Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2024-000667
First tier number: (PA/50354/2023)

THE IMMIGRATION ACTS

Decision & Reasons Promulgated

On 27th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

SA
(ANONYMITY ORDERED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Revill, Counsel instructed by Oliver & Hasani Solicitors
For the Respondent: Ms H Gilmore, Senior Home Office Presenting Officer

Heard at Field House on the 18th September 2024

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

Unless and until the 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.

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Albania. The respondent refused his protection claim on the 6th January 2023 and his appeal against that refusal was dismissed by First-tier Tribunal Judge Hamilton on the 29th January 2024. The appellant was granted permission to appeal against Judge Hamilton's decision, and hence the matter came before me.

Background

2. The essence of the appellant's case before the First-tier Tribunal was that he had a well-founded fear of persecution in Albania due to a threat to his life in consequence of a blood feud declared by a family (characterized by the judge as "the X family") following the conviction and sentence of the appellant's brother for murdering an X-family member.

Findings of the First-tier Tribunal

3. In summary, the First-tier Tribunal Judge found that whilst there were "omissions, inconsistent and implausible aspects to the appellant's evidence", these were not sufficient to undermine the core of his account. He therefore accepted that the appellant had shown that he and his family were the target of an ongoing blood feud [56]. The judge also found that there was insufficiency of protection against the threat of the blood feud in the appellant's home area [57]. He nevertheless concluded that it was reasonable for the appellant to relocate to the capital city of Albania, Tirana, where the X family would, "not be actively searching for [him]", and where there was in any event sufficiency of state protection against the threat posed by the blood-feud [61].

The grounds of appeal.

4. The grounds of appeal can be conveniently summarized as follows:

   (1) The judge misapplied the law concerning the relevance of the X-family's links and reach beyond the appellant's home area, and failed to take account of relevant evidence appertaining thereto;
   (2) The judge applied too high a standard of proof in finding that the appellant had failed to show that the X family were motivated to search for him following his relocation within Albania.
   (3) The judge misapplied the country guidance concerning sufficiency of protection in Tirana, the capital of Albania.

   Permission to appeal was granted on all three grounds.

Analysis

5. Although, as we shall see, the three grounds are inter-inked, I shall endeavour to consider them discretely and in turn.

6. The first part of the first ground of appeal is based upon what is said to have been the misapplication by the judge of the decision of this Tribunal in **BF** (Tirana – gay men) Albania C G [2019] UKUT 93 (IAC). Whilst that decision was principally concerned with the risk to gay men in Albania, it is accepted by both parties that its principles are generally applicable to the feasibility of internal relocation within that country, in respect of which the following guidance appears at paragraph 181:

> We accept Ms Young's evidence that a person's whereabouts may become known in Tirana by word of mouth. Albania is a relatively small country and we accept as entirely plausible that a person might be traced via family or other connections being made on enquiry in Tirana. Whether that would occur would depend on the family being motivated to make such enquiries (which motivation would probably depend on an awareness that the person may be living there) and the extent of its hostility. That is a question for determination on the evidence in each case.

Ms Revill's submission is that the judge misapplied this guidance at paragraph 60 of the Decision, by suggesting that the absence of cogent evidence to show that the X family had, "links to the police or criminal gangs", or that they had, "any extensive reach", were relevant considerations in the assessment of internal relocation within Albania. It was, she argues, unnecessary for the appellant to be able to show that the X family had any particular 'links' or 'reach'. The correct approach, she submits, is to find that anyone who is sufficiently motivated to make enquiries may discover a person's whereabouts in Tirana simply through word of mouth.

7. Had it been that the passage relied upon in paragraph 60 stood alone, there may have been some force in Ms Revill's submission. As it is, it is necessary to read that passage within the context of the Decision as a whole. Having done so, it becomes readily apparent that the judge *did* consider the strength of the X family's motivation in tracing him to Tirana were he to relocate there. Thus, at paragraph 58, the judge drew attention to the "slightly surprising" fact (amongst others) that it took the X family two or three months before they even sought the appellant's whereabouts in his home village, before then going on to conclude that there was insufficient cogent evidence, "to show that they have the influence, resources, motivation, or ability to trace him anywhere in Albania" [emphasis added]. Moreover, I do not read the decision in BF **as** suggesting that the means available to an actor of persecution in tracing their victim is wholly irrelevant to the conduct of a rounded assessment of the risk of them doing so. Whilst it is true that the Tribunal in BF focussed upon on the strength of the persecuting family's motivation and degree of hostility that they felt towards their victim, it is surely a matter of plain sense that the less their ability to trace their victim the greater will need

to be their determination in order to achieve their objective. Moreover, as Ms Revill acknowledged at the hearing, the issue of internal relocation to an area of Albania, which is less dependent on the Kanun, is one that is intimately bound up with the question of the sufficiency of state protection, in respect of which there can be no doubt that considerations such as the 'reach' and 'influence' of the aggressor clan are relevant to the latter question, together with their commitment to the prosecution of the feud (see paragraph 74(c) of EH (blood feuds) Albania CG [2012] UKUT 348 (IAC), which is relied upon by the appellant in support of the third ground and is accordingly considered more fully at paragraph 10, below). Thus, as the Tribunal in BF emphasised, the risk of tracing following internal relocation will be a fact-sensitive question to be determined on *the whole* of the evidence in the individual case.

8. The second part of the first ground relies upon evidence contained within paragraph 45 the appellant's witness statement, which Ms Revill submits was relevant to the risk assessment associated with internal relocation, and to which she therefore argues the judge should have given consideration when making that assessment. In summary, the appellant claimed that the member of the X family ('Eri') in respect of whose murder the appellant's brother was held responsible, had been murdered in a place called 'Mirdite'. Moreover, Eri's brother had in his turn murdered someone in a place called 'Durres'. As the respondent points out in her Rule 24 Notice, this aspect of the appellant's narrative appears not to have been "tested" or explored at the hearing. It is moreover unclear whether the judge accepted it (whilst accepting the existence of the blood feud, the judge clearly did not accept all aspects of the appellant's account, considering that some of his claims lacked credibility, and that others had been embellished: see, for example, paragraphs 51, 53, 54, and 55). However, assuming for present purposes that the judge took the contents of paragraph 45 of the appellant's witness statement at face value, one is bound to observe that there are many gaps in that evidence. It does not, for example, reveal the geographical location of the places in which the two murders took place ('Durres' and 'Merdite', respectively). It is therefore unclear where those places are located relative to the appellant's home area, or even whether they are in the north or south of the country. Neither does the evidence reveal whether these places are situated within urban or rural areas of Albania (the judge specifically having found that the appellant could safely relocate to, "Tirana or other large city away from his home area": see paragraph 59) Moreover, whilst the appellant claimed that 'Eri' had at some point relocated from his place of origin (a place called 'Puke') to Tirana, it is noteworthy that he does not suggest that Tirana was the place where he was murdered. He instead says that he was murdered in 'Mirdite' where, as he puts it, Eri had, "ended up". I am not therefore persuaded that the failure to take this evidence into account affects the safety of the judge's conclusion that there was not a real risk of the X family tracing him to either the Albanian capital of Tirana or to another large city away from his home area.

9. The second ground of appeal is that the judge imposed too high a standard of proof in determining whether the X family would seek to trace the appellant following internal relocation. Ms Revill confirmed that she was not suggesting that the judge's self-direction concerning the standard of proof (the lower standard of a reasonable degree of likelihood) was erroneous. Rather, she suggested that the evidence ought to have persuaded the judge that that standard had been met. As I observed at the hearing, I have some considerable conceptual difficulty with this submission. It may of course be that another judge would have concluded that the evidence in the appeal met the appropriate legal standard. It does not follow from this, however, that the judge who was tasked with making the decision erred in law by finding that it did not. It seems to me that this ground can only prosper if it can be shown that no judge, properly directed in law, could have reached the conclusion that they did. In short, it would have to be established that the judge's conclusion was perverse. Ms Revill made it clear that she was not suggesting this to be the case, but instead submitted that something less than this would suffice to justify overturning the judge's finding. I reject that submission. To uphold it would effectively mandate interfering with every aspect of the decision of a specialised fact-finding tribunal for no better reason than that the appellate tribunal would have found differently if it had been deciding the case at first instance. The true position is that the Upper Tribunal must exercise restraint when it is tempted to overturn the First-tier Tribunal's findings simply on account of its disagreement.

10. Turning to the final ground of appeal, it will be recalled that it is said that the judge erred in their application of the country guidance relating to sufficiency of protection in Albania. In support of this ground, Ms Revill drew attention to paragraph 61 of the judge's decision in which they appeared to suggest that there is generally sufficiency of protection from an active and established blood feud, save where Kanun law predominates. The true position, however, is as stated at paragraph 74(c) of **EH** -

> The Albanian state has taken steps to improve state protection, but in areas where Kanun law predominates (particularly in northern Albania) 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 to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan.

(Emphasis added by Ms Revill in her grounds of appeal)

As I noted at paragraph 6 (above) the Tribunal had made a similar point in relation to internal relocation, at paragraph 70 -

> Internal relocation will be effective to protect an appellant 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.

(My emphasis)

11. Whilst Ms Revill is no doubt correct that the judge mis-stated the effect of the country guidance relating to sufficiency of protection in Albania, the reality (which she acknowledged) is that this issue is so intimately tied up with that of internal relocation that the judge's conclusions in relation to each of those issues were bound to stand or fall together. Having rejected the complaints made against the judge's reasoning concerning internal relocation in the first and second grounds of appeal, it follows that the judge's mis-statement of the country guidance relating to the issue of sufficiency of protection was incapable of affecting the outcome of the appeal. Put another way, given the soundness the judge's findings concerning the unlikelihood of the X family tracing the appellant in Tirana (or other large city in Albania), the correct application of the country guidance relating to sufficiency of protection could not and would not have made any difference.

Notice of Decision

12. The appeal is dismissed, and the decision of the First-tier Tribunal therefore stands

Judge Kelly: David Kelly Date: 24th September 2024

Deputy Judge of the Upper Tribunal