



IAC-AH-KEW-V2

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

Appeal Number: AA/11104/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28th August 2015**

**Decision & Reasons Promulgated
On 18th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MASTER LK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Kadic, Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania. He is a minor having been born on 4th November 1998. The Appellant left Albania on 14th September 2013 and travelled by lorry arriving in the UK on 16th September 2013. Thereafter he was put in contact with social services and claimed asylum on 15th October 2013. The Appellant's application for asylum was based on a claim that he had a well-founded fear of persecution in Albania on the basis of his involvement in a blood feud and thus on the basis of his membership of a particular social group. That application was

refused by the Secretary of State on 28th November 2014. Within that Notice of Refusal it was noted that the Appellant being currently aged under 17½ and adequate reception arrangements in Albania not having been established that he qualified for leave to remain as an unaccompanied asylum seeking child until 3rd May 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Callender Smith sitting at Taylor House on 17th March 2015. In a decision and reasons promulgated on 7th April 2015 the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection.
3. On 21st April 2015 Grounds of Appeal were lodged on the Appellant's behalf to the Upper Tribunal. On 5th May 2015 Designated First-tier Tribunal Judge Murray granted permission to appeal. Judge Murray noted that the grounds stated that the judge used too high a standard of proof when considering the minor discrepancies in the evidence and did not properly take into account the Appellant's young age when considering his evidence. Further although the judge mentions the authority of *EH (Albania) [2012] UKUT 348 (IAC)* the grounds state that there is no explanation of how it was considered. He noted that the grounds contend that the judge appears to have been seeking corroboration which is not necessary in an asylum claim and that he placed undue weight on immaterial matters and thereafter went on to state that Article 8 had not properly been considered.
4. Judge Murray noted that the First-tier Tribunal Judge had referred to paragraph 74 of *EH* relating to blood feuds and the details set out in the body of that case. He further noted that the judge had been aware of the Appellant's young age and that he had not rejected the Appellant's evidence about why he has not tried to find his family in Albania but he does not agree with what the Appellant has done and finds it goes against the Appellant's credibility. Judge Murray considered that it was not for the judge to put himself in the Appellant's position and decide what the Appellant should have done and that the judge may well have used too high a standard of proof when reaching his decision. With regard to Article 8 he considered that it was not clear what, if anything, was before the judge in this connection and in such circumstances overall found that there were arguable material errors of law.
5. On 18th May 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24. That response opposed the Appellant's appeal. The response points out that the Respondent had attempted to verify the Appellant's claim and had not been able to do so and further the person [MG] who it was claimed had been murdered by his uncle was recorded as having committed suicide. The Secretary of State noted that the Appellant had made no attempt to deal with these matters or to contact his family in Albania and that it was open to the judge to conclude that the Appellant's refusal to engage with the Red Cross and maintain contact by telephone with his family was to prevent any attempt at the Respondent seeking corroboration. Further the Rule 24 response notes that the Appellant's claim was not believed and the Appellant provided no evidence to deal with material inconsistencies and that it was

open to the judge to dismiss the appeal. Further there was no evidence to support a consideration of Article 8 which could be resolved in the Appellant's favour.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. The Appellant appears by his instructed Counsel Ms Kadic. The Secretary of State appears by her Home Office Presenting Officer Mr Avery.

Submissions/Discussion

7. Ms Kadic relies on the Grounds of Appeal submitting that the Tribunal has applied an unduly high burden of proof. She acknowledges that at paragraph 24 and thereafter the judge has set out the correct standard of proof but submits that the standard imposed by the Tribunal particularly with regard to corroborative evidence is too high. She contends that no consideration has been given to the Appellant's circumstances/narrative and how difficult it is to obtain evidence from Albania. She submits that the judge did not give due weight to the narrative and that whilst the judge has acknowledged the Appellant's tender age (at paragraph 44) that the judge has not treated his evidence as that of a minor. She states that the Appellant has given reasons as to why he is having difficulty contacting his parents and submits that the reasoning of the judge has been subjective rather than objective. She asked me to find that there is a material error of law, to set aside the decision of the First-tier Tribunal and to remit the matter back to the First-tier for rehearing.
8. Mr Avery opposes the application. He points out that the Appellant has had the whole of the period that he has been in the UK to produce corroborative evidence and none has been produced and in making that submission he takes into account the Appellant's tender years. He submits it is wrong to say the Appellant was not aware of the report of the British Embassy as set out in the Notice of Refusal and that it was open to the Appellant to have taken steps to obtain such evidence as was needed regarding the feud if he had been able to. He points out the issue is that the information provided by the British Embassy and the Appellant's account are irreconcilable. He points out that the Albanian authority have confirmed that although MG had died that was reported as being a suicide and that the authorities had taken the matter no further. He emphasises that pointing out that there was no investigation for murder being carried out by any prosecuting authorities and that this is fundamentally incompatible with the Appellant's account. In such circumstances he submits that the judge has looked fully at the evidence, made findings that he was entitled to and that the findings at paragraph 42 to 44 are ones that the judge was entitled to reach.
9. In very brief response Ms Kadic contends that the judge has failed at paragraph 42 to make findings regarding the blood feud.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into

account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

12. A proper approach to credibility requires an assessment of the evidence and of the general claim. In asylum claims, relevant factors are first, the internal consistency of the claim; secondly, the inherent plausibility of the claim; and thirdly, the consistency of the claim with external factors of the sort typically found in country guidance. I acknowledge that it is theoretically correct that a claimant need do no more than state his claim, but that claim still needs to be examined for consistency and inherent plausibility. Further it is necessary to give due and proper consideration to the Appellant's age.
13. In this appeal the judge has given, albeit scant, consideration to the country guidance given in *EH*. He has noted the authority at paragraph 33 and has made findings to the effect that there is not any blood feud in existence and in reaching those findings he has given due and proper consideration to the position relating to blood feuds generally in Albania as set out at paragraph 74 of *EH*.
14. The question herein is whether or not the judge has put himself in the position of the Appellant and therefore applied too high a standard of proof or whether the Grounds of Appeal posed on his behalf amount effectively to mere disagreement. This is a judge who has acknowledged clearly throughout that he has taken account of the Appellant's age. He has heard the evidence. He has made a finding at paragraph 39 that there is almost no objective or independent evidence in support of the Appellant's claim. He has recited the evidence and has made findings which he was perfectly entitled to having considered that evidence at paragraphs 42 to 44 firstly that he is not satisfied about anything the Appellant states about the alleged blood feud and secondly the evidence that has been produced to the First-tier

Tribunal and which is reiterated to me by Mr Avery today that the death of MG was due to a suicide and not as a result of a blood feud. I note that there is no objective evidence whatsoever that was before the First-tier Tribunal or indeed available now to support the Appellant's contention that MG was murdered and was a victim of a blood feud.

15. Further the judge has gone on to consider at paragraphs 45 and 46 the seeming failure of the Appellant to involve the Red Cross to locate and contact his immediate family in Albania and has made findings at paragraph 47 with regard to the damage done to the Appellant's credibility. In such circumstances I find this is a judge who has carried out a full and thorough analysis and I am not satisfied that the judge has in any way imposed too high a burden of proof. In fact the judge has addressed this matter in a careful and considered manner. In such circumstances the decision discloses no material error of law. Nor does it disclose any material error of law in the manner in which the judge has addressed Article 8, this being properly addressed at paragraph 49 of the determination. In such circumstances the Appellant's appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal discloses no material error of law and is dismissed and the decision of the First-tier Tribunal is maintained.

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

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT **FEE AWARD**

No fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris