded from the feud failed, he was sent to Montenegro and then on to the United Kingdom.
3. The judge dismissed the appeal in the absence of evidence that the feud continued after the date of the last contact between the appellant and his mother in Albania, in either November or early December 2012. As at the date of hearing, the judge was not satisfied that an active blood feud existed. As he put it in paragraph 87 of the determination:

“The Tribunal is satisfied that the reasonable degree of likelihood is that there was an active blood feud in the past but, because of a lack of up-to-date information, the Tribunal is not satisfied that the reasonable degree of likelihood is that there remained an active blood feud up to and including 3 February 2014.”

The judge went on to find that even if this part of the assessment were wrong, a sufficiency of protection from the authorities in Albania was available to the appellant, as at February 2014.

4. In seeking to set aside the judge's decision and in advancing his case before the Upper Tribunal, the appellant relied upon country guidance given in EH [2012] UKUT 00348 and, in particular, on paragraphs 70 to 74 of the judgment in that case.
5. In addition to the documentary evidence which was before the First-tier Tribunal, the appellant provided a witness statement made on 9 December 2014, in which he described his recent success in establishing contact with his mother and the news from her that there has been no reconciliation with the S family. The appellant claimed in his recent statement that his younger brother has experienced problems from the children of members of that family who attend the same school, such that his mother has decided to remove his brother from education.

The Hearing

6. The appellant gave evidence. He adopted his witness statement. In answer to supplementary questions from Ms Wass, the appellant said that he re-established contact with his mother towards the end of November 2014 and that contact continued. He spoke to her nearly every day. The previous attempts he made to get in touch with her were unsuccessful.

The number he used did not work. Three weeks before he made contact with her he met some people in Croydon from the same town in Albania as he came from, []. He asked for their help but they could not assist. Then he met a man from []. The appellant's maternal uncles live there too, with some cousins and so he asked the man whether he knew any of them. The man said that he knew one of the cousins and mentioned a name. The appellant then rang and asked if this person could find his mother's new number.

7. Although he had tried this method before, he was unsuccessful in the past.
8. In paragraph 2 of his statement, the appellant referred to his mother's news that reconciliation with the S family had failed. There were three attempts, with the village elders being sent along but the S family did not agree. The appellant said that his younger brother was 13 years old but would be 14 in May. He had now left school but before he did so some of the children in the S family were beating him up. His mother decided to take him away from any school as he was nearly 14 and she feared that the S family would kill him. His younger brother no longer left the house and had not received any schooling this year. Ms Wass asked whether the appellant's mother had provided him with any evidence of what she had told him. He replied that she had not done so but she was not the kind of person to go to the city and knock on doors. He had asked her to write a letter but there was no post office in their village and so she could not send one.
9. In cross-examination, the appellant said that his mother had tried to make contact with the appellant's father and elder brother but without success. She attempted to do so recently. The appellant's younger brother's problems were not reported to the police as they had no presence in the village. The nearest post was about two hours away. The teachers were unable to help or do anything about the S family. Ms Kenny asked whether the problems suffered by his younger brother were at the school or outside it. The appellant replied that the problems occurred on the way home from school but not in the building itself. The boys were causing trouble because of the blood feud. Ms Kenny asked whether they had actually said that and the appellant replied that they would not say anything but his family knew why they were doing these things. His brother had not attended the school since September 2014, the beginning of the academic year. He had not suffered problems since because he remained indoors at the family home.
10. Ms Kenny asked why the appellant believed he could not relocate elsewhere in Albania. The appellant said that he went to [] for a year but the S family found him there. The authorities would be unable to protect him and as far as they were concerned he would be killed. The police could not guard him. He did try to seek help from the authorities but this never materialised. They did not help him. Ms Kenny asked whether they

were unwilling to do so. The appellant replied that they told him “we cannot help you”.

11. There was no re-examination.
12. In submissions Ms Kenny said that the two critical questions were these: was the appellant at present a target in the blood feud and second, if he were, could he relocate within Albania?
13. The appellant had recently re-established contact with his mother, who told him that there was no reconciliation. There was nothing from his mother directly and nothing to show that the appellant was actually being looked for. The problem suffered by the family appeared to concern his younger brother. This relative had been targeted by children, said to be S family members. There appeared to be no problems from the older members of that family and the appellant’s brother was now at home. There was an assumption by the appellant and his mother that the problems were due to the blood feud but they might have been caused by bullying or similar. There appeared to be no serious consequences to date in terms of harm to the younger brother and no serious injuries. There was nothing to show that the appellant was still a target or that he was being looked for.
14. Even if the appellant made out this part of his case, the Secretary of State believed that he could relocate. The First-tier Tribunal Judge found, at paragraph 79 of the determination, that the appellant had received indirect threats but this did not suggest that the appellant was directly in danger. At paragraph 79, perhaps the police might have taken the appellant away. The appellant said that he had attempted to seek protection from the authorities but it was not clear how they were unable to help him.
15. Ms Wass said that the appellant fell within the country guidance given in EH, particularly at paragraph 70 and 72. Internal relocation would only be a viable prospect where the aggressor clan’s reach did not extend beyond a person’s local area. The preserved findings made by the First-tier Judge showed that the appellant attempted to relocate 300 kilometres from his home and yet he was found by the S family. As was clear from paragraph 72 of EH, where self-confinement was the only means of protecting a person, a claim would be likely to succeed. The evidence before the Tribunal today showed an active blood feud.
16. The appellant’s evidence was not challenged in submissions and the appellant had resumed contact with his mother and was told that the blood feud continued. Attempts at reconciliation were unsuccessful. All of this was consistent with the appellant’s initial account. The First-tier Judge had found that the appellant was a target. The attempt to exclude him from the feud failed and so he remained a target. His younger brother was not 14 yet and so was not fully fledged, as a potential target. The

difficulties were not due to bullying. They revealed the same pattern as occurred with the appellant, who was withdrawn from school and then self-confined. The absence of serious threats to the younger brother was a consequence of his age and self-confinement.

17. The First-tier Judge found that an active feud existed up until fourteen or fifteen months prior to the appellant's last contact with his mother. The evidence now before the Tribunal showed that the feud continued. To an extent, the appellant's mother was isolated in her village and if a letter had come from her, it might have been regarded by the Secretary of State as self-serving. The appellant's case could be distinguished from MF (Albania) [2014] EWCA Civ 902. The thrust in that case was more to do with discredited expert evidence. The appellant in MF had come abroad without self-confinement or an attempt at relocation. The issue of protection from the authorities was more to the fore in MF, whereas in the present appeal the preserved findings of fact had a bearing on the appellant's case. The lack of evidence from the appellant's mother was dealt with by his own evidence. It was for the Tribunal to consider whether the requirements of paragraph 339L of the rules were met. In MF, the absence of evidence from the mother was essential to the relocation issue, whereas in the appellant's case much of that terrain had been covered by the First-tier Tribunal and the preserved findings of fact.

Findings and Conclusions

18. In this appeal, the burden lies with the appellant to show that he is at real risk of persecution on return to Albania, by reason of his family's involvement in a blood feud. If he is not a refugee, he may be entitled to humanitarian protection under the rules. In this context, he must show that there are substantial grounds for believing that he will suffer serious harm on return. So far as Article 3 of the Human Rights Convention is concerned, the appellant must show that he is at real risk of ill-treatment on return. The appellant's case was not advanced in reliance upon Article 8 of the Human Rights Convention.
19. The preserved findings of fact have an important bearing on the appellant's case. The judge found that an active blood feud existed between the appellant's family and the S family, up until November or December 2012. That feud caused the appellant's father, paternal uncle and elder brother to flee Albania and led to the appellant becoming a target. This in turn caused him to cease schooling and to seek internal flight within Albania with relatives.
20. Paragraphs 79 and 21 of the determination, read together, show that the judge accepted the appellant's claim that having moved to relatives, two sets of people visited his place of hiding. The first consisted of members of the S family, who sent threats to the appellant and the second were the police, who came looking for the appellant's paternal uncle. When an

attempt made thereafter to have him excluded from the blood feud failed, the appellant was then sent abroad.

21. The appellant was carefully cross-examined. Although there is little detail in the witness statement, I accept Ms Wass's submission that the account which emerged is consistent with earlier accounts given by him, at least in relation to the source of the threats and the consequences for his family. As happened to the appellant in the past, his mother decided to withdraw his brother from school, and to confine him at home. I also accept Ms Wass's submission that, taking into account the appellant's amplification of what appeared in the statement, his evidence is sufficient to show that it is reasonably likely that the blood feud continues and that attempts to effect a reconciliation have failed.
22. The next question is whether the appellant's case falls within the country guidance given in EH [2012] UKUT 00348. That guidance is still in place. The Upper Tribunal found that although the Albanian state has taken steps to improve state protection, in areas where Kanun law predominates, particularly in northern Albania where the appellant is from, those steps do not yet provide sufficiency of protection from Kanun-related blood taking if an active feud exists and affects the individual claimant. Internal relocation elsewhere may provide sufficient protection. At paragraph 70 of EH, the Upper Tribunal held that this will be effective only where the risk does not extend beyond the appellant's local area and he is unlikely to be traced in the rest of Albania by the aggressor clan. Here, the appellant may rely upon the preserved findings made by the First-tier Tribunal Judge, set out above. The S family located him, in hiding with relatives some 300 kilometres away from his home area. The Upper Tribunal went on to find in EH that where there is a genuine, active blood feud, whose reach is wide enough to preclude internal relocation, such that self-confinement is the only protection, an appellant's claim will normally succeed. I have accepted as reasonably likely to be true the claims that the blood feud continues and that a recent consequence is the decision made by the appellant's mother to withdraw his younger brother from school and confine him at home. He will be 14 next year and the relative safety of being a child will reduce in the coming years.
23. Turning to the judgment of the Court of Appeal in ME (Albania) [2014] EWCA Civ 902, I find that the appellant's case may be distinguished. The absence of evidence from the appellant's mother in ME bore on paragraph 339L(ii) of the rules as the only source of information about the reach of the aggressor family was this close relative, who could have provided a statement setting out her understanding but did not do so. The appellant was asking the Tribunal to accept as a fact, his mother's understanding of the range and influence of the aggressor clan, which was based on uncertain evidence and which he received from her in uncertain terms. In the present appeal, the preserved findings of fact in this context, regarding the S family, were made by the judge following a careful assessment of the evidence before him. The recent news passed to the

appellant by his mother is hearsay evidence but it is of course admissible and capable of having weight. I have taken it into account and have weighed it with all the evidence, including the appellant's earlier statement and the evidence which was before the First-tier Tribunal.

24. The appellant has shown that he falls within the country guidance given in EH and that he is at real risk of persecution on return. He is also at real risk of ill-treatment in breach of Article 3 of the Human Rights Convention.
25. For the reasons I have given, the appeal is allowed.

DECISION

26. The appeal is allowed.

Signed

Date **9 December 2014**

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

The First-tier Tribunal Judge made an anonymity direction. I maintain that direction (now an Anonymity Order).

Signed

Date **9 December 2014**

Deputy Upper Tribunal Judge R C Campbell

FEE AWARD

As no fee is payable in these proceedings, there can be no fee award.

Signed

Date **9 December 2014**

Deputy Upper Tribunal Judge R C Campbell