



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10259/2019**

THE IMMIGRATION ACTS

**Heard remotely at Field House
On the 27th May 2021 via Teams**

**Decision & Reasons Promulgated
On the 21st June 2021**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**XP (ALBANIA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R. Jesurum, Counsel, instructed by Central Chambers
Law Solicitors

For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to / not objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents that I was referred to were primarily the grounds of appeal to the Upper Tribunal and the decision of the First-tier Tribunal, the contents of which I have recorded.

The order made is described at the end of these reasons.

The parties said this about the process: they were content that the proceedings had been conducted fairly.

1. In a decision promulgated on 11 December 2019, First-tier Tribunal Judge Chana dismissed an appeal of the appellant brought under section 82 of the Nationality, Immigration and Asylum Act 2002 against a decision of the respondent dated 1 October 2019 to refuse his fresh claim for asylum. The appellant now appeals against that decision with the permission of Upper Tribunal Judge Finch. The appellant claimed to be at risk from a blood feud in Albania.
2. The primary ground of appeal is that it was procedurally unfair for the judge to refuse an application for an adjournment made at the outset of the hearing before the First-tier Tribunal. The appellant had recently changed solicitors, and his then new representatives sought an adjournment to obtain an expert report addressing the circumstances of his claimed blood feud in Albania. The judge refused. She said at [22] that the appellant had been in the country since 2014, and there had been sufficient time, once he had attained the age of majority, “to ensure proper representation”. There was sufficient background evidence in *EH (blood feuds) Albania CG* [2012] UKUT 00348 (IAC) to decide the case without an expert report, she held.
3. It was common ground at the hearing before me that the judge erred when refusing the adjournment request. Very fairly, Mr Walker accepted that the reasons given by the judge, namely that the appellant had sufficient time to obtain an expert report, could not withstand scrutiny, in light of the fact he had changed solicitors on 28 October 2019, only three weeks before the hearing before the judge, which took place on 22 November 2019.
4. That was an appropriate concession to make. As set out in the grounds of appeal, the judge applied a test of reasonableness to the question of whether an adjournment was necessary, rather than focusing on the question of whether the appellant could receive a fair trial. In *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC), it was held:

“Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party’s right to a fair hearing? See *SH (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 1284.”
5. While the judge purported to consider the question of fairness by reference to *EH (Albania)*, she did not engage with the extent to which a bespoke expert report could provide the appellant – and the tribunal – with more assistance than a country guidance case of some nine years vintage. That is not to say that all adjournment requests in such circumstances should be granted. However, in order to give sufficient reasons for refusing an adjournment request to obtain an expert report, at least some

reasoned analysis would be required to demonstrate that why an expert report would add nothing to any country guidance authorities available to the tribunal. This the judge failed to do.

6. It follows that the hearing before the judge was unfair, and the decision must be set aside, with no findings of fact preserved.
7. There are two further grounds of appeal, relating to the judge's reliance on her own subjective views of the plausibility of the appellant's case, and a general failure to give sufficient reasons. In light of my findings, and the common ground, concerning the judge's approach to the adjournment application, it is not necessary to consider those grounds.
8. I set aside the decision of Judge Chana with no findings of fact preserved. As the appellant has been deprived of a fair hearing, the appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge.
9. Although Judge Chana did not make an order for anonymity, given the appellant's appeal against the refusal of his fresh asylum claim is yet to be finally determined, I consider that an order for anonymity is appropriate.

Notice of Decision

The appeal is allowed.

The decision of Judge Chana involved the making of an error of law.

I set aside the decision of Judge Chana with no findings of fact preserved. The appeal is remitted to the First-tier Tribunal to be heard by a different judge.

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 or any member of their family. 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 *Stephen H Smith*

Date 28 May 2021

Upper Tribunal Judge Stephen Smith