



**IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM  
CHAMBER**

Case No: UI-2023-005396

First-tier Tribunal Nos:  
PA/53024/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

1<sup>st</sup> March 2024

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AM  
(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Ahmed, Senior Presenting Officer

For the Respondent: Mr T Wilding, Counsel, instructed by A J Jones Solicitors

**Heard at Field House on 19 February 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr AM is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify Mr AM. Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

### **Introduction**

1. For the sake of continuity I shall refer to the parties as they stood before the First-tier Tribunal; therefore the Secretary of State is once more “the Respondent” and Mr AM is “the Appellant”.
2. The Respondent appeals with permission against the decision of First-tier Tribunal Judge Bart-Stewart (“the Judge”), promulgated on 14 November 2023 following a hearing on 8 November of that year. By that decision, the Judge dismissed the Appellant’s appeal in respect of the Refugee Convention, but allowed it on humanitarian protection grounds and human rights grounds.
3. The Appellant is a citizen of Albania born in 2003. He left Albania in 2019 and arrived in this country in early August of that year, claiming asylum shortly thereafter. Alongside his asylum claim the Appellant had asserted that he was a victim of forced labour whilst in Albania. On referral, a positive conclusive grounds decision was taken by the Single Competent Authority. The protection and human rights claims were refused by the Respondent in a decision dated 28 July 2022 and the Appellant appealed to the First-tier Tribunal.

### **The Judge’s decision**

4. The first aspect of the Judge’s decision to note relates to an application made by the Respondent to adjourn the hearing. The details are set out at [17]-[19]. In summary, the Judge recorded that the Respondent’s adjournment request had been made at 12:09 on the morning of the hearing itself. The request asserted that the Respondent had not had the chance to instruct “any barristers” to attend face to face hearings for four lists due to be heard on that day. Apparently, a request to convert the face to face hearings into remote CVP hearings had been made at some point and had been rejected by the First-tier Tribunal. The Judge recorded that she had not seen any evidence of the applications or the refusal to

convert into remote hearings made by the Tribunal. The Respondent's belated application to adjourn had been opposed by the Appellant at the hearing. The Judge noted medical evidence indicating the Appellant's vulnerability. The Judge recorded that no further objective evidence had been submitted by the Respondent. The Respondent's review had included submissions on the Appellant's evidence and that the core aspects of the claim had been accepted. The Appellant's credibility had not been challenged in the reasons for refusal letter. Noting the existence of a good deal of background evidence, the Judge considered that cross-examination of the Appellant was not necessary in order to ensure fairness, "having regard to the issues". Thus the Judge proceeded to hear the case in the absence of a representative for the Respondent.

5. The Judge's findings and conclusions are a mixed picture. She concluded that the Applicant did not fall within a particular social group and thus the Refugee Convention was not engaged. Having said that, she found that the Appellant would be at risk of serious harm if returned to his home area (Tirana) by virtue of the criminal gang which had forced him to work in a cannabis farm previously and had ill-treated him. There was no state protection in the home area and the Judge concluded that the issue of internal relocation fell to be considered. She concluded that there was no risk of serious harm to the Appellant elsewhere in Albania. However, she went on to take a number of factors into account, including the absence of a "family support structure" and concluded that internal relocation would, in all the circumstances, be unduly harsh. For "similar reasons" the Judge concluded that there would also be very significant obstacles to reintegration into Albanian society. The appeal was accordingly allowed on a limited basis.

### **The grounds of appeal and grant of permission**

6. Two grounds of appeal were put forward by the Respondent. First, it was said that the Judge's refusal to adjourn the hearing had amounted to procedural unfairness. Her decision had apparently prevented the

Respondent from the chance of cross-examining the Appellant on what were described as “unresolved” matters including contact with his mother or other family members in Albania. The second ground of appeal seemed to flow from and be dependent upon the first. It was said that aspects of the Appellant’s evidence in relation to contact with his mother was “not credible”. The wording of this ground of appeal is not altogether clear. Whilst it does appear to suggest that the credibility issues cited were points which would have been put to the Appellant if the adjournment had been granted and cross-examination had taken place on another occasion, another reading of this ground suggests that it is intended to stand alone and that the Judge was being criticised for a lack of reasoning or based on some other unspecified errors of law.

7. In granting permission the Upper Tribunal focused on the procedural fairness point, but did not limit the scope of the appeal.

### **The Respondent’s error of law bundle**

8. This is one of the cases in which the Upper Tribunal had issued new standard directions requiring the party appealing to it to provide a composite error of law bundle. The standard directions are clear, as is the Presidential Guidance on E-Filing and Electronic Bundles, dated 18 September 2023. I note in this case that the Tribunal sent out the initial standard directions and when nothing was forthcoming from the Respondent a reminder email was sent giving him a further opportunity to file and serve an appropriate bundle.
9. As far as I could tell, the Respondent’s bundle, when it did come in, was provided on the Friday before the hearing (listed on the following Monday). In addition to it being extremely late and, as far as Mr Wilding could ascertain not having been served on the Appellant, it was not properly formatted. Its primary deficiency was that it did not contain any useful bookmarks. It is one thing to provide hyperlinks on the index at the very beginning of the bundle, but (in line with the Presidential Guidance) bookmarks are extremely important for the efficient navigation

of bundles by the parties and the Judge hearing the case. In this case, as well as in a number of others I have come across in recent times, the team preparing the Respondent's error of law bundles does not seem to be able to properly bookmark the bundles according to the various individual items contained in the sections, and particularly Part A which contains the core documents necessary for error of law hearings. In light of these failings I directed the Respondent to provide a written explanation by 5pm on Friday 23 February 2024, marked for my urgent attention.

### **The hearing**

10. I received oral submissions from Ms Ahmed and Mr Wilding, for which I am grateful. Their submissions are a matter of record and I will deal with relevant aspects when setting out my conclusions and reasons below.

### **Conclusions and reasons**

11. I am acutely conscious of the need for appropriate judicial restraint before interfering with a decision of the First-tier Tribunal. I am cognisant of the broad discretion involved in its management of the proceedings before it. I am also of course cognisant of the importance of procedural fairness.
12. With this firmly in mind I am satisfied the Judge did not commit any material errors of law when refusing the Respondent's application for adjournment and in allowing the Appellant's appeal on the basis she did.
13. In my judgment the Respondent's approach to the first ground of appeal and the allegation of procedural fairness has been unsatisfactory. As quite fairly pointed out by Mr Wilding, there has been no attempt to adduce any evidence relating to relevant matters, including: the remote CVP request; the First-tier Tribunal's refusal of that request; the point at which the Respondent was aware that no Presenting Officers could apparently attend the hearing in person; why no Presenting Officers were

indeed available, when seemingly they could have attended remotely (as per the CVP request); and why the adjournment request had been made just after midnight on the day of the hearing itself. There has been no Rule 15(2A) application from the Respondent and Ms Ahmed could not provide any explanation for this (I do not criticise her in any way).

14. Mr Wilding confirmed that none of the relevant information had been put onto the CCD system and thus the Judge was simply unable to have obtained any evidence for herself when considering the application (even if it had been incumbent on her to attempt to do so)
15. Procedural fairness is, as I have already mentioned, an important aspect of the proceedings in any tribunal. Having said that, in my judgment it is not enough simply to make an assertion of procedural unfairness without any attempt to support it by way of appropriate evidence. In this case, nothing was put forward to her. Indeed, it seems as though no steps have been taken to rectify the position even once proceedings began in the Upper Tribunal.
16. The Respondent's inaction is in my judgment fatal to the success of the first ground of appeal because there is simply no proper evidential basis on which to found the allegation of procedural unfairness.
17. Beyond that, there is a real danger in this case of the Respondent seeking on an *ex post facto* basis to assert that important credibility issues were in play before the Judge which could not have been addressed by the Respondent as a result of the decision to refuse the adjournment application.
18. Certainly, the second ground of appeal raises the issue of the Appellant's credibility, which I take to relate to his truthfulness. However, having delved into the background materials in some detail at the hearing, it is apparent to me that there were no credibility issues taken in either the reasons for refusal letter or the Respondent's review prior to the hearing before the Judge. It is right that the issue of family support

was raised, but only in respect of the question of very significant obstacles and not in relation to the protection claim. In any event, the issue was framed simply as a factor which fell to be considered; it did not assert any challenge to the credibility/truthfulness of the Appellant's evidence on family support and/or internal relocation in general. As far as I can see, the challenge to the truthfulness of his evidence arose for the first time within the second ground of appeal.

19. In my judgment Mr Wilding was entitled to rely on the approach set out by the Upper Tribunal in the decision of Lata (FtT: principal controversial issues) India [2023] UKUT 163 (IAC) insofar as the identification of live issues was concerned and the importance of a Judge being able to focus on those live issues. In the present case, the Respondent had not stated in clear terms prior to the hearing that he did not believe the Appellant in respect of claimed lack of contact with his mother. It is important to note that the Appellant himself had stated in his witness statement (which had been provided to the Respondent in advance of the review being drafted) that he had not had contact with his mother and the reasons for that. No issue was taken with the truthfulness of that evidence.
20. Whilst not material to my overall conclusion, I would add that there is a real sense that the Respondent's adjournment application had been made on a generalised basis. From what I can gather, the application related to four separate lists protection appeals. There is no evidence to indicate that the Appellant's case and been specifically considered and a view taken as to the need for representation and cross-examination.
21. In light of the above, I am satisfied that there was no procedural unfairness in the Judge's decision to proceed.
22. In respect of the second ground of appeal, I conclude that it fails in line with the first ground. Further or in any event, there is a strong implication here that the Respondent is impermissibly attempting to treat the First-tier Tribunal hearing as a "dress rehearsal", or that the hearing

could have been a vehicle for a testing of the evidential waters, as it were, to see if any credibility issues might have arisen under cross-examination. That is plainly not a justifiable approach and it certainly does not go to identify any error of law in the present case.

23. Turning back to the Judge's decision itself, it is quite clear that she took a variety of factors into account before concluding that internal relocation would be unduly harsh. This included: the Appellant's vulnerability by virtue of poor mental health; his lack of very much education; the fact that he was a male victim of forced labour; the absence of structured support for such victims in Albania; and difficulties in obtaining employment; All of this was in addition to lack of a family support structure. The Judge was entitled to take those factors into account and to reach the conclusions she did. This was particularly so in the absence of specific credibility challenges put in advance by the Respondent and also the fact that the core of his account had been accepted by the Respondent.

24. In light of the foregoing, the Respondent's appeal to the Upper Tribunal is dismissed and the Judge's decision stands.

### **Notice of Decision**

**The decision of the First-tier Tribunal did not involve the making of an error of law and that decision stands.**

**The Secretary of State's appeal to the Upper Tribunal is dismissed.**

**H Norton-Taylor  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 23 February 2024**