



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09080/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 4 May 2017

Promulgated

On 16 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

CD

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, Counsel instructed by Sentinel Solicitors

For the Respondent: Mr K Norton, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of a national of Albania born in September 2001. There is an anonymity order in place given the fact that the Appellant is a minor. He made an asylum claim on 16 February 2016 which was refused in a decision dated 15 August 2016. The basis of his claim was that he was subject to a blood feud which commenced when his paternal uncle killed two other individuals, since which time he stated that his father had been

in self-confinement and that subsequently a separate blood feud had arisen in relation to his cousins. The Appellant stated that in December 2015, he was directly targeted by members of the families whom his uncle had shot and he himself was shot at. He had then, with the assistance of his cousins, left Albania shortly before his 14th birthday. The Respondent refused his asylum claim. The Appellant appealed against that decision and his appeal came before Judge of the First-tier Tribunal Bartlett for hearing on 6 February 2017.

2. At the outset of the hearing, the Appellant's counsel Mr Collins informed the Judge that the Appellant was present without either of his foster parents and thus there was no responsible adult present and that this was in breach of the Presidential Guidance. He informed the Judge that he was unable to act as the responsible adult as he was the Appellant's legal representative and thus it was necessary to adjourn the appeal in order that Social Services could be contacted and a social worker could be arranged to attend any further hearing as the Appellant's responsible adult. Mr Collins submitted that this was the correct course of action in light of the fact the Appellant had also been unaccompanied by a responsible adult at his asylum interview. The judge declined to adjourn the appeal and proceeded to hear evidence from the Appellant in the absence of a responsible adult and to dismiss his appeal on the basis that she did not accept that the Appellant was a victim of a blood feud. That decision was promulgated on 16 February 2017.
3. An application for permission to appeal was made in time to the Upper Tribunal. The grounds in support of the application submitted essentially that the Judge had erred materially in law in failing to adjourn the appeal in order for a responsible adult to be present. The grounds submit at [7] *"while the Joint Presidential Guidance Note No.2 of 2010 does not indicate that there must be a responsible adult at a hearing it is obviously best practice and as the Guidance put it at (1) good judge craft."* Further it is apparent from paragraph 5.2(iii) of the Joint Presidential Note that *"it is advisable that a child has someone available at all hearings"*. There was nothing to indicate that Social Services could not have provided a responsible adult for a hearing in the future once they had been appraised of the foster carer's failure to attend on this occasion. It was submitted that the Judge erred and acted unfairly in not adjourning rather than proceeding with the asylum appeal of a 15 year old in the absence of a responsible adult. As a result, all of the Judge's purported findings are vitiated and the determination should be treated as a nullity. It was asserted at [9] that whilst the Judge purports to take the Appellant's age into account at all material times in coming to her adverse findings largely on the basis of *"vagueness"* the Judge does precisely the opposite which was also a material error.

Hearing

4. At the hearing before me, I heard submissions from Mr Collins on behalf of the Appellant and from Mr Norton on behalf of the Respondent. I also located the Record of Proceedings by the First-tier Tribunal Judge which I

read to the parties in its material respects and which properly reflected the contents of the grounds of appeal and the submissions by Mr Collins. It is the case that the counsel for the Respondent on that occasion agreed with Mr Collins that it would be best practice to have a responsible adult and that he had only proceeded in cases involving a minor on previous occasions with the agreement of the representative, which is not the position here. Counsel for the Respondent also stated: *“the legal representative would be in the best position to determine what is in the best interests of his client.”* Mr Collins submitted that the Judge’s error was material given that she relied on the Asylum Interview Record where there had also been no responsible adult present and that it was the case that any 15 year old should have the support of a responsible adult at his or her asylum appeal hearing and if neither foster carer were present Social Services would provide a responsible adult for any further appeal hearing.

5. In his submissions, Mr Norton stated that the Judge was not bound by the position of counsel for the Respondent at the appeal hearing that the presence of a responsible adult was not the requirement albeit it would have been preferable. He submitted that it was a matter of a judgment call for the Judge and the only issue is whether it had a material effect on the appeal hearing. He agreed that if there had been procedural impropriety the correct course would be for the matter to be remitted back to the First-tier Tribunal for a further hearing *de novo*.

Decision

6. I find for the reasons set out in the grounds of appeal and the oral submissions of Mr Collins that the Judge erred materially in law by reason of procedural impropriety. Whilst it is the case that she was not bound to adjourn the appeal due to the absence of a responsible adult to support the Appellant during his appeal hearing, I consider that given that the Appellant and his representative wished there to be a responsible adult present, it was unfair on the Appellant who was 15 years of age to proceed in the absence of a responsible adult. The Joint Presidential Guidance Note No.2 of 2010: Child Vulnerable Adult and Sensitive Appellant Guidance provides as follows at 5.2(iii) that a Judge should:

“Identify and record whether a minor asylum seeking Appellant has a responsible adult e.g. parent, social worker, teacher, foster parent who will be attending the substantive hearing to provide support. A legal representative is not and cannot be a responsible adult. It is advisable that a child has someone available at all hearings but it is not possible for you to direct a third party to attend.”

7. There is also footnote 5 to that sub-paragraph which provides that paragraph 352 of the Rules requires a responsible adult to be present at all interviews conducted by the Respondent. That should have alerted the Judge to a concern that the Appellant had not previously had the benefit of a responsible adult at his asylum interview. There was a legal representative present but it is clear from that sub-paragraph that a legal

representative is not and cannot be a responsible adult. Furthermore, whilst at [3] the Judge records that of her own volition she telephoned the Appellant's foster mother and then reported back to the parties that she was still at home, this is somewhat unorthodox, not least as there is no attendance note as to the contents of the conversation between the Judge and Appellant's foster mother. Given that Mr Collins on behalf of the Appellant had himself telephoned the Appellant's foster mother, it was not in my view, incumbent upon the Judge to double check that information herself. It is also the case that the Judge wished Mr Collins to act as the responsible adult until her attention was drawn to the Joint Presidential Guidance Note.

8. At [4] of the judge's decision, whilst she gave consideration to the decision in *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC) she went on to hold as follows

"I refused the request for an adjournment as I considered that the Appellant would be able to have a fair hearing without the attendance of his foster mother or a responsible adult. I accepted that Mr Collins is the legal representative could not be a responsible adult however I considered the Appellant had legal representation and he also had the full assistance of the Albanian interpreter Ms X."

9. In so finding, I find that the Judge failed to give adequate reasons as to why the Appellant would be able to have a fair hearing in the absence of a responsible adult given that the Presidential Guidance Note makes clear that a legal representative cannot also be a responsible adult nor clearly can an interpreter. In these circumstances, I find that given that the fairness of the hearing is undermined, the Judge's findings cannot be sustained and the matter is remitted for a hearing *de novo* in the First-tier Tribunal by a Judge other than Judge of the First-tier Tribunal Bartlett.

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 Rebecca Chapman

Date 12 May 2017

Deputy Upper Tribunal Judge Chapman

