



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

Appeal Number: PA/03737/2017

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 18 October 2018

On 20 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

[E R]

(Anonymity has not been directed)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Easty, Counsel for Slade & Fletcher Solicitors, London
For the Respondent: Mr Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania born on [~] 1988. He appealed the Home Office's decision of 3 March 2016 refusing him asylum, humanitarian protection and refusing his claim on human rights grounds. His appeal was heard by Judge of the First-Tier Tribunal Howard on 28 March 2018 and dismissed on all grounds in a decision promulgated on 18 May 2018.
2. An application for permission to appeal was lodged and permission was granted by Upper Tribunal Judge Rintoul on 11 September 2018. The

permission states that it is arguable that First-Tier Tribunal Judge Howard erred in not adjourning the matter, being unaware, it appears, of all the attempts made to obtain Counsel. The permission states that it is also arguable that the Judge erred in not taking into account expert evidence. The permission goes on to state that the appellant will be expected to explain his own absence in a witness statement to be served 14 days before the next hearing.

The Hearing

3. Counsel submitted that the appellant's representative had sent a letter to the First-Tier Tribunal on 26 March 2018 requesting an adjournment. In this letter it is stated that Counsel, Miss Helen of Garden Court Chambers, was not available for the hearing on 28 March as she was already engaged in court on another matter. The letter goes on to state that the representative had asked for alternative Counsel from Garden Court and had also looked to other chambers but had been unsuccessful. The letter finishes by saying that: "In the interests of justice we are requesting an adjournment for about four weeks to enable us to get a Counsel and prepare our client for the hearing."
4. She submitted that that letter of 26 March 2018 is not mentioned anywhere in the Judge's decision. She submitted that at paragraph 5 of the decision the Judge states that neither the appellant nor his representative attended the hearing and that the solicitors had written to the Tribunal on 27 March 2018 seeking an adjournment because of the unavailability of Counsel. The decision goes on to state that there is no suggestion that the solicitors had enquired from other chambers whether there was a Counsel available and because of this the adjournment was not granted and the hearing went ahead. She submitted that it is clear from the representatives' letter of 26 March 2018 that they had been trying to engage alternate Counsel in the Garden Court and in other chambers but had been unsuccessful. Counsel submitted that the appellant did not have a fair hearing and permission should be granted as this is a material error of law and the hearing should be remitted back to the First-Tier Tribunal for a fresh hearing.
5. The Presenting Officer submitted that the appellant appears to have been disadvantaged in this case as he expected Counsel to appear on his behalf. He submitted that none of this was the appellant's fault and as he has been disadvantaged the Home Office is prepared to agree to the appeal being reheard before the First-Tier Tribunal because of an error of law.

Decision and Reasons

6. The appellant has submitted a letter as requested in the permission. It is dated 10 October 2018. I am satisfied with this.

7. It is not clear whether the letter from the appellant's representatives dated 26 March 2018 was before the Judge. I have no reason to suppose that it was not but I find that had the Judge been aware of it an adjournment was likely to have been granted and in the particular circumstances of this case an adjournment should have been granted. The fact that it was not means that the appellant has been disadvantaged through no fault of his own and this is a material error of law.

Notice of Decision

As I find that there is a material error of law in the Judge's decision I direct that the decision of the First-Tier Tribunal is set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing.

The members of the First-Tier Tribunal chosen to consider the case are not to

A handwritten signature in black ink, appearing to read 'Judge Howard', with a horizontal line underneath it.

include Judge of the First-Tier Tribunal Howard.

Anonymity has not been directed.

Signed

Date 19 November 2018

Deputy Upper Tribunal Judge I A M Murray