

Neutral Citation Number: [2008] EWCA Civ 127
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: IA/05583/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 6th February 2008

Before:
SIR MARK POTTER, PRESIDENT OF THE FAMILY DIVISION
LORD JUSTICE THOMAS
and
LORD JUSTICE HOOPER

Between:

LJ (ALBANIA)

Appellant

- and -

**SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

(DAR Transcript of
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Mr J Collins (instructed by Messrs Sheikh & Co) appeared on behalf of the **Appellant**.

Ms J Collier (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

Judgment

(As Approved by the Court)

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Lord Justice Hooper:

1. The appellant appeals, with leave of Sir Henry Brooke, the decision of Immigration Judge Cohen, on reconsideration, dismissing the appellant's appeal against the decision of the Secretary of State for the Home Department on 15 September 2005 refusing his application for further leave to remain in this country. It had been submitted to the Secretary of State that the appellant should be granted further leave to remain in this country on the basis that his return to Albania would be contrary to the refugee convention and the Human Rights Act 1998.
2. The appellant arrived in the United Kingdom on 28 December 2001 and applied for asylum. He indicated in his witness statement on 24 January 2002 that his father had been killed in an industrial accident in Albania whilst working as an electrician in 1991 and that, as a result, the appellant and his remaining family members had gone to live with his maternal uncle. After a time, so the appellant was saying, he believed that he had become a burden on his uncle and so decided that he should leave, but he had nowhere else to go or live in Albania and he came to this country. He raised no concerns at all about any blood feud. Although the appellant's application for asylum was refused, on 6 February 2002 he was granted exceptional leave to remain until 30 October 2003 in the light of his age. In July 2004 that leave was extended until 30 December 2004, thus allowing him to remain in the United Kingdom whilst he was a minor.
3. On 30 November 2004 the appellant applied for a further extension of his leave. He was interviewed in connection with that application on 12 August 2005. During the interview the appellant indicated that his previous application accurately reflected his claim and he did not have anywhere to go or anyone to look after him. Again he raised no concerns about any blood feud.
4. The secretary of state refused the claim for further leave to remain for the reasons set out in a letter dated 6 September 2006. The appellant appealed against that decision to the AIT. His grounds of appeal from the decision of the secretary of state raised no concerns about any blood feud. That was to be mentioned for the first time in a witness statement prepared for the hearing of his appeal, that witness statement being dated 17 October 2005. In that statement he said that his uncle had now told him that there had been a blood feud against his family; his grandfather had killed one and injured one of the Kovaci family members; that his father had not been killed in an accident but had been murdered by the Kovaci family as part of the blood feud; his uncle and mother had not previously told him about the blood feud as they wanted to protect him; and that his uncle and mother had sent him out of Albania for his own protection since he was getting older and was therefore vulnerable. He was told that his uncle had been unsuccessful in seeking reconciliation as the Kovaci family had declared that they would take his and his brother's life. According to the witness statement the appellant now feared that if returned to Albania he would be killed as a result of the blood feud.

5. The immigration judge who heard that appeal, Immigration Judge O'Garro, allowed the appellant's appeal on both asylum and human rights grounds. The secretary of state applied for reconsideration of the decision on the ground that the immigration judge had failed to give any adequate reasons for finding that the alleged blood feud story was credible.
6. Senior Immigration Judge Lane found that there was a material error of law in the determination of Immigration Judge O'Garro, and in particular because the findings on credibility were inadequately reasoned. Senior Immigration Judge Lane ordered a fresh reconsideration. Following that, second-stage reconsideration was heard by Immigration Judge Cohen. He dismissed the appeal on asylum, humanitarian and human rights grounds.
7. The appellant's first ground examines the conclusion of Immigration Judge O'Garro and submits that Senior Immigration Judge Lane erred in law in ordering a reconsideration. If, in fact, there was no error of law in the conclusions of Immigration Judge O'Garro then Senior Immigration Judge Lane would have erred in ordering a reconsideration. If this submission is right the appeal succeeds.
8. Immigration Judge O'Garro said this about the blood feud issue and the appellant's account thereof:

“6. At the hearing of this appeal the appellant attended and put forward a different case to that raised in his grounds of appeal. The appellant adopted as his evidence his interview record dated 12 August and his statement dated 17 October 2005. The appellant said in his statement that following his refusal of his application for leave (sic) to remain he contacted his maternal Uncle Gjin Likaj in Albania and it was then that his uncle advised him that there was a blood feud against his family. The appellant said that his uncle told him that this information was kept hidden from the appellant and his brother, as he wanted to protect him and his brother. The appellant said that when his uncle learnt that he was returning to Albania he felt compelled to tell him exactly what happened. The appellant said that when his uncle learnt that he was returning to Albania he felt compelled to tell him exactly what happened. The appellant went on to explain what his uncle had told him about how the blood feud started. The appellant said that the blood feud started more than 45 years ago following a dispute over land the appellant's grandfather had with another family. The appellant said that his grandfather killed a member of the Kovaci family and injured another. The appellant said that there

was never any reconciliation between the two families but due to the Communist regime coming into power the blood feud could not be carried out. The appellant said that the Kovaci family killed his father. The appellant said that reconciliation was suggested but refused by the Kovaci family and declared that they take the life of the appellant and his brother. The appellant said that his brother is being protected by the church that has been caring for him and is arranging for him to go to Italy. The appellant said that his mother died of a heart attack on 17 June 2002. The appellant said that he feared that if he returned to Albania, the Kovaci family would carry out the blood feud and kill him.”

She went on to say:

“11. Turning to the core of the appellant’s claim, he said that he could not return to Albania because there was a family blood feud going on and that he would be killed. He found out about the blood feud after his uncle decided to tell him once he learnt [he] was refused leave to remain in the United Kingdom.

12 In considering this appellant’s claim I have considered the objective evidence. The nature of Albanian blood feuds is set out at paragraph 6.130 to 6.136 of the April 2004 CIPU. Blood feuds have its origins in customary practices of mediaeval or even earlier origin. The rules of the blood feud were formalised during the fifteen-century (sic) and have become known as the Kanun or ‘the law of Lek’. The institution of the blood feud is most apparent in the mountain regions of Northern Albania and the vast majority of contemporary feuds were the result of disputes over land and water rights’. According to paragraph 6.135, the Kanun has traditionally served as ‘the foundation of social behaviour and self-government for the clans of northern Albania. In particular, the Kanun regulates killings in order to stop the total annihilation of families.’ Having re-emerged as a significant social phenomenon following the fall of the Communist regime in Albania, it can be seen from the table set out in Paragraph 6.143 that blood feuds appeared to reach their height during the 1990’s. Since that time, at least according to the US Department figures, there has been a falling off in the number of deaths due to blood feuds. In 2003 the US Department records there were more than fourteen killings.

13 Bearing in mind what the appellant was told by his uncle concerning the origins of the blood feud between his family and the Kovaci family, the fact that the appellant comes from Northern Albania where blood feuds continue to exist, and having considered the objective evidence found in the CIPU report along side the expert report of Stephanie Schwandner, I find the appellant's claim to be credible. I therefore accept his claim that there is a blood feud between his family and the Kovaci family."

9. In paragraph 16 Immigration Judge O'Garro refers to some documentation to which I shall come back later and, having looked at those, goes on to say that:

"This must mean that the [Kovaci] family is still committed to persecuting the feud [even though 45 years has now elapsed]."

10. Senior Immigration Judge Lane said this about the decision of Immigration Judge O'Garro:

"2 Despite Ms Panagiotopolou's able submissions on behalf of the appellant, the Tribunal on 6 February was in no doubt that paragraph 13 was legally flawed. Whilst it was open to the Immigration Judge, on the evidence before her, including a detailed expert report, to conclude that the appellant's blood feud claim was credible, notwithstanding its timing and general circumstances, both parties had the right to expect the Immigration Judge to deal expressly, as part of her reasoning, with the matters which the respondent had specifically relied upon at the hearing in support of the submission that the claim was not credible. The respondent represents the general public interest and he, as much as the appellant, is entitled to expect credibility findings which are adequately reasoned."

11. Mr Collins, who appears for the appellant but who did not prepare the grounds of appeal and skeleton argument, accepts that the reasoning given by Immigration Judge O'Garro can be described as economical. In my judgment Senior Immigration Judge Lane was quite right to find that the decision of Immigration Judge O'Garro erred in law in failing to deal with the many arguments put forward by the presenting officer suggesting that this account of a blood feud was a complete fabrication. I will return to those arguments, most, if not all, of which can be found in the judgment of Immigration Judge Cohen.

12. To take one point alone. Immigration Judge O'Garro ought to have dealt with the issue that the appellant had said that his father was killed in an industrial accident: now he was saying that he had been shot dead. The immigration judge ought to have dealt with the presenting officer's argument that that was incredible or implausible.
13. I see no merit in Ground 1. There was a second part of Ground 1, which has been rightly abandoned.
14. I turn therefore to Ground 2. In Ground 2 it is submitted that Immigration Judge Cohen in dismissing the appeal reached a conclusion which no rational judge could reach. His conclusion was that the appellant had fabricated his claim in its entirety. It was said in the grounds that Immigration Judge Cohen failed to have regard to relevant facts; failed to reach findings in relation to a significant part of the appellant's evidence; failed to have regard to the totality of the evidence; made factual errors in the assessment of the expert's report and took into account irrelevant considerations. The expert's report, however, is the subject of another ground to which I will turn later.
15. The appellant had given evidence that he learnt at the time of making that witness statement in October 2005 that he had in fact been sent out of the country in 2001 for his own protection since he was getting older and was therefore vulnerable. His brother had been sent to a church and later to Italy for the same reason. He now knew, so he was saying, that his father had been killed not in an industrial accident whilst working as an electrician but had been shot as a result of a blood feud. It is submitted in paragraph 5 of the grounds that the immigration judge's conclusion at paragraph 26, that if he had been sent out of Albania as a result of a blood feud then he would have made his claim earlier, was a perverse conclusion. It is submitted that the finding overlooks the fact that on the appellant's account he had only been told about the blood feud when he had been refused further leave to remain and was preparing his appeal to the AIT in 2005. That criticism of Immigration Judge Cohen's decision is completely without merit. Indeed, as Mr Collins accepted, in paragraph 27 Immigration Judge Cohen deals with that specific issue.
16. During the course of argument Mr Collins referred us to the report of the expert which had been both before Immigration Judge O'Garro and Immigration Judge Cohen. The report will be found at page 10 of the supplementary bundle and was prepared by Stephanie Schwandner-Sievers, who is an expert on issues to deal with blood feuds in Albania. At paragraph 18, page 36 of the report, the expert writes this:

“The Appellant's story suggests that his mother and maternal uncle intended never to tell him and his brother the real reason for taking them to live away from their paternal home and land. This may have been a deliberate strategy intended to interrupt the

feuding cycle and protect both boys/young men from becoming targets in this feud (and, possibly, additionally, from feeling compelled to take revenge themselves for their killed father).”

17. However, what the immigration judge was saying was not that he might have expected the appellant to be told earlier but that he would have expected the appellant to be told at the time that his asylum claim was refused, or at about that time. The immigration judge found it incredible that the uncle would have waited so long to explain the situation in which the appellant would find himself if returned to Albania. In my judgment the immigration judge was quite entitled to reach that conclusion.
18. In paragraph 28 of his determination Immigration Judge Cohen expresses his lack of belief about the appellant’s story because of the appellant’s failure to give any details about the claimed blood feud. He did not know, so Immigration Judge Cohen said, the details of the claimed land dispute which led to the original incident involving the grandfather; he did not know the circumstances in which his father had been killed; he did not know how the second Kovaci brother was wounded. Immigration Judge Cohen continued:

“I find that if the appellant discovered that his own father discovered had been killed as a result of a blood feud rather than an industrial accident in his employment as an electrician then he would have sought to find out as much information concerning the claimed incident as possible. I find the appellant’s lack of knowledge concerning the numerous claimed incidents to date in the blood feud and most particularly his own father’s claimed murder to be implausible and further damaging to the appellant’s credibility.”

19. It was submitted during the course of argument that the family would be unwilling or might be unwilling to give the necessary details but in my judgment the immigration judge was entitled to reach the conclusion that, if he had been told about the blood feud, then he would have expected the appellant to be able to ask for more information about it. The report suggests at page 29 that younger people do not always know about blood feuds and their details. That is neither here nor there in this case. Here the appellant is discovering, so he claims, for the first time about the blood feud. The immigration judge decided it was inconceivable that he would not have asked for more details, particularly about the circumstances in which his father was killed. The immigration judge was entitled to reach that conclusion and it cannot possibly be described as perverse.
20. In paragraph 29, to which no particular criticism has been attached, the immigration judge sets out various discrepancies about the ages at which blood feuds operate and discrepancies about the evidence of age given by the appellant himself.

21. In paragraph 30 the immigration judge turns to another point. The appellant claimed that he was born in one village but moved to his uncle's village when he was four to five years old. The appellant said that the two villages were about two hours apart on foot. The appellant claimed that when he was taken to school from his uncle's village to the village of his birth he did not know how long the journey took. He also claimed that the Kovaci children attended the same school themselves, travelling a very significant distance over the mountains. The immigration judge continued:

“22 I find the appellant's claim that children who have travelled the equivalent of 2 hours over a mountain range...in separate directions in order to attend a school in the appellant's original village to be implausible. I find if this was the case that the appellant would have been able to provide an indication of how long the journey took by vehicle. In the circumstances I find that the appellant's claim of attending school with the Kovaci children and his account of being in various locations in Albania have been fabricated by him and I find this to be further damaging to the appellant's credibility.”

Again, although criticism is made in the grounds of appeal of that conclusion, in my judgment it cannot possibly be described as a conclusion which the immigration judge was not entitled to reach.

22. In paragraph 31 he returns to the issue of age and finds the appellant's evidence about his mother and about his mother's age again to contain inconsistencies such that it undermined his credibility.

23. I see nothing in Ground 2 and turn to Ground 3. In Ground 3 the appellant attacks the manner in which Immigration Judge Cohen dismisses the appellant's expert evidence. In my view this ground does have some merit. Immigration Judge Cohen said in his conclusion in paragraph 32 that:

“24 The appellant's claim that his father was killed as a result of a blood feud in 1991 [as opposed to 1992] was contrary to the objective evidence...”

In my view that overstates the position. Indeed the respondent in the skeleton argument, whilst not conceding the ground, refers in the last lines of paragraph 30 to a 2004 CIPU report which tended to support the fact that there were killings in 1991. Given that killings have taken place in Albania according to the material before the immigration judge since the Middle Ages he should not have reached the conclusion that the claim of a 1991 killing, as opposed to a 1992 killing, was contrary to the objective evidence. The most that Immigration Judge Cohen could have said was that the expert's report in this area offered little or no support for the appellant's case.

24. However, that is not the end of the matter. What this court has to ask itself is whether it is confident that the outcome of the case would have been no different if that error had not been made. In my view, before reaching this point in paragraph 32 the immigration judge had given clear and precise and very damaging reasons for rejecting the account given by the appellant. In my view, this error makes no difference to those conclusions.
25. I turn finally to Ground 4. It is submitted that Immigration Judge Cohen was wrong in paragraph 33 to attach no weight to the documentation, all of which postdated the making of the claim. Those documents are set out at page 134 of the supplementary bundle, other than the mother's death certificate. In broad outline what those documents purported to show was that attempts had been made to effect a reconciliation insofar as the Kovaci family was concerned. The expert in her report identified that documentation and said in paragraph 21 that the documentation emanated from organisations which were involved in the process of trying to bring blood feuding to an end by effecting a reconciliation between the feuding parties.
26. It is accepted, as indeed it must be, by Mr Collins that if the earlier findings as to credibility are sufficiently powerful, then the judge is not required to go on and deal in any great detail with this documentation. In my judgment the immigration judge had reached the conclusion, which was certainly open to him, that the appellant's account, looked at on its own, had no credibility at all for the detailed reasons he set out. In those circumstances it was not necessary for him to go on in any great detail to look at that documentation. Clearly the documentation had all postdated the refusal of the appellant's further leave application. That in itself cast doubt upon the authenticity of that material. But given his earlier findings it was not necessary for him, as I say, to go further.
27. For all those reasons I would dismiss this appeal.

Sir Mark Potter P:

28. I agree.

Lord Justice Thomas:

29. I also agree. The appeal will therefore be dismissed.

Order: Appeal dismissed.