



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

Appeal Number: PA/02315/2017

THE IMMIGRATION ACTS

Heard at Field House

On 9 April 2018

**Decision & Reasons
Promulgated
On 19 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

[A B]

(~~ANONYMITY DIRECTION NOT MADE~~)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, Counsel

For the Respondent: Ms J Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Albania, date of birth [] 1999, appealed against the Respondent's decision to refuse a protection claim. The appeal against the Respondent's decision, of 17 February 2017, came before First-tier Tribunal Judge J Robertson (the Judge) whose decision [D], on 6 September 2017, dismissed the appeal. Permission to appeal was

granted by Upper Tribunal Judge Reeds on 18 January 2018 who said as follows:

- “1. The grounds concern the obligation on the respondent to verify a document produced on behalf of the appellant that is said to be central to the appellant's case. Whilst the grounds make reference to PJ (Sri Lanka) there is more recent authority in MA (Bangladesh) [2016] EWCA Civ 175 and VT (Article 22 Procedure Directive) Sri Lanka [2017] UKUT 318.
 2. However in this case it appears that the Secretary of State sought an adjournment in order to authenticate the document, which was granted. There is no reference in the determination to the circumstances arising after the decision was made to adjourn the hearing and why this was not undertaken. Given the uncertainty in this respect I am persuaded that permission should be granted”.
2. The matter has to a degree moved on because examination of the Record of Proceedings, and indeed confirmed by the note of the Presenting Officer, the Tribunal was told that there had been, notwithstanding a three month adjournment, no check yet produced verifying the document, which was a certificate issued by the Administrative Unit of Komsi in the Municipality of Mat. The Certificate stated that there was a blood feud because of the death of one [GD] at the hands of the Appellant's uncle [VB] in 2002. There were details confirming that [VB] had in fact been sentenced to 21 years in prison and the families are in conflict which has not been reconciled. The view was expressed by the certificate writer, the Administrator, [FK], that there was an element of danger posed to the Appellant. In addition, although it does not form part of the grounds, there was a letter produced by the Appellant's older sister [LB] which relates to some of the history of difficulties she and the Appellant and another child had faced which did not exclude the possibility that the Appellant was not confined to the home. The Judge unfortunately makes no reference to that statement but does say this at D25:

“I have a letter obtained by the Appellant's sister from the Administrative Unit of Komsu which certifies the Appellant is involved in a blood feud and that his life is in danger. I give this document little weight. It is an unverified document. I have no information as to the source of the information in it or any checks which may have been conducted to ascertain the accuracy of the content by its author”.

3. It was said in an essentially two-pronged attack that the Secretary of State did, by seeking the adjournment to obtain verification of the document, somehow put herself under an obligation to do so. It does not seem to me as a matter of law there is an obligation so much as a measure of responsibility and the difficulty that is inevitably faced if the Secretary of State does not pursue the enquiries. If so the Secretary of State may be in difficulty in arguing that it is not a reliable document let alone that it is a forgery. I do not accept that there is in law an obligation created but it does seem to me it is a point that very much bears on the issue of fairness and the fair and proper conduct of the decision making process. I conclude that the failure to do so does plainly create problems for the Appellant but perhaps at that stage of the hearing before the Judge the Appellant was in truth in a stronger position to argue that the documents should be taken to be reliable on a Tanveer Ahmed basis. Rather it seemed to me, and this is no criticism of current representation, an assumption was made by the advocate on behalf of the Appellant that absent of an adverse verification check or any check then the Appellant's document should be accepted as genuine. It seems to me that was wrong but it certainly makes it harder to argue that the document is unreliable.
4. Accordingly, I am satisfied that the Judge has addressed this matter to some extent in the structure of the decision having reached adverse views in other respects upon the child Appellant and that the conclusion, albeit with very little reasons in D25, is unreliable in its own right and renders the decision unsafe.

5. More importantly the grounds in the second prong of attack argue the adverse credibility findings as being unjustified. Those are not particularised in the grounds but it was offered that I would be taken through the decision to point those matters out. It seemed to me that the layout of the decision was such that trying to cherry pick through the decision to save aspects of it at this stage renders re-making this decision extremely difficult and potentially unreliable. I conclude that the appropriate course is that no findings of fact should stand. The matter will be returned to the First-tier Tribunal to be determined in accordance with the law.

DECISION

The Original Tribunal's decision cannot stand the appeal is returned to the First-tier Tribunal to be remade.

DIRECTIONS

- (1) List for hearing 2 hours. To be heard at Taylor House.
- (2) Not to be listed before First-tier Tribunal Judge Robertson or Judge L Murray.
- (3) Albanian interpreter required.
- (4) A fresh bundle to be prepared and served not later than fourteen working days before the further hearing.
- (5) Any further response to the verification document dated 27 July 2017 to be included in the additional statement produced by the Appellant.

No anonymity direction is made.

Signed

Date 15 April 2018

Deputy Upper Tribunal Judge Davey