Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/12953/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 June 2017	**On 15 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR Q H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Bonavero, Counsel instructed by Kilby Jones Solicitors LLP
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant in this case is an Albanian national born on 19 May 1948. The respondent refused the appellant's application for asylum on 14 October 2015. The appellant's appeal against that refusal was dismissed by Judge of the First-tier Tribunal G A Jones QC on 22 March 2016. That decision was set aside by the Upper Tribunal in a decision promulgated on 24 June 2016. No findings of fact were preserved and the appeal was remitted to the First-tier Tribunal. The appeal came before Judge of the First-tier Tribunal Kimnell on 4 January 2017. In a decision and reasons

promulgated on 18 January 2017 Judge of the First-tier Tribunal Kimnell dismissed the appellant's appeal on all grounds.

2. It was not disputed before me that the only live issue was the appeal on protection grounds and the appellant had not sought to challenge the dismissal of his appeal on Article 8 human rights grounds.

3. The appellant appealed to the Upper Tribunal with permission on the following grounds:

   (a) Ground 1: failure to assess credibility in the round/failure to make reasoned findings;

   (b) Ground 2: reliance on inherent plausibility;

   (c) Ground 3: flaws in assessing the availability of internal relocation.

Error of Law Discussion

4. Mr Bonavero submitted in relation to Ground 1 that there were key parts of the evidence given by the appellant's daughter that were not properly considered by the judge. In particular the judge had rejected the threats to the appellant and the claimed damage to his property as "complete fiction" and that "whatever the attitude of the X family may be to the appellant's daughter, he is not at risk" [74]. Mr Bonavero submitted that the appellant's evidence in these matters was corroborated by the evidence of his daughter in the following ways:

   (a) With direct, first hand evidence of her marital problems and fleeing from the X family, which was a source of the asserted blood feud/dispute;

   (b) With direct, first hand evidence that "her husband had told her that if she left him he would kill her and her father";

   (c) With second hand evidence that the appellant recounted the threats he had received by telephone, whilst she was in Belgium (between 15 November 2012 and 5 January 2013) i.e. at least two months before he made an asylum claim.

5. It was submitted that all these aspects of the appellant's daughter's evidence were corroborative of the appellant's account and that the appellant's daughter and son had been found to be credible witnesses by the Upper Tribunal.

6. However, Judge Kimnell acknowledged at [56] that the outcome of the appellant's daughter's appeal was a starting point for Judge Kimnell. Specifically the judge found that:

   > "Importantly it is also necessary when assessing credibility to take as a starting point the findings made by Deputy Upper Tribunal Judge Lindsley in the appeal of the appellant's daughter."

7. It was submitted that the judge had made adverse credibility findings against the appellant without considering the evidence in the round and had not considered the direct evidence of the appellant's daughter; nor had there been any consideration of the value of the second hand evidence, namely that the appellant described the threats received to his daughter months before he made the asylum claim. It was also submitted that the judge failed to reach a finding as to the credibility of the appellant's daughter's evidence on the central matters. Mr Bonavero submitted that the judge, in order to dismiss this evidence, would need to give reasons for not finding it credible.

8. However, Mr Bonavero accepted that at [65] the judge specifically stated that "the evidence from the witnesses in this case contains many inconsistencies." Although Mr Bonavero suggested that this was mainly in relation to the appellant, that is not the case, as the judge went on, at [65], to find that the marriage certificate in respect of the appellant's daughter showed that it was issued on 27 December 2010 and the judge specifically rejected the evidence "from the appellant's daughter that the document simply marks her engagement". The judge also noted that the appellant at interview said that his daughter was married in August 2012 whereas, according to the witness statement and oral evidence, it was August 2011.

9. It was entirely open to the judge to find that there were inconsistencies in the evidence of all three witnesses, including the appellant's daughter. This included that the judge had been provided three dates for the appellant's marriage. The fact that Upper Tribunal Judge Lindsley found the appellant's daughter credible in her 2014 appeal before the Upper Tribunal is not determinative of her credibility before Judge Kimnell. I accept Mr Bonavero's submission that although a later Tribunal should not regard itself as bound to follow previous decision, the principles of good administration require that decisions should not be needlessly divergent and therefore the earlier decision should be treated as starting point. However, it cannot be disputed that a Tribunal must not hesitate to depart from that starting point "in every case where the evidence requires it" (**AS and AA (Effect of previous linked determination) [2006] UKAIT 52**) applied).

10. I have also considered what the Court of Appeal said in **AA & AH [2007] EWCA Civ 1040**. This discussed the various principles including (including in **Ocampo v SSHD [2006] EWCA 1276** and **TK (Consideration of Prior Determinations) Georgia [2004] UKIAT 00149))** that the **Devaseelan [2004] UKIAT 00282** guidelines were not limited to cases between the same parties. The Court of Appeal confirmed that the first decision is not binding and it is the fundamental obligation of the judge independently to decide the second case on its own individual merits:

> "If, having considered the factual conclusions of the first Tribunal, the second Tribunal rationally reaches different factual conclusions, then

it is those conclusions which it must apply and not those of the first Tribunal." (Paragraph 29 LJ Hooper).

11. Mr Bonavero submitted that in relation to Ground 3 the judge erred in his approach to the Upper Tribunal's finding that it was "probable" that the X family had connections with authority as the judge was of the view that "there appears to be no evidence whatsoever on which that conclusion was reached and it was not expressed as a clear finding"([59] of Judge Kimnell's decision. Mr Bonavero submitted that this was incorrect and that Judge Lindsley had given cogent reasons as to why she accepted that the appellant's daughter could not relocate. Upper Tribunal Judge Lindsley found that the appellant's daughter was consistent in her evidence that the X family were a big family and she new they had friends in "different positions, everywhere" with "relationships with those in the police, with drivers and government officials". Judge Lindsley went on at paragraph 43 of the Upper Tribunal decision to accept that it was "probable that some of them have connections with authority (such as the police and local government)" including because she found the appellant's daughter credible and it was clear that they are "significantly more wealthy than her own family, owing a lot of cars, with number plates indicating residence from regions around Albania, and speaking in a more educated fashion". Mr Bonavero submitted therefore that the judge erred in considering that there was "no evidence whatsoever" for Judge Lindsley's conclusion and that her conclusions were not "expressed as a clear finding". Mr Bonavero submitted that Judge Kimnell then went on to compound his error at [77] by finding that the X family were not a rich or powerful family in Albania with influence over the authorities and provided no evidence for this.

12. However, the judge was entitled to reach the findings he did including that the evidence of the witnesses before him contained inconsistencies. In addition the judge noted that the appellant returned from France where he fled in 2010 according to his interview (despite the fact that it was his evidence his daughter was not even married at that stage) and remained at home "for more than a year indicating that he did not fear for his safety from the X family because of any threat issued in September 2011" [67]. It was open to the judge was to consider in the round his negative credibility findings in relation to the claimed threats against the appellant in September 2011 and his rejection of that evidence.

13. The judge had in mind both that Judge Lindsley decision was a starting point and that this included the positive credibility findings in relation to the appellant's daughter. However it was incumbent on the judge to take into account all the evidence including the oral evidence from the appellant and the appellant's daughter and the appellant's son, which was set out in some detail at [11] through to [52] of the decision, including the submissions of both parties.

14. The judge took great care in his reasons and fully explored all the evidence, giving adequate reasons for not finding that this appellant was at risk in relation to the blood feud "whatever the attitude of the X family

may be to the appellant's daughter". It was submitted that the judge gave no reasons for finding that the family are not rich and powerful/have no influence over the authorities. However, reading the decision and reasons as a whole, the judge was relying on his findings as to the "many inconsistencies" between the parties, the fact that the appellant was able to return and live safely from France to Albania, the fact (as set out at [70]) that the appellant was able to reside in Shkodra between October 2012 and February 2013 without coming to any adverse attention and the fact that there was no evidence in the 124 pages of country information relating to the X family. Therefore the finding at [77] that the appellant was not at risk and that they were not a rich and powerful family with influence over the authorities was a finding that was open to Judge Kimnell on the further evidence that he received and which justified his departing from the findings of Judge Lindsley on this point in 2014.

15. Any error therefore that the judge made in stating that there was "no evidence whatsoever" for Judge Lindsley's conclusion that it was 'probable' in 2014 that some of the family had connections with the authorities such as the police or local government, is not material given that there were adequate reasons given for the findings at [77] that the family are not rich and powerful with influence over the authorities.

16. In relation to Ground 2 Mr Bonavero submitted that the judge's findings were of some concern in that he rejected the appellant's case as not plausible which is unsafe given the advice from the Court of Appeal in **HK v Secretary of State for the Home Department [2006] EWCA Civ 1037**:

> "Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding Tribunal have any (even second hand) experience."

17. It was submitted that the likely behaviour of assailants in a blood feud falls into this category and that it was an error on the judge's part to find that it was not plausible that the assailants would not have lain in wait for the appellant. However, the judge reached these findings in the context of what he found to be the inconsistency of the evidence of the witnesses as already detailed and the appellant's answer at interview, when he said that six months after his daughter's marriage the X family came to his home to tell him that his daughter did not turn out to be "good" was inconsistent with his evidence that this occurred in September, the month after the marriage and that according to his previous answer at question 26, six months after the marriage, his daughter was "alright". The judge also took into consideration that, although he had heard evidence from the appellant's daughter and the appellant's son, neither were eye witnesses to the incident: "Neither can give direct evidence of what occurred"

([71]). In all these circumstances there was no material error in the conclusions reached.

18. The judge had also took into consideration at [2] of the decision and reasons that the appellant had left Albania in 2010 but was detected in France and returned to Albania and had given different dates for his date of departure and that at [6] the appellant had specifically confirmed that he was not present when the claimed assailants had attacked his property and shot dead his dog and that he had not returned home.

19. The judge indicated that a concession had been made in the daughter's appeal before Upper Tribunal Judge Lindsay, but no such concession had been made before Judge Kimnell. It is not the case, and Ms Isherwood did not specifically assert, that any such concessions are relevant to the application of the **Devaseelan** principles However Mr Bonavero accepted that the judge was not wrong to note that and to take into consideration in his findings that there were no concessions made before him. The judge quite properly asked the Presenting Officer at the appeal before him to address the fact that the appellant's daughter's appeal was allowed and noted that it was the Presenting Officer's position that "there is no blood feud with the X family in existence in Albania and any incident that might have occurred whilst the appellant was living in Albania was isolated. It is the respondent's position that he is at no continuing threat of harm".

20. The judge was entitled, having taken Judge Lindsley's findings as a starting point, to nevertheless reject as a complete fiction the evidence of the threats to the appellant in September 2011 given the inconsistent evidence before notwithstanding that Judge Lindsley took into account that there were threats made to the appellant in the course of the appeal by the appellant's daughter.

21. I am satisfied that the judge gave the appropriate weight to the evidence of the appellant's daughter but provided more than adequate reasons why, notwithstanding that weight, and notwithstanding the positive findings made by Judge Lindsley and the success of the appellant's daughter's appeal which was said to be based on an issue of "honour", that there was no risk to this appellant. The judge reached his own conclusions for the reasons given and I am satisfied that he gave adequate reasons for doing so.

Notice of Decision

22. The decision of the First-tier Tribunal discloses no error of law such that it should be set aside and shall stand. The appeal by the appellant is dismissed.

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: 15 June 2017

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee was paid or payable so no fee award is made.

Signed Date: 15 June 2017

Deputy Upper Tribunal Judge Hutchinson