

## **UK - R (FR and KL (Albania)) v Secretary of State for the Home Department, 23 June 2016**

**Country of Decision:**

United Kingdom

**Country of Applicant:**

Albania

**Date of Decision:**

23-06-2016

**Citation:**

[2016] EWCA Civ 605

**Additional Citation:**

Case No: C2/2015/2903; C2/2015/3021

**Court Name:**

The Court of Appeal (Civil Division)

**Keywords:**

Best interest of the child  
Child Specific Considerations  
Country of origin information  
Credibility assessment  
Internal protection  
Manifestly unfounded application  
Medical Reports/Medico-legal Reports  
Membership of a particular social group  
Non-state actors/agents of persecution  
Personal circumstances of applicant  
Protection  
Real risk  
Refugee Status  
Safe country of origin  
Vulnerable person  
Well-founded fear

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**Relevant Legislative Provisions:**

International Law > [1951 Refugee Convention](#) [1]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [2] > [Article 3](#) [3]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [2] > [Article 8](#) [4]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [5]

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### **Headnote:**

This case dealt with the issue of whether the Secretary of State's certification of the asylum claims of the two independent applicants as 'clearly unfounded' was flawed on public law grounds, and the important difference between a decision on refugee status itself and a decision on a claim being 'clearly unfounded'.

### **Facts:**

Both applicants had independently claimed asylum in the UK based on a well founded fear of persecution if returned to Albania, as a result of a blood feud and lack of protection from the state.

As Albania was listed in sec 94(4) Nationality, Immigration and Asylum Act 2002, the Secretary of State's obligation was to certify the claim as clearly unfounded unless satisfied that it was not clearly unfounded. The consequences of such certification would be that the applicants could be removed from the UK before having the chance to appeal.

KL's claim was based on an alleged blood feud stemming from his father killing a man from an allegedly powerful political family, for which his father (having first survived an apparent revenge attack) was then sentenced to 25 years in prison. KL had gone into self-confinement at home, an established means of protecting oneself from the consequences of a blood feud under Albania Kanun law.

The Secretary of State had certified KL's claim as unfounded based on the fact that there was little evidence to demonstrate an active blood feud, and in any event it was not clear that the state could not afford him sufficient protection, and he could safely relocate within Albania.

FR's claim was more complicated. Not only did her husband badly injure another man, allegedly triggering a blood feud, but her husband's violence and death threats were also directed towards her, eventually leading her to leave him, which in turn triggered death threats against her from her own family. She was responsible for three children and had developed severe mental illness.

The Secretary of State had certified FR's claim as unfounded based on the fact that there was no evidence that she was being targeted by the family of the man whom her husband had injured, or that the state could not in any event protect her, either from that family, her own family or from the domestic violence of her husband, or provide for her healthcare needs, and relocation within Albania was therefore an option for her.

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### **Decision & Reasoning:**

The Court set aside the Secretary of State's decision to certify both claims.

The Court acknowledged that the power to certify is an important one, giving the Secretary of

State the power to act as 'gate-keeper' to ensure clearly unfounded claims do not take up valuable resources in the in-country appeals system. It is a 'draconian' power though, separate from the asylum claim determination itself, and to which a different standard applies. Indeed the Secretary of State's own guidance stated that for the purposes of certification the claim must be taken 'at its highest; as if all the claimed historic events did in fact occur'. Only if, on that basis, the claim would admit of only one answer before an immigration tribunal, can the certification be given.

The Court did not find this to be the case for the KL claim, as it believed there were grounds on which the claim could succeed before a tribunal.

Indeed some of the Secretary of State's stated grounds for certifying the case (eg inconsistent evidence from the applicant), whilst they would have been appropriate in assessing the claim for asylum, cast doubt on the consistent application of her own test for certifying. This was because they did not seem to be taking the claim 'at its highest', and did not address the correct standard of whether the claim was 'bound to fail' at the tribunal, but rather simply whether it would fail.

The case of FR was less clear cut. The Court found that the Secretary of State was entitled to conclude that FR and her children were not targets of an active blood feud, and that it was practical for her to relocate in Albania where neither her husband nor family had access to her.

However there was the question of the impact of any such relocation on the mental health of the applicant, and on the best interests of her children (to be considered under sec 55 of the Borders, Citizenship and Immigration Act 2009). Whilst this would have greater force in the context of a human rights claim under article 8 ECHR, rather than under the Refugee Convention, it meant that 'the quality of her claim is not such that the facts of her case admit of only one answer before a tribunal'.

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**Outcome:**

The decisions certifying the claims of the applicants as 'clearly unfounded' were set aside.

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**Observations/Comments:**

The question of when a claim can be certified as 'clearly unfounded' has produced a large body of decisions in the UK, including at the highest level of the House of Lords/Supreme Court. The Court's finding generally followed, and built on, those previous cases.

This case summary was written by Jonathan Thomas, LL.M student at Queen Mary University, London.

**Attachment(s):**

[R \(FR and KL \(Albania\)\) v Secretary of State for the Home Department .docx](#)[6]

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**Other sources cited:**

Non-Suspensive Appeals Certification under section 94 of the NIA Act 2001 (version 1.6, May 2013)

Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims)

