



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

Appeal Number: PA/09535/2019

**THE IMMIGRATION ACTS**

**At Field House  
22<sup>nd</sup> November 2021**

**Decision & Reasons Promulgated  
On 26<sup>th</sup> November 2021**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**HM  
(anonymity order made)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**DECISION AND REASONS**  
**RULE 43 TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The Appellant is a national of Ethiopia. He asserts a well-founded fear of persecution in Ethiopia for reasons of his political opinion.

2. The Appellant was refused asylum by the Respondent on the 24<sup>th</sup> September 2019. He lodged an appeal with the First-tier Tribunal, such appeal being dismissed by First-tier Tribunal Judge Phull on the 21<sup>st</sup> January 2020. The Appellant applied for permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Scott-Baker on the 3<sup>rd</sup> March 2020.
3. On the 23<sup>rd</sup> March 2020 the United Kingdom went into 'lockdown' in response to the Covid-19 pandemic. On that date the President, Mr Justice P. Lane, issued the President's Guidance Note No 1 2020: Arrangements During the Covid-19 Pandemic. Following that guidance, Upper Tribunal Judge C. Lane made directions in this case, expressing a provisional view that the question of whether the decision of Judge Phull contained an error of law, and so should be set aside, could be determined without a hearing. Judge Lane invited the parties to make written submissions.
4. The Respondent made written submissions on the 14<sup>th</sup> May 2020 and asserted that she considered that this was a matter which could be determined on the papers. On the 15<sup>th</sup> May 2020 the Appellant's representatives made further written submissions (in addition to their grounds) and invited the Tribunal to remit the matter to the First-tier Tribunal. The letter concluded "we agree that this can be decided without a hearing".
5. On the 13<sup>th</sup> July 2020 Upper Tribunal Judge Coker made a decision 'on the papers' under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Rules"). She dismissed the appeal.
6. On the 20<sup>th</sup> November 2020 Mr Justice Fordham handed down his decision in JCW v The President UTIAC and the Lord Chancellor [2020] EWHC 3103 (Admin), following which the Appellant's representatives requested that the matter be relisted for an oral hearing to determine whether the decision of Judge Phull should be set aside.
7. On the 22<sup>nd</sup> October 2021 the matter came before me to consider whether the decision of Judge Coker should be set aside under Rule 43 of the Rules. On that date I issued directions to the parties, asking them to consider the guidance given in EP (Albania) & Ors (rule 43 decisions; setting aside) [2021] UKUT 233 (IAC), and inviting them to make submissions on whether the decision of Judge Coker should be set aside. I directed that any such submissions should be received within 14 days.
8. No such submissions have been received.
9. Having had regard to the history of this matter, in particular the decisions of Judges Phull, C. Lane and Coker, the decisions in the *JCW*

case and EP (Albania), I conclude that the decision of Judge Coker should not be set aside.

10. I do so for the following reasons:

- i) It is clear that the Note and Directions made by Judge C. Lane on the 29<sup>th</sup> April 2020 were issued in accordance with the Presidential Guidance Note subsequently found to be unlawful in the JCWI case;
- ii) That does not however mean that any decision taken pursuant to those directions automatically falls to be set aside for procedural unfairness;
- iii) In this case both parties expressly consented to the matter being determined on the papers. In EP the panel held that such consent ordinarily provides strong support for the conclusion that a decision to proceed without a hearing was lawful;
- iv) The Appellant has not identified any procedural unfairness in the decision of Judge Coker, and having read her decision, I am unable to find any. Judge Coker plainly had regard to the Appellant's case, as expressed in the grounds of appeal and the submissions of the 15<sup>th</sup> May 2020. Importantly, no submissions have been made to the effect that the decision could have been otherwise, had an oral hearing been convened.

11. The decision of Judge Coker is therefore to stand.



Upper Tribunal Judge Bruce  
22<sup>nd</sup> November 2021