



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

Appeal Number: PA/13907/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 December 2017**

**Decision & Reasons Promulgated
On 23 January 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**AV
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rees instructed by Simman Solicitors

For the Respondent: Miss Vijiwala Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Chowdhury promulgated on 13 June 2017 in which the Judge dismissed the appellant's appeal on both protection and human rights grounds.

Background

2. The appellant is an Albanian national born on 22 June 2000. He claimed to have left Albania on 3 April 2016 and to have travelled

through various countries before arriving in the United Kingdom on 15 April 2016, where he claimed asylum. The asylum claim was refused against which the appellant appeals.

3. The Judge considered the evidence, including noting that the respondent accepted that the appellant's mother killed his father [12] that the appellant had provided an internally consistent and credible account of this aspect of his claim. The Judge noted at [36] that "*the core elements of the Appellants claim are accepted. I accept that this Appellant's mother killed his father. However aside from that appalling tragic fact I find I can accept little else*".
4. The Judge had regard to not only the appellants evidence but also a country expert's report, a letter from the Refugee Council, evidence from the appellant's foster mother in the UK, and medical evidence. The Judge accepted the appellant was suffering from PTSD and impaired concentration did not find this explained inconsistencies that the Judge found in the evidence when considered as a whole.
5. The Judge did not accept the appellant's claim that he was at risk as a result of a blood feud in Albania. At [40] the Judge finds:

40. This is because of a number of credibility findings I make in respect of this Appellant. I make clear here that I have had regard to the fact that the Appellant is a minor and that he is currently seeing a psychotherapist. I have had regard to the letter from the Refugee Council exhibited at page 65 of the Appellants bundle and also the testimony of his foster mother. I accept that this Appellant had a "deep seated sense of loneliness and loss" (see second paragraph of page 65). This is to be expected given his feelings of loss around the murder of his father by his mother. I also accept that he has a history of traumatic physical abuse from his mother and has suffered scarring as a result. Nevertheless, even giving due weight to these factors, I do not find elements of his account to be credible.
6. The Judge then gives reasons in support of his finding from [41 - 42] of the decision under challenge.
7. The Judge finds at [49] that the appellant is an economic migrant whose exit from Albania has been facilitated by his family.
8. The applicant sought permission to appeal which was granted by a Designated judge of the First-tier Tribunal on the grounds it is arguable that the judge failed to have proper regard to the appellant being an unaccompanied asylum seeking child and that it is incumbent upon a decision maker dealing with a vulnerable person such as a child to give the benefit of the doubt more leniently and to give more regard to evidence from others than might be the approach in other cases (see KS (benefit of the doubt) [2014] UKUT 552).

Error of law

9. The appellant disagrees with the findings of the Judge in relation to the existence of a blood feud. Submissions were made at the hearing

that this was “an unusual blood feud” and it is said the expert noted the appellant had become the primary target of such feud.

10. It was asserted in submissions to the Upper Tribunal that although the Judge was fully aware of the fact the appellant is a minor the Judge failed to give full cognizance of this fact when assessing the merits of the appeal.
11. The submission by Mr Rees that [36] of the decision displayed ambiguity has no arguable merit. This is not the Judge finding that all aspects of the appellants claim are accepted as the Judge clearly states that the core elements of the claim are accepted and then provides details, by way of confirmation, that the Judge accepted that the appellants mother killed his father but that apart from that nothing else could be accepted. This is a clear unequivocal finding.
12. It is argued the Judge failed to give adequate weight to the fact the appellant was having psychotherapy had suffered traumatic abuse when undertaking an assessment of those aspects of the appeal the Judge found undermined the credibility of the claim.
13. It was argued the Judge failed to follow the Presidential guidance regarding the assessment of the evidence of vulnerable witnesses.
14. There is no arguable merit in the assertion the Judge failed to give adequate reasons for why it was found the appellant was not at risk of treatment contrary to Article 3 ECHR. The Judges reasons are clearly that the claim for international protection has no arguable merit, that the appellant had failed to establish a credible real risk on return to Albania, and that he was no more than an economic migrant.
15. It was submitted on the appellant’s behalf that the Judge needed to do more in relation to section 55 and the best interests of the children.
16. I find the Judge was fully aware of the appellants circumstances, including his being a minor, and also the events that he claimed he had experienced in Albania which had been accepted as credible by the respondent for the purposes of this application.
17. It is not made out the Judge paid mere lip service to the appellant's situation which she then completely ignored when assessing the weight to be given to the evidence. It is not made out the Judge failed to take all possible steps to ensure the appellant was able to understand and participate in the proceedings and to properly assess the available evidence in light of the appellant’s presentation.
18. In relation to assessing the evidence of a vulnerable person, the Joint Presidential Guidance Note, Number 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, at paragraph 10.3, states:

10.3 assessing evidence

Take account of potential corroborative evidence

Be aware:

- i. Children often do not provide as much detail as adults in recalling experiences and may often manifest their fears differently from adults;
 - ii. some forms of disability cause or result in impaired memory;
 - iii. the order and manner in which evidence is given may be affected by mental, psychological or emotional trauma or disability;
 - iv. comprehension of questioning may have been impaired.
19. It is clear that the Judge was cautious in the way in which the evidence was to be assessed making specific reference not only to the appellants experiences but also the impact of those upon his cognitive functioning. The Judge found at [43] that even though the appellant suffered from PTSD symptoms and impaired concentration, this did not explain the inconsistencies in the evidence presented to the Judge. It is still reasonable to expect that even though a person may be a minor, but they will tell the truth. The Judge was not satisfied that the appellant had done so in relation to this appeal.
20. In addition to considering the evidence with the required degree of anxious scrutiny the Judge has also given adequate reasons for the findings made, bearing in mind the fact the appellant is a vulnerable witness. As such the weight to be given to the evidence is a matter for the Judge.
21. It has not been made out that the decision under challenge was affected by any arguable procedural irregularity, failure of the Judge to consider the appellant's presentation, or to factor that into the decision-making process, sufficient to amount to an arguable error of law.
22. It has not been made out that the conclusion by the Judge that the appellant is an economic migrant is outside the range of findings reasonably open to the Judge on the evidence considered as a whole.
23. The Judge clearly considered the best interests of the child but notes that he has a legal guardian in Albania and a network of support to turn to such as his paternal family if returned. The fact the appellant has other family members who have left Albania was also considered by the Judge.
24. No arguable legal error sufficient to warrant a grant of permission to appeal to the Upper Tribunal has been made out.

Decision

25. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

26. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Judge of the Upper Tribunal Hanson

Dated the 14 December 2017