Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00093/2019

THE IMMIGRATION ACTS

Heard remotely via Skype for Business	**Decision & Reasons Promulgated**
On 22 January 2021	**On 18 February 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LM
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr Bates, Senior Home Office Presenting Officer
For the Respondent: Mr Georget, instructed by Polpitiya Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1993 and is a male citizen of Albania. He was sentenced on 16 August 2018 to 29 months imprisonment for the possession of a Class A drug with intent to supply. On 3 September 2019, the Secretary of State decided to deport the appellant, to apply section 72 of the 2002 Act and to revoke the application's status as a refugee (the appellant had been granted indefinite leave to remain as a refugee on 25 August 2016). The appellant appealed to the First-tier Tribunal, which, in a

decision promulgated on 12 February 2020, allowed his appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The Secretary of State submits that (i) First-tier Tribunal failed to give adequate reasons for concluding that the appellant remained at risk of a blood feud in Albania; (ii) failed to consider adequately whether the Albanian authorities were willing and able to protect the appellant in his home area; (iii) failed to consider whether the appellant had a viable internal flight alternative in Albania.

3. At the remote hearing on 22 January 2021, I heard oral submissions from the representatives of both parties. I note that the First-tier Tribunal's decision not to uphold the section 72 certificate is not challenged on appeal. I reserved my decision.

4. The judge's reasoning on the matter of the revocation of the appellant's protected status is set out succinctly at [23-24]. The first ground of the Secretary of State arises from the judge's analysis at [23] of the appellant's claim that, in 2013, he took a holiday in Kosovo during which he was attacked by unknown individuals and, as a consequence, spent 3 months in hospital. The Secretary of State contends that the judge's findings in respect of this claim (that 'any Balkan state' as a choice for a holiday was 'very odd' and that the claim was associated with the blood feud was 'purely speculative') are not consistent with his conclusion that the application remains at risk. As a result, the respondent contends that the reasons given by the judge for concluding that the appellant remains at risk on return were inadequate. I find that this ground is without merit. The judge made it clear [23] that 'if the attack took place, I do not find that it is evidence either way of a continued feud.' Significantly, he did not conclude that the appellant's account of the attack in any way undermined everything which he had ever said about being subject to a feud (which the respondent has previously accepted as true) or that, if the attack had not occurred, that the appellant was, as a consequence, now sufficiently protected in Albania. I agree with the judge that the appellant's claims regarding the 2013 incident do not assist the arguments of either party in the appeal. That was a conclusion patently available to the judge and it is neither inconsistent nor irrational.

5. Secondly, at [24], the judge discusses the recent (October 2018) CPIN upon which the respondent seeks to rely as evidence that there has been a fundamental and durable change of circumstances in Albania (the test which both parties agree should determine the revocation of the appellant's protected status). Mr Bates, who appeared for the Secretary of State at the initial hearing, submitted that the judge had misrepresented the CPIN; the judge had referred to the 'declining' number of feuds in Albania but had not also stated that the report recorded that feuds were 'few and declining.' I do not agree that the judge has misrepresented the evidence of the CPIN. The judge has given cogent reasons for concluding that the appellant is still at risk; that risk can, of course, be posed by one

of the ‘few’ feuds which continue to exist. His omission of the adjective is not material.

6. I also find that the judge reached sustainable findings as regards the availability of protection provided by the Albanian state. He noted that a Cedoca report, which is almost contemporaneous with the CPIN (2017), ‘included doubts that the police were able to deal with blood feuds’ and that feuds were often not reported to the police. Whilst the judge accepted that the Albanian government had ‘taken measures to reduce the practice of blood feuds’ he found that, once a feud was active (as the parties accept has been the case with the appellant) the evidence, including the CPIN, did not indicate that it would become ‘less effective as a result of government measures’. The judge records that there was no evidence that the particular feud which affects the appellant had ceased and he concluded that, whilst gradual change had occurred, that change did not amount to a fundamental and durable change in circumstances. In my opinion, those are rational findings based on the entirety of the relevant evidence. It was not inconsistent for the judge to find that, whilst government action may be reducing the incidence of new feuds, it was not necessary to conclude that an active existing feud would have ceased.

7. Finally, it is the case that the judge does not address the matter of internal flight. However, the respondent’s decision letter also makes no mention of it whilst the judge’s *precis* of the submissions of the Presenting Officer at [17] shows that internal flight was not raised at the First-tier Tribunal hearing. The judge has considered the Secretary of State’s case as it was put to him, both in the decision letter and at the hearing; he was not required, subsequent to the hearing, to raise new matters of his own motion upon which the parties would have had no opportunity to comment. Indeed, had he done so, he may have fallen into legal error. The judge was entitled to proceed on the basis that, as internal flight was not raised, the respondent did not consider it to be a remedy available to this particular appellant.

8. For the reasons I have given, I do not find that the decision of the First-tier Tribunal is vitiated by reason on legal error. Accordingly, the appeal of the Secretary of State is dismissed.

Notice of Decision

The Secretary of State’s appeal is dismissed.

Signed Date 29 January 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.