**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: AA/08783/2014**

**At Field House**
**On 14h May 2015**

**Decision and Reasons**
**Promulgated On 7th July 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY**

**Between**
**A B**

**(ANONYMITY DIRECTION MADE)**

**Appellant**

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms Rachel Francis, Counsel, instructed by JD Spicer Zeb, Solicitors.
For the Respondent: Ms Julie Isherwood, Home Office Presenting Officer.

## DECISION AND REASONS

Introduction

1. The appellant is a national of Albania, born on 25 June 1998. He has been granted permission to appeal to the Upper Tribunal the decision of First-tier Tribunal Judge Mayall who dismissed his appeal in a decision promulgated on 28 January 2015.

2. The appellant claimed asylum on 9 June 2014, stating he had just arrived in this country having entered illegally. He said he was not accompanied by any responsible adult. He said he lived on a farm in Albania with his parents and three older brothers. His father inherited the land on the death of his father. A neighbouring family disputed ownership of the

farmland and assaulted the appellant and his father. Out of fear the appellant's brothers and then his father fled the country. Before leaving, his father made arrangements with an agent for the appellant to leave.

3. The claim was considered in the context of blood feuds in Albania. The claim engaged the Refugee Convention on the basis the appellant was a member of a particular social group: a member of his father's family. The respondent did not accept the claim was true. If true, the Albanian State could provide effective protection. Furthermore, he could reasonably be expected to relocate within Albania to avoid any risk. On the basis the appellant was an unaccompanied minor the respondent agreed to allow him to remain until his family were contacted or until he turned 18 years of age.

4. First-tier Judge Mayall's decision sets out the main points in the respondent's refusal letter which in turn sets out the appellant's claim. It is clear from the decision the judge did not believe the appellant's claim. There were a number of points made in support of the negative credibility finding:

    (i) None of the rival family had been killed. Consequently, there was no blood to avenge.
    (ii) The appellant's grandfather died when he was very young. The appellant's father had been farming the land since without difficulty and it was implausible that the rival family would only become active in 2012.
    (iii) There were inconsistencies between the appellant's claim that his parents kept him at home for safety and the rival family beating him up when he was on his way to meet his friend. The account of the attack was also inconsistent and lacking in detail.
    (iv) At screening he did not to know the name of the rival family yet could name them in a statement dated before screening and in his substantive interview despite claiming no contact with home.
    (v) The limited enquiries by him as to what had become of his brothers.
    (vi) Going away without asking if he was joining his brothers.
    (vii) The likelihood that no arrangements would have been made for contact afterwards.
    (viii) The appellant in his witness statement said his mother still lived on the farm but at hearing said he did not know if this was still the case.

5. Permission to appeal was granted on the basis it may have been an error of law for Judge Mayall to attach significance to a more detailed account given in the substantive interview than the screening. Bearing in mind the appellant was 13 or 14 at the time it may have been an error of law for the judge to place weight on an apparent lack of discussion of events between the appellant and his parents. It was also arguable that the judge placed undue reliance upon the details of the appellant's account about the claimed assault on him. The judge referred to him saying it occurred

at his friend's house which was next door. He then said he was assaulted not more than three minutes away from his own home.

The error of law

6. Ms Francis submitted that Judge Mayall erred in law in concluding that as there had been no killing then this was no blood feud. Firstly, she made the point that there may have been a killing of which the appellant was unaware. Furthermore, the country information indicated that blood feuds could begin with an argument which can include a dispute over the ownership of land. She also submitted that the judge was not entitled to make inferences from the appellant's limited knowledge of his brothers' situation. The appellant said he had asked about his brothers and was told they were all right. She also submitted that there was a material factual error in relation to the claim by the appellant as to when he was assaulted. Judge Mayall drew an adverse inference from the appellant being assaulted which was not consistent with the claim his family were keeping him indoors. She submitted the judge misunderstood the factual claim, namely, that the appellant was kept indoors as a result of and following the assault. She also submitted that the judge erred in drawing inferences about where the attack took place. She submitted that there was no inconsistency with the appellant's evidence that the houses were close to each other: next door and three minutes away.

7. Another criticism of the judge's approach was in relation to the comment that more details were given in the substantive interview then at screening. Reference was made to the decision of GM((risk-failed asylum seekers)DRC CG [2002] UKIAT 06741. This case concerned a challenge to the negative credibility finding made by the adjudicator. At paragraph 15 the Tribunal said that the interview records should be treated with considerable care given that the appellant was 17 at the time and mention was made to the vulnerability of unaccompanied children. The Tribunal at paragraph 16 stated `we would be very cautious before drawing any adverse inferences from ommissions or discrepancies in the SEF or the interview'.

8. I was also referred to paragraph 79 of the country guidance decision of E. H.( Blood feuds) Albania [2012] UK UT 00348 were the tribunal in assessing credibility referred to the appellant's age and the fact the index events occurred when he was younger.

9. In response, Ms Isherwood argued that the disagreement related to the outcome and that there was no error of law in the judge's approach. She pointed out that the appellant had signed a prepared statement dated 18 June 2014, the day before his screening occurred. In that statement he sets out that the whereabouts of his parents and brothers are unknown. He states he has not had contact with his family since leaving Albania. At paragraph 10 he stated that his happy existence changed in 2012 when his father would not allow him to go out alone. He mentions in paragraph 11 that his father was in a dispute with the S family about the land. He

then goes on to state his father was assaulted in June 2013 and because of that he was not allowed to play with his friends any more and he would be escorted to school. At paragraph 14 he stated at the end of July 2013 he was out of the house waiting for a friend when a car pulled up and he was assaulted. He states that he stopped going to school as his family were afraid for his safety and he was then forced to remain indoors and not allowed to spend time with his friends. She submitted that allowance had to be made for the appellant age but nevertheless they were credibility issues arising. She submitted that the judge was considering the evidence as a whole. She said it was open to the judge to question the appellant's account about his brothers. She referred to paragraphs 45 and 46 of the decision which refers to inconsistencies in the appellant's evidence.

Consideration

10. Material facts must always be assessed in the context of the evidence as a whole and not in isolation. It is the total content of the evidence, including consistency, improbabilities or reasonableness that has to be evaluated. General credibility findings are not the starting point. Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11 established that everything capable of having a bearing on the case must be given the weight due to it. This was summarised in SM (Section 8: Judge's process) Iran [2005] UKAIT 00116 (5 July 2005):

> "It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence… Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together; and … although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole".

11. Assessing the credibility of asylum claims presented by children is particularly challenging. When the appellant came for his screening he was approaching his 16th birthday. On his account his family had experienced difficulties from when he was 14 to 15. On his account his brothers and father had left the previous summer, fearful of their neighbours. The appellant said he had been confined to the house from the summertime and had been assaulted. When he came to his screening on his account he had been away from home for just over a week and had travelled through various countries. Consequently, if the claim was true he was approaching his screening having experienced significant trauma and sensitivity was required in considering his claim.

12. The respondent has a protocol which is reflected in the screening interview. At 3.1 of the screening it was recorded he did not know the name of the family that were causing his family the difficulties. This clearly is not consistent with the statement he provided which names the

family. This inconsistency was something the judge is entitled take into account. I appreciate that a screening interview is meant to provide only basic details in relation to the appellant and is not dealing with the specifics of the claim. However, if a detail relating to the claim is given which is at odds with the later claim a judge is entitled to take this into account in assessing credibility. GM((risk-failed asylum seekers)DRC CG [2002] UKIAT 06741 does not lay down any principle that omissions or contradictions cannot be taken into account. Instead, the tribunal refers to the caution required, particularly in the case of a child. It is my conclusion that it was open to the judge to factor this into the credibility assessment.

13. In his first statement he indicates the whereabouts of his mother was not known. At paragraph 11 of his later statement of 19 November 2014 he states that his mother still lives on the land and that it was supporting her. He said the land could not simply be given away but required the appearance of consent. The judge records that in his oral evidence he said he did not know if she was still on the disputed land. He had not claimed any contact with home to explain this change. Again, the judge was entitled to take this into account in making an assessment of the truth of the claim.

14. On behalf of the appellant it was submitted that the judge made a factual error in relation to when the appellant was kept at home. The significance of the point is that it raises the question of how he could have been assaulted if he was not allowed out.It was submitted his confinement only began after he was assaulted and consequently explains why he was out of doors. However, I do not find the judge made an error of fact in this regard. At paragraph 12 of his statement of 18 June 2014 he sets out how his father was assaulted in June 2013 and after that his father would escort him to school and he was not allowed to play with his friends. At paragraph 14 he states it was July 2013 when he was assaulted.

15. At paragraph 46 of the decision the judge comments on the appellant's account as to how far he was from home when the assault took place. In his original statement at paragraph 14 he says he was out of the house waiting for a friend when a car pulled up and he was assaulted. In the following paragraph he states he then went home. In his substantive interview at question 60/63 he said the rival family lived nearby and had been living in the same area for a long time. At question 65 he states that his family would not let him step out of the house. He also states it would not leave him on his own. Then he goes on to describe being beaten up in July 2013. At question 67 he states he was on his way to meet a friend when he saw a car pull up. At question 74 he was asked where he was when the attack took place. He states it was in the neighbourhood. At Q 76 he said his house and house of his friend were close. One of the points made in the refusal letter at paragraph 23 was the apparent inconsistency between the appellant being assaulted and the claim he never went out. His later statement, dated 19 November 2014 was made after the refusal. At paragraph 12 of the subsequent statement he seeks to explain this by saying his friend’s house was directly next door. The judge was entitled to comment on the differing accounts.

16. The judge accepts other points made in the refusal letter which go to credibility. The first is the fact that on the appellant's account his father inherited these lands when he was a child. The appellant indicates there were no problems when he was growing up and things only came to a head in the summer of 2012. The respondent and the judge then questioned why, if the dispute related to ownership of the land, it had not been an issue before. There is always a danger in speculating but in the circumstances the observation was reasonable.

17. A further point related to the appellant's apparent lack of enquiry from his parents about his brothers. In response, it is argued that he did ask and was told they were all right. However, it is legitimate to ask why he would simply accept this.

18. Another issue was his apparent lack of awareness as to where he was going. Linked to this is his claim that no arrangements were made about contact. It seems highly improbable that a mother would entrust her young child to an agent without knowing the arrangements and then check he had arrived safely and was doing well. I find these were legitimate factors for the judge to take into account.

19. If the judge was suggesting at paragraph 40 that a Kaun blood feud could only take place on foot of the killing this was wrong. The image of a blood feud may suggest this but the realities are that lesser events can result in a feud. In making the comment the judge was repeating what was said at paragraph 38 to 40 of the reasons for refusal letter. I find this to be a comment by the judge, rather than an indication of a conclusion. Had it been determinative the judge would not have gone further and considered the other issues.

Conclusion

20. It is my conclusion that when the determination is read as a whole it is sound. I find the points taken by the judge were legitimate. The judge did not believe the appellant's claim and gave rational reasons for this conclusion. I find there is no material error of law and so the decision shall stand.

Decision.

The appeal is dismissed. No material error of law is established and so the decision of the First-tier Tribunal dismissing the appellant's appeal shall stand.

FJ Farrelly
A Deputy Judge of the Upper Tribunal