IAC-BH-PMP-V2

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02793/2019**

THE IMMIGRATION ACTS

Heard at Bradford by Skype for business	**Decision & Reasons Promulgated**
On the 21st October 2020	**On the 30th October 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

DJ
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jafar, Counsel instructed on behalf of the appellant
For the Respondent: Ms Pettersen, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant, a citizen of Albania, appeals with permission against the decision of the First-tier Tribunal (Judge Davison) (hereinafter referred to as the "FtTJ") who dismissed his protection appeal in a decision promulgated on the 12 February 2020.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the

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circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The hearing took place on 21 October 2020, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

4. I am grateful to Mr Jafar and Ms Pettersen for their clear oral submissions.

Background:

5. The immigration history of the appellant is set out in the decision letter and the decision of the FtTJ.

6. The appellant is a national of Albania. He arrived in the United Kingdom on a visit Visa in October 2017 accompanied by his wife and two children. On 2 November 2017 he applied for asylum, his wife, and children as dependents upon that claim.

7. The basis of his claim was that he had been in the Albanian army since 2008 and went to assist the NATO forces in Afghanistan between January -July 2012. Upon his return he stated that he had been discriminated against within his community and had suffered verbal abuse and was not invited to community events. He claimed that after he was enlisted for a second tour to Afghanistan that he received his first threat from unknown men but whom he considered would be “Islamic extremists”.

8. The first threat was on the 23 January 2017 and then his car was attacked on 26 January 2017. A grenade was left outside his door on 31 August 2017 and he was threatened by two men in public on 15 September 2017.

9. The appellant claimed that the attacks on 26 January and 31 August 2017 were reported to the police and the family sought updates.

10. The appellant stated that he left the army on 15 October 2017 and the family fled Albania on 22 October 2017.

11. In a decision letter of 7 March 2019, the respondent refused his claim for asylum. In that decision, the respondent made reference to his claim and the threats from extremists and the evidence that had been provided in support. It was noted that the appellant stated in interview that he had only reported the incident of 26 January 2017 to the police and that it was difficult to understand

why he would not report a dangerous explosive such as a hand grenade being delivered to the door. No information was provided as to how he safely disposed of the hand grenade either. It is also noted that he had been receiving threats since 23 January 2017 that the threats had not been acted upon during his time in Albania. The respondent considered that those he feared had ample opportunity to act upon the threats from January to October 2017 that he and his family did not experience any physical harm. The respondent also considered that he had given inconsistent evidence about how many threats he received and that he had stayed in Albania from July 2012 until January 2017 with no major problems. The respondent considered that he provided no evidence to suggest he was behind the threats or whether they were linked to claim persecutors. At paragraphs 47 – 56 the respondent considered the issue of sufficiency of protection and concluded that taking into account the objective material in relation to Albania that it was not established that there was a sustained and systemic failure of state protection on the part of the authorities. The respondent also considered that internal relocation would be possible for him at paragraphs 60 – 69.

12. The appellant appealed that decision, and his appeal came before the First-tier Tribunal (Judge Sweet) who, a decision promulgated on 2 May 2019, dismissed his appeal. Permission to appeal was sought and the appeal came before Upper Tribunal Judge O'Callaghan, who in a decision promulgated on 15 August 2019 found a material error of law on the basis that Judge Sweet had failed to give any or any adequate reasoning for dismissing the appeal and that no actual findings of fact had been made (see paragraph 9 of that decision). As a result, he remitted the appeal to be reheard again by a fresh First-tier Tribunal judge.

13. The appeal came before the FtT for a second time on 13 January 2020 before FtTJ Davison. He had the opportunity of hearing the evidence of the appellant that in a decision promulgated on 12th February 2020 he dismissed his appeal.

14. The FtTJ accepted that the appellant had undertaken military service in Albania and further accepted that his father and mother were in the army and that his father had reached the rank of Colonel. The judge further accepted that during his service the appellant went to Afghanistan as part of the international peacekeeping force as set out in the certificate dated 3 November 2017 (at [29]).

15. However, the FtTJ did not accept that he had been involved in the threats and incidents of violence as he had asserted. Whilst the judge accepted that his presence in Afghanistan may not have been acceptable to all members of the local community, and whilst accepting he suffered some social ostracism and verbal abuse, he did not accept for the reasons given that a grenade was left at his house, or a note had been left on his car nor the other events relating to the car incident. The judge found at [30] the appellant's family had been living in Albania for many years after his first trip to Afghanistan in 2012 and although he suffered some ostracism they were not targeted and persecuted. At [31] the judge took into account that his father was a "high ranking official who still

resides in Albania" but that he had not received any threats as a result of his involvement in the army or due to the fact that the appellant was his son.

16. Having considered the positive and negative findings, the judge reached the conclusion that upon approaching the end of his military service and with a young family the appellant sought economic betterment in the UK. The judge did not accept that he had a well-founded fear of persecution should he and his family return to Albania. The judge therefore stated that he did not find his account have been credible. But in any event, the appellant had now left the army and has not been to Afghanistan since 2012 (at [33]).

17. Permission to appeal was sought and was granted on 19 March 2020 by FtTJ Appleyard who stated as follows:

> "the grounds assert that the judge failed to consider relevant evidence in relation to the appellant being targeted because he had fought and was going to fight again in 2018 with NATO forces against the Islamists in Afghanistan, that the judge failed to take into account expert evidence and in assessing the background material, that the judge's reasoning is illogical and that he has erred in his credibility findings.
>
> All grounds are arguable."

The hearing before the Upper Tribunal:

18. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

19. Mr Jafar, Counsel on behalf of the appellant relied upon the written grounds of appeal. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.

The submissions on behalf of the appellant:

20. Mr Jafar began his submissions by relying on the written grounds as supplemented by his oral argument.

21. In respect of paragraph 5 of the grounds, the judge referred to the appellant being Muslim as a reason why extremists would not target him and that it was incredible that they would have waited since he last served in Afghanistan in 2012 (see paragraphs 22 – 23). It is submitted that the judge omitted or failed to consider the point that he was targeted by extremists because he was going to fight in 2018. That was clear from the certificate of the Mayor which the judge accepted as reliable at [24]. The appellant in his interview also stated this at question 64 where he said he was going to another mission .Therefore the judge rejected his account of risk of harm on a false premise (that it was not credible that he was persecuted because he was a Muslim and he had served in

2012) and thus went on to reject the events of persecution and threats against him.

22. In relation to this point, at paragraph 6 of the grounds, Mr Jafar submitted that in reaching his decision he failed to take account of the expert report and the change in circumstances in Albania between the tour of Afghanistan in 2012 and the second upcoming tour.

23. In his submissions to the Tribunal he directed my attention to particular parts of the report. He submitted that the expert report gave a chronology of ISIS in Albania. At page 19 (page 158AB) (an article in 2014) referred to ISIS declaring authority over all Sunni Muslims in June 2014 and the declaration was translated into Albanian. Following that there was a slow progression in the next article referred to 2015. References are made to the emergence of ISIS. At page 22 there was reference to the reintegration of returnees and those holding extremist ideology. Thus, he submitted the evidence suggested that there was no ISIS presence until June 2014 and from the date afterwards there was a slow approach in Albania. In 2016 ISIS gained a firm foothold. Thus, he submitted the FtTJ should have taken that into account in his assessment that it would not be reasonably likely after five years or after 2012 that he would have received such threats. At page 112 a further article referred to the arrest in 2019 of a terrorist who was a serving soldier. Therefore, the appellant's claim was credible when he stated that he was targeted because he was to start a tour in Afghanistan in December 2017. The FtTJ rejected his claim on an inaccurate basis and an incomplete picture.

24. Dealing with paragraph 7 of the grounds, the FtTJ made a finding it [24] that individuals had disagreed with the appellant but did not threaten him but that finding was not supported by any reasoning. The judge accepted the documentary evidence that the appellant had reported an intimidation act against him on 31 January 2017 and that on 7 February 2017 it was being investigated by the police as a crime and the certificate from the mayor that the appellant's detractors were being investigated. However, the judge found that the individuals had a mere disagreement with the appellant not amounting to threats whereas the evidence showed that the actions of his persecutors amounted to criminal acts. Mr Jafar submitted that the judge's reasoning here is illogical.

25. In respect of paragraph 25 of the FtTJ's decision, the judge did not accept that a grenade was left outside the appellant's residence on 31 August 2017 because the mayor's letter makes no reference to this and that he would have known of it. However Mr Jafar submitted that the letter made no reference to any events including those that the FtTJ accepted as being treated as criminal acts. Therefore the judge was wrong and illogical to expect that the mayor's letter should corroborate specific events when it is clear that the letter did not intend to do so. It was a further error of law by seeking corroboration.

26. At paragraph [22] the FtTJ found that a note and flowers were not mentioned by three witnesses and therefore he did not accept that those items were left on

the appellant's car. However, the appellant produced pictures of the car with the object and three witnesses confirmed that objects were placed on the appellant's car. Also, in respect of the grenade, the appellant produced a photograph of the suspicious package left at his door, but the judge made no findings on this. The judge failed to consider corroborative evidence.

27. At [28] the FtTJ made it clear finding that the certificate dated 30 October 2019 (136AB) confirming that the appellant was to serve in Afghanistan from December 2017 to June 2018 was "not genuine". The reasoning for this is that the judge considered it contradicted the certificate dated 3/11/2017 that the appellant had served in the army from 2008 and until ended his service on 31/10/2017. Mr Jafar submitted that the first certificate was written contemporaneously and then after the appellant left he went back to obtain a number certificate that he was planning to take part from 17th of December 2017 to 20th of June 2080 Mr Jafar submitted that the two documents were not contradictory at all and the judge had failed to give reasons for rejecting the 30/10/2019 certificate as "not genuine". One was a statement to say what had occurred and that the appellant had left the military and the second document was not contradicted by the fact that he was due to take part in further support in 2017 – 2018. They are not contradictory documents but different certificates showing different things.

28. Furthermore, he submitted that the judge was wrong to state that the document was not genuine and that he was stating therefore that it was a "forgery". However, as the grounds at paragraph 10 set out there was no finding that it was a forgery and there was no evidence to support such a finding. The judge was not entitled to find or assume that a document is a surgery or treated as a forgery the purposes of the decision save for on the evidence

29. Mr Jafar submitted that the judge was required to make logical findings and considering all the material. Here the judge did not leave the appellant being able to understand why the appeal had been refused. The judge had misrepresented the basis of persecution, found a document from the military was not genuine and that was wrong on his part.

<u>The submissions on behalf of the respondent:</u>

30. Ms Pettersen confirmed that there was no Rule 24 response filed. In respect of ground 5, Ms Pettersen submitted that it was not clear whether the judge had in fact accepted the contents of the certificate dated 5 September 2017 at [24].

31. In relation to the submissions made at paragraph 6, she submitted that whilst counsel had referred to a number of articles concerning extremists in Albania to explain why the judge was wrong in his assessment, there was still a gap between 2014 – 2017 where the expert refers to more Albanian government initiatives with ISIS . Therefore, the expert report and the articles referred to did not explain the entire five -year gap.

32. Whilst the submissions referred to an article about a former commander in 2019, that evidence does not corroborate individual members of the military had been targeted by pro- ISIS people nor did it show that those in the military who had returned had been targeted. She submitted that when the expert report was read properly, the expert made no reference to being localised targeting of former personnel who had served in Iraq/Afghanistan. Whilst it referred to radicalisation in Albania the report did not show that those who had been working with NATO had been targeted by individuals. It did not show that former military members or military personnel were targeted for having served alongside NATO.

33. As to paragraph 7, Ms Petterson submitted that the fact that the police acted show that there was sufficiency of protection. The judge was entitled look at all the evidence and that it was open to him not to accept the threats that had been made to the appellant.

34. Paragraph 8 of the grounds criticised the finding in relation to the grenade. Ms Pettersen submitted that given the date of the grenade incident, the letter from the mayor was close in proximity and thus it was surprising that there was no reference to something which was important such as an explosive device outside a house and was different to a note on a car and therefore the judge was entitled to call into question whether the grenade in fact had been left outside his home .

35. As to the photographs, the refusal letter dealt with this at paragraphs 31 – 34. There are questions as to why he had not reported the grenade.

36. As to paragraph 10 of the grounds, she submitted that the judge was not stating that the document from the military was a forgery and that if paragraph 28 was read in its entirety, the judge sets out why he does not understand why the appellant needed a certificate given that he had an earlier certificate to show that he left the military in 2017. The judge did not say was a forgery but said it was a contradictory document. According to the chronology the appellant did leave the military in 2017 and it calls into question how anyone in early 2017 knew that the appellant was going back to Afghanistan.

37. Mr Jafar in his reply reiterated that the judge was stating that the certificate was not genuine and that it was a forgery. These were two different documents and were not contradictory. The first certificate showed that he left the military because he was forced to do so and thereafter obtain confirmation that he was due to serve in 2017. It is not unusual for them to do repeat tours

38. At the conclusion of the hearing I reserved my decision which I now give.

<u>Discussion:</u>

39. The grounds challenge the assessment of the evidence that was before the FtTJ that related to this appellant's claim of risk on return to Albania based on his past history of having served in the Albanian army and having fought for

NATO in Afghanistan in 2012 and that from early January 2017 he was threatened by unknown people as a result of having served in Afghanistan.

40. The grounds challenge the FtTJ's factual findings and assessment of the credibility of the appellant's claim by reference to certain paragraphs in the decision. However, the decision should be read as a whole and concentrating on particular paragraphs runs the risk of not viewing the factual findings and the assessment of the evidence "in the round" and in their context.

41. The FtTJ accepted that the appellant had undertaken military service in Afghanistan and that he had been part of the international peacekeeping force (there was a separate certificate in the respondent's bundle confirming this (at [29]). The judge further accepted that his father had also been in the military and had attained the rank of colonel (at [29]).

42. Notwithstanding those positive findings of fact, the FtTJ considered the appellant's evidence and supporting documents including the expert report as to the claimed events in Albania. Having done so, whilst the judge accepted that his presence in Afghanistan might not have been acceptable to all members of the local community and that he had suffered some social ostracism and verbal abuse, the judge did not accept the evidence advanced on behalf of the appellant as to the threats and the placing of a grenade left at his home on the doorstep (at [30]).

43. At paragraphs [22 – 28] the FtTJ considered the evidence of threats and gave reasons as to why he did not accept that evidence. The grounds advanced on behalf of the appellant seek to challenge those findings.

44. The first ground relied upon by Mr Jafar (see paragraph 5 written grounds) refers to the findings made at paragraphs [22 – 23] and that the judge referred to the appellant as a Muslim as a reason why extremists had targeted him and that it was not credible that they would have waited until 2017 when he last served in Afghanistan in 2012. In support of that submission he pointed the Tribunal to various articles contained in the expert report and that the evidence contained there described a change of circumstances in Albania between his tour of Afghanistan in 2012 and the second upcoming tour.

45. I have carefully considered that submission but find that there is no merit in it. At paragraphs [22 – 28] the judge set out his factual findings in relation to the evidence as a whole relating to the threats that the appellant claimed had occurred. At [22] the judge set out his assessment of the evidence relating to the incident on 23 January 2017 and at [23] his assessment of the evidence relating to the car accident was said to have taken place on 26 January 2017. At paragraph 25 he considered the evidence of the incident on 31 August 2017 where it was claimed a grenade was left on the appellant's doorstep. At [27] the judge considered the evidence relating to the incident whilst they were having coffee on 15 September 2017. In all of those paragraphs, a careful reading demonstrates that the judge gave adequate and sustainable reasons for rejecting the evidence that he had been the subject of threats of violence as claimed. At

[26] the judge made an omnibus finding relating to the earlier findings that he accepted that his presence in Afghanistan might not have been acceptable to all members of the community but that he did not accept that the events described by the appellant had occurred. The judge found that on the evidence the appellant and his family members were in Albania for many years after his first trip to Afghanistan (which ended in July 2012) and that he did not find that they had been targeted and persecuted.

46. This finding is supported by the appellant's own evidence of having lived in Albania since returning from Afghanistan in July 2012 until he left in October 2017 and that neither he or his family members had suffered any physical harm despite the nature of the claim threats which he stated had started in January 2017. Furthermore, nor had his father (at [31]).

47. It was against the background of those findings that the FtTJ reached the conclusion that he did not accept that the events in Albania had occurred as the appellant had claimed (at [30]).

48. In my judgement it was open to the FtTJ to place weight on the chronology of the events in the appellant's own evidence that he had served in Afghanistan for six months between January – July 2012 and that he not been the subject of threats until January 2017, some five years later.

49. Whilst Mr Jafar has referred the tribunal to material in the expert report, the articles that he has referred me to can be described as generalised material concerning the position of jihadists in Albania and also Kosovan Albanians (at section 3 of the report). The evidence he has referred me to refers to support within Albania for ISIS and its movement from 2014 and there is reference made to returning jihadists. None of that material, nor the contents of the expert report make reference to jihadists or former returning jihadists targeting military personnel or ex-military personnel for having fought/been part of the peacekeeping forces for NATO. The article Mr Jafar referred the tribunal to at page 112 AB refers to a commander who was arrested as an extremist. He had been in the military previously and had posted material on social media and flagged ISIS flags on Facebook. That evidence does not show that he had targeted ex-military members or any past colleagues it served with and the acts undertaken were directed to the social media.

50. Even if the evidence in those articles demonstrates that support for ISIS did not emerge until 2014, as Ms Pettersen submits, it does not explain the remaining period between 2014 – 2017 when the appellant had not been subjected to any harm or threats of harm. Consequently, it was open to the judge to make those findings of fact.

51. It is also important to note that the judge made that finding at [22] by reference to the first incident which is said to have occurred on 23 January 2017 when a note was left on the appellant's car with some flowers and three stones. The FtTJ did not reject the appellant's account based only on the length of time since 2012 but also by reference to the evidence in support.

52. At [22] the judge considered the evidence in support of the incident. The appellant relied upon a "statement" of support which is contained in the respondent's bundle which is unhelpfully not paginated. There is also a copy of the letter itself. The letter makes reference to the appellant not being a good Muslim and the threat made is "dark days will come for you and your family."

53. The FtTJ referred to that evidence at [22] and set out the contents of the "statement" which said "different obstacles and objects were placed" onto the car. It is plain the judge did not consider the evidence in that statement to be reliable evidence or evidence that any weight should be attached to it. As the judge identified, the three witnesses attesting to the incident did not say that flowers or a note were left on the car. The contents of the document do not set out what in fact the appellant had stated. The document gives names of three individuals but no evidence of their identity or their address was provided. Whilst Mr Jafar in his submissions (and in the written grounds at paragraph 9) refers to the photograph, the one in the bundle was illegible and is not dated. Furthermore, whilst the judge did not expressly say so, the appellant's account of the content of the letter in his interview (Q62) was that the letter stated "we are going to cut you" and that was not consistent with the contents of the letter itself is exhibited in the respondent's bundle.

54. At [27] the judge considered the evidence concerning the incident on 26 January 2017 when the appellant claimed he was involved in a car accident where occupants of the car jumped out and threatened him.

55. The FtTJ considered the evidence in support and the letter which referred to individuals jumping out of the car screaming at the appellant and threatening him. Having considered that evidence, the judge considered that the letter/note was "vague" and that it did not set out the threats that were made. In my judgement that was a finding wholly open to the judge to make on the evidence. This was a handwritten note, there was no evidence of the writer's identity provided and no reference to the nature of the threats said or any details of those responsible. In addition, the judge also took into account a further inconsistency between the evidence in the note/letter and the appellant's evidence. The appellant claimed that he had a threat and the perpetrators shouting Allahu Akbar but that none of the witnesses had referred to that in the note which purported to support his account.

56. The FtTJ also considered that the appellant's evidence as to the incident and set out the appellant's evidence that he had described "many people surrounded the scene to help me in my work colleagues" (see witness statement paragraph 12). The judge found that despite that claim, none of the suspects had been apprehended, and no licence plate for the car was obtained. In my judgement the FtTJ had given adequate and sustainable reasons for reaching the conclusion that if this had happened, it was nothing more than a road accident and it had nothing to do with any threats made against the appellant.

57. At [24] the judge made a finding that the threats to the appellant's family had not escalated to the level claimed. This relates to paragraph [25] in his

assessment of the incident which was said to have occurred on 31 August 2017 where it was claimed a grenade was left on his doorstep.

58. The FtTJ did not accept that this incident had occurred. He referred to the evidence before him in particular the letter from the mayor (at [25)]). The document was dated 5/9/2017. The contents of the letter referred to the appellant and his wife, it gives their address and makes reference to there being "residents who compound a big percentage of Muslim religion of several divisions of the said religion". It goes on to say "according to this family recorded data it resulted that the over mentioned are hated and despised by some of their neighbours there, because Mr DJ has been a member of peacekeeping forces in Afghanistan. The attitude of these neighbours is a hateful one, because according to them DJ went in Afghanistan to fight their Muslim brothers. We are investigating these persons."

59. After considering the contents of the letter, the FtTJ noted that it did not make any reference to a grenade being left at the appellant's home.

60. It is submitted on behalf of the appellant (see written grounds at paragraph 8 and oral submissions) that the FtTJ was wrong to make that finding because the mayor's letter makes no reference to any events including those the judge accepted as being criminal acts and that the judge was wrong and illogical to expect the mayor's letter to corroborate specific events.

61. That submission fails to take into account the contents of the mayor's letter and importantly the basis of the factual finding made by the judge. The judge considered the letter in the light of the appellant's own evidence where he stated that the mayor is the person who is informed of local events and issues (see appellant's evidence recorded at paragraph 25). The date of that letter was 5 September 2017 and thus was very close in proximity/date of the event in question which was said to have taken place on 31 August 2017. However, there is no reference to that incident involving a grenade despite it being in such close proximity to the writing of the letter and from someone who is said to have been informed of local events. In my judgement it was open to the judge to place weight on the omission from that letter to any reference of the incident involving the grenade which on the face of it was the most serious incident and which had occurred only the week before the drafting of that letter. It was open to the judge to reach the conclusion that it was not credible that someone who is informed of local events and issues would not have referred to such an incident if it occurred. Therefore, it was open to the judge to disbelieve the appellant's account that such an incident occurred. Whilst Mr Jafar refers to an illegible photograph which puports to be a grenade this does not assist the appellant. It is not dated nor is there anything to link that photograph to the event.

62. The other findings made by the FtTJ at [26] is that it was not credible that that those concerned would not have waited five years to target the appellant and that according to the appellant's account he had continued to live in the family home but no physical harm had occurred to him or his family members despite

the unknown people having the opportunity to carry out what was stated in those threats (see paragraphs 26 and paragraphs 30 of the determination).

63. The grounds of paragraph 7 challenge the finding at [24] that individuals disagreed with the appellant but did not threaten him. Reference is made to the police certificate which reported an" intimidation act" against him on 31 January 2017 and that it was being investigated by the police (document 7 February 2017). It is submitted that none of this supports the judge's findings that individuals had a mere disagreement with the appellant not amounting to threats. The grounds submit that the judge's reasoning is illogical.

64. I agree with the submission made by Ms Pettersen that it is not said by the judge that he accepted the contents of the police certificate. Furthermore, in my judgement that paragraph should be read in the light of the decision as a whole. The grounds do not quote the remainder of paragraph 24 in which the judge stated that whilst he accepted some in the community may have disagreed with the appellant and him being in the army, he did not accept that the threats to the appellant and his family were escalated to the levels claimed.. The FtTJ gave reasons for this set out at paragraph 22 – 27, and paragraphs 28 – 29 and 30 – 31. He gave reasons why he did not accept in relation to the earlier threats they had been made nor did he accept the evidence contained in the mayor's letter and that of the military to be reliable evidence. The certificate dated 31 January 2017 makes no reference to the nature of the acts that had occurred. When read as a whole, the judge gave adequate and sustainable reasons for reaching the overall conclusion that beyond suffering social ostracism and verbal abuse, the events described by the appellant had not taken place as claimed.

65. The grounds at paragraphs 5 and 10 concerned the evidence relating to the certificates and the military. The grounds at paragraph 10 challenge the judge's finding at [28] that the document for the military exhibited at AB 139 dated 30th of October 2019 was not a "genuine document".

66. Mr Jafar makes a number of submissions. Firstly, he submits that the judge had not given reasons for rejecting the letter and that the judge had found that the document contradicted the second certificate but that there was no contradiction between those two documents because they were two different documents which showed different things. Secondly, he submits that the judge by stating that it was not genuine was stating that it was a forgery but there was no evidence to support such a finding.

67. I have considered with care that submission in the context of the evidence and the judge's assessment of it. Having done so, I do not read the decision as stating that the certificate was a "forgery" when reaching the conclusion that it was "not genuine". The careful reading of paragraph 28 demonstrates that the judge had given reasons why he found the document to be inconsistent with the appellant's evidence. He was not stating that it was "forgery" but that it was a document which was not reliable because it was not consistent with the appellant's evidence.

68. Furthermore, I do not accept that the judge failed to give reasons for reaching that conclusion. The FtTJ noted the contents of the certificate dated 3/11/17 that he had been employed by the military from 1 April 2018 until 31st of October 2017 at which point "he passed to the reserves at his personal instance". The second certificate dated two years later 30th of October 2019 stated that the appellant was a "former soldier in the military" who "has been planning to take part "an Albanian mission in Kabul between 17 of December 2017 – 20th of June 2018.

69. It is entirely open to the judge to consider those two documents in the light of the appellant's evidence. As the judge recorded at [28] the first certificate referred to the appellant's service ending on 31 October 2017 at which point he passed into the reserves. He then recorded the appellant's evidence he was asked about being in the reserves. The appellant stated, "which reserves". When the certificate was then read out to him he gave an explanation that he completed his military service and was now in the reserves and could be called upon at any time if needed like ex-soldiers in America.

70. In my judgement it was open to the FtTJ to contrast that oral evidence with the contents of the two letters, the second of which stated that he was planning to take part in as a support mission. As the FtTJ found at [28] the contents of the second letter was inconsistent with the appellant's oral evidence that he had completed military service and was in the reserves and could be called up at any time. The letter refers to him planning to take part in a mission which was not consistent with having ended military service and being called up as a reserve.

71. Whilst it would have been better for the judge to have referred to the document as unreliable rather than as "not genuine", when reading the paragraphs and considering the documents as a whole, it is plain in my judgement that what the judge was stating that in view of the inconsistency and the contents of the document when set against the appellant's own evidence, it was an unreliable document upon which he could not place weight.

72. Whilst at paragraph 5 of the grounds, it is submitted that the judge failed to take into account that he was being targeted due to undertaking a further mission, it is plain from the finding at [28] when read with paragraph 22 that the judge did not accept that those threats would be made the appellant some five years after his service and also rejected the account that he had been threatened as a result of attending another mission for the reasons set out at paragraph 28.

73. In so far as it is asserted in the written grounds that there was a lack of reasoning for consideration of the evidence in the determination, when considering claims of international protection, a judge is required to consider the core issues and to make findings upon them. Following *Budhathoki (reasons for decisions)* [2014] UKUT 341 (IAC) judges need to resolve the key conflicts in evidence and explain in clear and brief terms their reasons for preferring one case to the other so that parties can understand why they have lost. Reasons

need not be extensive if the decision as a whole makes sense, having regard to the material accepted by a judge: *Shizad (sufficiency of reasons: set aside)* [2013] UKUT 85 (IAC), at [10]. I accept the submission made on behalf of the respondent that this was a clear decision in which adequately reasoned findings were made with anxious scrutiny and in accordance with the evidence.

74. The question whether the decision contains a material error of law is not whether another Judge could have reached the opposite conclusion but whether this Judge reached a conclusion by appropriately directing himself as to the relevant law and assessing the evidence on a rational and lawful basis.

75. The FtTJ had the advantage of hearing the oral evidence before the Tribunal. In the well-known case of Piglowska v Piglowski [1999] UKHL 27, Lord Hoffmann said this:

> "...the appellate court must bear in mind the advantage which the first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge's evaluation of those facts. ..."

76. The judge had the advantage of considering all the evidence in the case. As the Supreme Court stated in Henderson v Foxworth Investments Ltd [2014] UKSC 41; [2014] 1 WLR 2600 at [62]:

> "It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."

77. For those reasons, I am not satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and I have reached the conclusion that the decision was one that was reasonably open to him on the assessment of the evidence.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtT shall stand.

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. 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 *Upper Tribunal Judge Reeds*
Dated 27 October 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email