



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

Appeal Number: AA086622015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 May 2016**

**Decision & Reasons  
Promulgated  
On 8 June 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

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

Appellant

**and**

**GP (ALBANIA)  
(ANONYMITY DIRECTION MADE)**

Respondent/Claimant

**Representation:**

For the Appellant:  
Officer

Mr E Tufan, Senior Home Office Presenting

For the Respondent/Claimant: Mr A Burrett, Counsel, instructed by  
Wimbledon Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal allowing the claimant's appeal against a decision by the Secretary of State to refuse to recognise him as a refugee. The First-tier Tribunal did not make an anonymity direction in favour of the claimant, but I consider that it is appropriate that the claimant is accorded anonymity for these proceedings in the Upper Tribunal.

### **The Reasons for the Grant of Permission to Appeal**

2. On 22 April 2016 First-tier Tribunal Judge Davidge granted the Secretary of State permission to appeal for the following reasons:
  1. The Respondent appeals a decision of First-tier Tribunal Judge Majid promulgated on 19<sup>th</sup> March 2016 in which he allows the appeal of an Albanian national born on 2<sup>nd</sup> October 1997.
  2. I find it is arguable that a number of factual errors including that the Appellant was under the age of eighteen at the date of hearing when he was not, that the Upper Tribunal at paragraph 44 of **EH (blood feuds) [2012] UKUT 348** found that Mr Gjin Marku's evidence was impressive when it was held that it was unimpressive, having affected the reasoning of the judge. Further whilst the judge was entitled to believe the Appellant as to the existence of the claimed blood feud and his having been tracked to another town, he has failed to explain to the Respondent why he found him credible in the context of the reasons for refusal or to provide a detailed assessment as required by **EH**.

### **Relevant Background**

3. The claimant says he arrived in the UK concealed in the back of a lorry on 8 October 2014. He is recorded as having claimed asylum the following day. Up until he left Albania, he had lived in Tirana with his maternal grandparents, his mother and his maternal uncle. He had attended school up until 7 June 2014.
4. In November 2013 "H" had accused his uncle of harassing his wife. H had taken a gun to a meeting with his uncle. During that meeting, his uncle had defended himself, and as a result had killed H. His mother had told him that a blood feud had been declared at that time by H's family. There was no police investigation into the killing of H, and the appellant did not know why that was the case.
5. On 2 January 2014 he was at home with the rest of his family when they heard a gunshot. His maternal uncle had been shot whilst he was standing on the balcony in another room of the house. His uncle died on the way to the hospital. Nobody informed the police about this killing, and again the claimant did not know why this was the case. Nobody saw the person who shot his uncle, and he did not know who had carried out this crime.
6. On 5 June 2014 his maternal grandfather had spoken to two members of H's family in an attempt at reconciliation. An altercation then broke out

which led to his maternal grandfather and the two of H's family members being killed. The claimant did not know how his grandfather was killed. The following day a village elder came to the house and told the claimant that H's family intended to seek revenge on his family, as three members of their family had now been killed, whereas only two members of his family had been killed. At this point, the claimant's mother went to the police for assistance. But the police were unwilling to interfere in a blood feud.

7. On 7 June 2014 he left the family house. His mother and maternal grandmother decided he should relocate away from the area as they feared the potential repercussions from H's family. He went to Diber to live with his maternal uncle's friend, who was called Argon. He lived with Argon until he left Albania on either 13 or 14 September. During this period, he did not suffer any further problems and he lived a normal life, including leaving the house. The reason for leaving the country was that one day a girl named Rabi from the village told Argon that people were looking for his house, and were questioning how to get to his house. Argon became suspicious and scared that members of H's family were looking for his house, and so the claimant decided to leave Albania.
8. On 20 May 2015 the Secretary of State gave her reasons for refusing to recognise the claimant as a refugee. It was not accepted that his family was involved in a blood feud with H's family due to a number of discrepancies in his account.
9. The claimant said that he did not have any brothers or sisters, but a response from the British Embassy in Tirana noted that he had a sibling in Albania, who lived with his parents. The fact that he concealed such basic family information undermined his general credibility.
10. After the alleged murder of his uncle and his mother informing him of the blood feud, he continued life as normal and he encountered no problems from H's family or anyone else. So his claim that H's family were interested in killing him due to the blood feud appeared inconsistent with his claim that he was able to safely go out in the local community. Despite claiming to have relocated to Diber, he did not go into self-confinement and continued to live as normal. Again, his claim that H's family wished to kill him appeared inconsistent with his behaviour in Diber. He had admitted in interview that he was speculating as to whether H's family were trying to locate him in Diber, as he did not know the identity of those questioning Rabi.
11. On the issue of risk on return, the Secretary of State considered the guidance given in **EH**. The claimant stated he did not know any of the names of H's family members, nor did he know what line of work they were involved with. He had therefore failed to show that H's family had the ability or influence to locate him in Albania. It was therefore considered internal relocation was a viable option to him on return to Albania.

12. The Secretary of State went on to cite background evidence in support of the proposition that there as an effective police service in Albania which was willing to assist its citizens and thus he would be free to seek police protection and assistance of the courts on return to Albania. He had failed to demonstrate the authorities of Albania would be unable or unwilling to offer him protection from the alleged blood feud, if he sought protection.
13. Overall, his claim to be a genuine refugee in need of international protection was considered to be unfounded.

### **The Decision of the First-tier Tribunal**

14. Both parties were legally represented before Judge Majid. In his subsequent decision, the judge said at paragraph [15] that for the Home Office to say that the blood feud was not a major problem was contrary to his review of the objective evidence on this issue. He was left in no doubt that even though the authorities were making every effort to obviate blood feuds in Albania, the blood feud was a serious problem in Albania and those who found themselves subjected to this traditional malady could encounter lethal consequences, including the loss of life. He continued:

“I am willing to accept the story of this young appellant that he was targeted due to a blood feud in Tirana (the capital of Albania) but could not get rid of his persecutors despite moving from the city to the town of Diber which I was told is three to four hours drive from Tirana.”

### **The Application for Permission to Appeal**

15. A member of the Specialist Appeals Team settled an application for permission to appeal which I set out below verbatim:

#### **Making a mistake as to a material fact**

- It is respectfully submitted that FTJ Majid had been misdirected in his conclusion at 6(a) that the appellant was, ‘even at the date of the hearing under the age of 18.’ It is an accepted fact that the appellants Date of Birth is 02/10/1997 and as such at the date of hearing (22/03/2016) he was almost 18 years and six months old. It is asserted that this misdirection has influenced the Immigration Judges conclusions to such an extent that they are ultimately in error.
- This error is further compounded at paragraphs 10-12 in that FTJ Majid wrongly accepts the submission of the appellants Representative that the ‘Home Office’ had not recognised the appellants age in their reasons for refusal letter. It is clear that this fact was very much in the mind of the author as can be seen at paragraphs 11-16 (attached). The appellants age was accepted from the outset of his application and as such all appropriate steps were taken in order to ensure both his safety, in that he was placed in the care of Social Services and afford him the opportunity to have his claim fairly and thoroughly examined.

- There is additional material error in that FTJ Majid has been misdirected in his application of **EH (Blood Feuds) [2012] UKUT 348**. At paragraph 14 he states “In paragraph 44 of its judgement the UT said about Mr. Gjin Marku’s evidence that it was ‘impressive’ and that his position was that the blood feud problem was widespread and serious.” The UT in fact the hold the opposite of that position at paragraph 44 of **EH**, in that they find the evidence of Mr Gjin Marku to be ‘unimpressive.’
- It is asserted that these mistakes as to material facts have infected the reasoning applied by the FTTJ and as such his determination as a whole is in error.

### **Failing to give reasons or adequate reasons for findings on material matters**

- It is additionally submitted that the FTJ has failed to give any reasons for allowing the instant appeal, concluding only that the appellants age dictates that he be given the benefit of discretion. The determination does not reveal any examination of the evidence nor have reasons been articulated for why the appellant has been found to be credible or at risk. It is further asserted that there has been no examination of whether in fact a blood feud is in existence or if so, given the alleged connection is maternal and not paternal whether the appellant would in fact be at risk as a result, particularly in light of the fact the appellant has never been forced into self confinement, yet has remained unmolested by any alleged aggressors. Reliance in this regard is placed on the case of **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)**.

### **Making a material misdirection of law**

- It is finally submitted that there has been no indication by FTJ Majid as to why the appellant has been successful in his appeal. It is incumbent upon him to resolve key issues surrounding both credibility and potential risk, it is asserted that he has failed to do this and as such reliance is place on the case of **Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC)** which finds:

**“It is necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.**

### **Discussion**

16. The judge did not materially err in saying that the claimant was under the age of 18 at the date of the hearing, as the claimant was under the age of 18 when he presented his asylum claim, and he was still under the age of 18 at the date of decision. So the need for a liberal application of the benefit of the doubt still applied.

17. The judge's error in respect of the Upper Tribunal's assessment of Mr Gjin Marku's evidence was more significant. The judge treated Mr Gjin Marku as being a reliable source for the proposition that blood feuds continued to be widespread and serious in Albania, when in fact the Upper Tribunal had found Mr Marku to have given unimpressive evidence. Thus, Mr Marku was not a reliable source for the proposition relied on by the Judge.
18. However, the main reason for finding that an error of law is made out is the judge's failure to engage with the detailed reasons given in the refusal letter for disbelieving the core claim; and the judge's failure to address the questions of sufficiency of protection and the viability of internal relocation in the context of a discussion about the risk which the claimant would face on return to Albania.

### **Notice of Decision**

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside in its entirety.

### **Directions**

**This appeal is remitted to the First-tier Tribunal at Taylor House for a de novo hearing before any judge apart from Judge Majid.**

**None of the findings of fact made by the previous Tribunal shall be preserved.**

**The agreed time estimate for the de novo hearing is two hours.**

**An Albanian interpreter will be required.**

### **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 their 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 8<sup>th</sup> June 2016

Deputy Upper Tribunal Judge