



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07236/2017

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 19 June 2018

Decision & Reasons Promulgated  
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

F B  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Greer, instructed by Ison Harrison Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, F B, claims to have been born in October 1998 and claims to be a male citizen of Albania. The appellant arrived in the United Kingdom in July 2014 and claimed asylum the following day. The appellant claims to have encountered problems in Albania with another family member and fled in order to avoid the risk of ill-treatment at his hands. Initially, the appellant's claim had been certified. However, following a judicial review, the respondent reconsidered the claim and refusal on 13 July 2017 with a right of appeal. The appellant's representatives lodged an appeal in time on 31 July 2017. However, as a result of an unfortunate

combination of circumstances, the solicitors were unable to represent the appellant at the hearing. The appellant had received a substantial sum of money in compensation from the Home Office for having been unlawfully detained. However, he had received the compensation in the form of a cheque and, being an asylum seeker, he had been unable to open a bank account into which to pay the cheque. The appellant was not eligible for legal aid on account of the compensation payment but nor was he able to use the money to pay Ison Harrison so that they might represent him. It is not entirely clear from the papers, but it would seem that these circumstances were made known to the First-tier Tribunal (Judge Farrelly) which dismissed the appellant's appeal in a decision promulgated on 22 September 2017. What is clear is that the judge was aware that solicitors had prepared the notice of appeal and also that the time between the lodging of the appeal and the final hearing before the First-tier Tribunal had been only 27 days. Indeed, the period between the date of the refusal letter and the hearing was only 45 days. Notwithstanding these problems, Judge Farrelly had proceeded with the hearing.

2. I have read Judge Farrelly's decision carefully and I do not find it satisfactory. The allegation of bias contained in the grounds is not pursued by the appellant as I was informed by Mr Greer, who appeared before the Upper Tribunal. However, the fact remains that the judge's analysis is, by any standards, brusque. For example, at [17], the judge wrote:

"An age assessment was carried out with the conclusion being the appellant was older than he claimed. The age assessment was carried out over an extended period and had the benefit of the foster parents' input. They had the child to observe the appellant over an extended period. I appreciate the difficulties in age assessment and the dangers in judging by appearance. Certainly his appearance to me would be consistent with somebody much older than he claims. Whatever his exact age he is not a child. This means he has started out by telling a lie."

3. Having directed himself of the "dangers in judging by appearance" the judge appears to have proceeded to do exactly that. It is not clear that the judge ever put his observations of the appellant to give him the opportunity for comment. Indeed, there is no indication in the Record of Proceedings, which is now provided by Counsel who appeared before the First-tier Tribunal (which Mr Diwnycz, for the Secretary of State, acknowledged was accurate) that the judge ever raised the matter with the appellant. Further, the judge had before him country information provided by the Secretary of State. He appears to have relied upon that information in making his decision but those parts of the information which he considered relevant were not discussed at all with the appellant at the hearing. In consequence, the appellant has not been given an opportunity to comment on background material which played a significant part in the Tribunal's analysis. Thirdly, the judge boldly asserts at [22] that there is "sufficiency of protection" in Albania. The judge says that this finding is derived from the country information but he provides no references. Instead, the judge simply comments that, "Albania has sought entrance to the European Community (*sic*)." He adds that, "Whilst the country has a history of blood feuds the country has moved more towards a system of law and order." It is not at all clear upon what evidence that assertion is based.

4. Fourthly, the discussion of the internal flight alternative is inadequate. I acknowledge that the issue of internal flight would only arise if the appellant was found to be at risk in his home area, but, on the basis that the judge's analysis of that part of the claim is not satisfactory, the decision cannot be saved by the internal flight analysis. As regards internal flight, the judge simply wrote:

"If there were any truth in claimed difficulties with his uncle this could be avoided by relocating. On the appellant's account he lived in a forest for a year without encountering his uncle. However I do not believe the truth of this claim. If he went to a city like Tirana the chances of his uncle locating him are slim. The grievance claimed relates to land and with the family absent there should no longer be an issue. There is no question of any honour having been restored."
5. The analysis is not clear. The judge has not given any reason for not believing the appellant's claim that he had lived in a forest (indeed, he lived, according to his own account, in a barn) without encountering his uncle.
6. In conclusion, I find that the judge's decision is inadequate and cannot stand. I set it aside. None of the findings of fact shall stand. In addition, on the particular circumstances put before the judge, in particular in light of the appellant's apparent youth (if not minority), coupled with the willingness of Ison Harrison to represent the appellant for difficulties over his compensation payment might be overcome, I believe the judge did not act fairly by refusing an adjournment of the hearing.
7. There will need to be a new hearing and a fresh fact-finding exercise. That is an exercise better undertaken by the First-tier Tribunal to which this appeal is now returned for that Tribunal to remake the decision.

### **Notice of Decision**

8. The decision of the First-tier Tribunal which was promulgated on 22 September 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Farrelly) for that Tribunal to remake the decision.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

9. 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

Date 20 JULY 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 20 JULY 2018

Upper Tribunal Judge Lane