



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

Appeal Number: PA/01047/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 13 September 2019**

**Decision & Reasons
Promulgated
On 14 February 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**I.D.
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Z Harper of Counsel instructed by Luqmani Thompson.
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal against the decision of First-tier Tribunal Judge Freer promulgated on 17 June 2019 dismissing the appeal of ID on protection grounds.
2. The Appellant is a 20 year old citizen of Albania. His personal details are a matter of record on file and are not reproduced here in accordance with the anonymity order that has previously been made and is hereby continued.

3. An application for entry clearance as a visitor was made in September 2015. The application was refused on 28 September 2015.
4. The Appellant claims to have left Albania in February 2016, travelling overland through Kosovo, Belgium, and France, before entering the UK clandestinely at the end of February 2016. He claimed asylum on 1 March 2016.
5. Whilst his asylum claim was pending a referral was made in respect of trafficking / modern slavery under the National Referral Mechanism ('NRM'); a decision that he was not the victim of trafficking or modern slavery was made on 28 September 2016.
6. The Appellant's application for protection is based upon his claim to have unwittingly become involved with a gang selling drugs in Albania. The Appellant has claimed that after leaving school he was introduced in May 2015 by his older cousin, 'H', to 3 of his friends for whom he began to deliver packages. He now claims that the packages contained drugs, of which he had been unaware when he began the work. In January 2016 H told him that the packages contained drugs and said he should leave the job. The Appellant stopped working and sought to avoid his 'employers'; however they found him after about a week, beat him, and forced him to resume working for them. In February 2016 he overheard the gang saying that H had been killed in Germany; this was the trigger event for the Appellant leaving Albania. He fears that his attempts to evade the gang will lead to his ill-treatment or death.
7. The Appellant also alleged a history of physical abuse at the hands of his father, and expressed a fear that his father would again assault him in the future.
8. The Appellant's application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 22 January 2019.
9. The Appellant appealed to the IAC.
10. The appeal was dismissed for reasons set out in the Decision of First-tier Tribunal Judge Freer promulgated on 17 June 2019. Amongst other things, the First-tier Tribunal found:

(i) Were the Appellant's account to be true, *"a fear of drug dealing gangsters is plausible"*; *"it would be natural to keep one's head down rather than helping the police investigate a killing"*; *"The police are often connected with gangs"* (paragraph 33).

(ii) The Appellant was related to H as claimed (paragraph 39; see also paragraph 53).

(iii) H had been killed in Germany (paragraph 39; see also paragraph 53).

(iv) The Appellant was not *"a reliable witness of truth"* (paragraph 32). (This particular observation was made in the context of his evidence as to his family's knowledge of H's killing being discrepant at different times.)

(v) *"He is unstable and haphazard with his evidence"* (paragraph 46). (This observation made in the context of evidence relating to the circumstances of the visa application made in September 2015 and the use of the Appellant's father's apparent signature.)

(vi) The Appellant had *"failed to make his case about the reason for the killing of [H]"* (paragraph 22, see also paragraph 35).

(vii) The Appellant's claim that his father had ever been violent towards him was to be rejected (paragraph 45; see also paragraph 54).

(viii) The Appellant has never been involved with a drugs gang as claimed (paragraph 55); *"... no gang was ever interested in this appellant or any of his family"* (paragraph 57).

11. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was initially refused by the First-tier Tribunal, but subsequently granted by Upper Tribunal Judge Grubb on 9 August 2019.

Consideration of 'Error of Law' challenge

12. The Grounds of Appeal in support of the application for permission to appeal essentially seek to challenge the Decision of the First-tier Tribunal on three bases, set out in the Grounds of Appeal with the following headings: *"Ground 1: Failure to assess the claim in light of the expert evidence"*; *"Ground 2: Failure to apply the correct standard of proof"*; and *"Ground 3: Failure to consider the claim with anxious scrutiny"*.

13. In granting permission to appeal Judge Grubb characterised Ground 1 as *“arguable”*. In respect of Grounds 2 and 3 he observed that they *“have less merit and may, on examination prove unfounded. However, I would not exclude consideration of them”*.
14. Ground 1 focuses on expert evidence filed in support of the Appellant’s appeal. The details of the Appellant’s expert witness, and the contents of his report are a matter of record on file: Appellant’s bundle before the First-tier Tribunal at B1-B35. (The expert, as is usual in protection appeals, provided a report, but did not attend the hearing as a live witness.)
15. It is manifest that the Judge was aware of the report: indeed, it is observed at paragraph 3 of the Grounds that the Judge characterised the expert as having *“relevant experience and qualifications [which] are both impressive and very extensive”* (paragraph 20). However, it is argued on behalf of the Appellant that the Judge failed to have regard to the contents of the expert’s report in evaluating the credibility of the Appellant’s narrative account. Relevant aspects of the report are identified in this regard in the Grounds, in particular: that gangs targeted young people who were unaware of what they were being involved in; that it was difficult to extricate oneself from again; gangs were well-connected and exchange information about individuals; and there were difficulties accessing state protection. The Grounds also note the expert’s research into press reports of the trial of the Appellant’s cousin’s killer in Germany.
16. I have summarised above aspects of the Judge’s findings. In the present context I note in particular that the Judge observed that were the Appellant’s account to be true, *“a fear of drug dealing gangsters is plausible”*; *“it would be natural to keep one’s head down rather than helping the police investigate a killing”*; *“The police are often connected with gangs”* (paragraph 33). These generalised observations essentially relate to the background country situation and the milieu in Albania in respect of drug gangs and the limited effectiveness of the police. It is not suggested that such observations depart from the expert’s opinion. In my judgement it cannot sustainably be argued that the Judge had regard to the Appellant’s account in isolation from the country situation. Indeed - and again as recognised in the Grounds - he drew on the expert’s report in evaluating the circumstances H’s killing: *“The expert mentions...”* (paragraph 35). In such circumstances, neither can it be said that the Judge ‘overlooked’ the expert.
17. I can detect nothing in the Decision that suggests that the Judge was unaware of, or otherwise misconceived, the general country situation in so far as it pertains to the Appellant’s narrative account.

18. Moreover, and perhaps more pertinently, it seems to me that the Judge's reasons for disbelieving the Appellant did not relate in any way to the notion that his account was not credible when measured against the country situation. In particular, the Judge identified difficulties with the Appellant's chronology, and otherwise with internal inconsistencies in the evidence.
19. It seems to me that ultimately this Ground of challenge invites re-evaluation of the Appellant's narrative with reference to broadly consistent elements of the expert report. This is in substance to reopen and reargue the facts of the case I am not persuaded that any material error of law is identified in Ground 1.
20. Ground 2 pleads that the Judge failed to apply the correct standard of proof. It is argued that this may be inferred from the Judge's apparent requirement that the Appellant provide "*levels and types of corroborative evidence... to prove his claim conclusively rather than to the standard of reasonable likelihood*" (paragraph 6 of the Grounds). This submission is illustrated by reference to passages in the Decision.
21. It is plain on the face of the Decision that the Judge appropriately directed himself that the burden of proof was on the Appellant, and in respect of protection the standard of proof was "*reasonable degree of likelihood*" (paragraph 8). Having given the Grounds of Appeal and Ms Harper's submissions careful consideration, I am not persuaded that anything in the passages identified, or otherwise, is such as to conclude that the Judge disregarded his self-direction.
22. In particular:
 - (i) The Judge's observation that documents in respect of the decline of the Appellant's father's business were not evidence of bankruptcy (paragraph 37) is wholly rational. Similarly, there is nothing inaccurate in the Judge's observation at paragraph 60 to similar effect: "*When a business ceases to trade, it is not proof that no new businesses set up. It is not proof of poverty or bankruptcy.*" I do not accept that it can be implied from these observations that the Judge was thereby setting as a prerequisite to establishing the truth of this aspect of the Appellant's case that he provide other documents such as a bankruptcy order (or similar). In my judgement the Judge's observations in this regard - uncontroversial in the abstract - were merely aspects of the overall analysis of the Appellant's case, within the framework of the appropriately applied standard of proof.

(ii) In my judgement similar observations are to be made in respect of the Judge noting the absence of supporting documents in respect of the *“trial outcome in Germany”* (paragraph 35). The Judge was correct to say that there was no such evidence. It does not follow that that he required such evidence as a matter of course, or otherwise considered the absence of such evidence to be determinative of the Appellant’s case or credibility. The Judge, appropriately and accurately, in substance observes that there may be reasons for the killing of the Appellant’s cousin wholly unrelated to involvement in drugs and drug gangs. Absent more detail on the point, necessarily and sustainably, the fact of the Appellant’s cousin’s killing in Germany is of little weight in establishing the credibility of the Appellant’s overall account. The Judge’s observations in this regard do not reliably indicate a departure from the applicable standard of proof.

(iii) I do not accept the submission that the Judge’s consideration of the Appellant’s ‘confession’ to forging his father’s signature in relation to his visa application was to *“establish an impossible standard”* (Grounds at paragraph 9). The Judge was correct to observe that either way this was damaging to the Appellant’s credibility: if the confession were true, he was confessing to practising deception; if the confession were not true, not only was he lying to the Tribunal in making the confession, but the fact that his father had indicated consent in relation to his visa application significantly undermined his account of his relationship with his father. (There is a potentially damaging further issue in this regard not identified by the Judge with regard to the notion that the Appellant was not in school but running with drug gangs; see further below. Because it did not feature in the Judge’s analysis and was not otherwise discussed, I have disregarded it in my consideration of ‘error of law’.) I do accept that there is scope for criticising the Judge in his comment that the confession *“shows that his entire documentary evidence bundle is unreliable and that he is unreliable witness of truth”* (paragraph 46). However, I do not think that this is indicative of a misapplication of the standard of proof – which is the ground being pleaded. Further in this context, it seems to me that the Judge’s reasoning in the appeal as regards the Appellant’s narrative account is otherwise more than adequately cogent and sustainable, such that I would not be minded to set aside the decision on the basis of this single hyperbolic sentence.

23. The reality of the case is that the Appellant’s personal supporting documentary evidence – as distinct from supporting documentary evidence by way of background or country information – at best only went so far as to establish that his father was in financial difficulties, that the Appellant had a kidney problem, and that his cousin had been killed in Germany. The evidence did not go much beyond these basic facts. Objectively it was not sufficient to establish the Appellant’s claim for asylum on even the applicable standard of proof. The Judge was entirely

right to observe as much. Necessarily this threw the focus of the case on the Appellant's oral testimony. At best the supporting documents provided some corroboration for peripheral matters in his account: none of the documents assisted in establishing the core of the reasons that the Appellant claimed that he was at risk. The Judge dealt with the Appellant's narrative account adequately. I do not see that observations to the effect that the supporting documentary evidence was limited in its probative value - and in some regards, in the Judge's evaluation, in any event problematic - is tantamount to the imposition by the Judge of a requirement that the Appellant provide further documentary evidence, or evidence of a misapplication of the standard of proof. I reject the challenge in respect of Ground 2.

24. Ground 3 pleads that the First-tier Tribunal failed to consider the Appellant's claim with 'anxious scrutiny'. In the main part it seems to me that the way in which this was pleaded was to revisit the substance of Grounds 1 and 2 under a different 'head', or otherwise to re-put the substance of the Appellant's case together with an assertion that the outcome should have been different.
25. However, I do accept that there is some validity in the criticism at paragraph 10e of the Grounds to the effect that the Judge's comments at paragraph 79 in the context of Article 8 that the Appellant's exclusion from the UK was "*socially desirable*" because he "*has shown no resistance to being recruited by a gang*", is inconsistent with the substance of the Judge's findings in rejecting the claim for protection. However, in my judgement it is clear that any error in this regard is in respect of the Article 8 analysis, and not the evaluation of the protection claim. Permission to appeal was not granted in respect of Article 8 - and indeed the Grounds of challenge exclusively focus on protection.
26. In all such circumstances I reject the challenge set out in Ground 3. The Appellant's challenge in this regard essentially amounts to a disagreement, and does not identify any material error of law.
27. As an aside, I note that on the face of the visa application the Appellant included an indication that he was still at school: "*With my application I have a confirmation from my school that I will not attend my classes from 10 of October 2015 to 18 of October 2015*" (question 79, Respondent's bundle at C 6). Further, when questioned about his earlier visa application during the screening interview, the Appellant appeared to confirm that he had been in education at this time (Respondent's bundle G14). This would appear to be inconsistent with the Appellant's claim that he left school in May 2015 and thereafter worked for a drugs gang and spent some time sleeping rough. However, this was not expressly identified in the RFRL or

before the First-tier Tribunal: accordingly I make no findings or further comment. I have disregarded it for present purpose. I merely note that if this case is to be considered further at some future point this is an issue that might yet need to be considered and addressed by the parties.

28. In all the circumstances for the reasons given I find no basis for impugning the Decision of the First-tier Tribunal. The Appellant's challenge fails.

Notice of Decision

29. The decision of the First-tier Tribunal contained no material error of law and accordingly stands.

30. The Appellant's appeal remains dismissed.

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 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.

Signed:

Date: **10 February 2020**

Deputy Upper Tribunal Judge I A Lewis