



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

Case No: UI-2023-004845

UI-2023-004848

First-tier Tribunal No: PA/52212/2023

PA/52213/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

10<sup>th</sup> January 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WELSH**

**Between**

**ON and SN**  
**(ANONYMITY DIRECTION MADE)**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellants

Respondent

**Representation:**

For the Appellant: Ms Easty of Counsel, instructed by Duncan Lewis Solicitors

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

**Heard at Field House on 2 January 2024**

**DECISION AND REASONS**

**Anonymity Order:**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellants or members of their family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the Appellants seek international protection and so are entitled to privacy.**

**Introduction**

1. The appellants have been granted permission to appeal the decision of First-tier Tribunal Judge Moon (“the Judge”), promulgated on 3 October 2023.
2. At the hearing before me, the parties agreed that the Judge had erred. I agreed with them, concluding that the decision of the Judge involved an error on a point of law and gave brief oral reasons.

### **Factual background**

3. The Appellant are nationals of Albania. On 24 June 2021, they made protection and human rights claims, based on their fear arising from a land dispute in their home country. In particular, it is the appellants’ case that, in June 2021, they were threatened by a man and that threat was directly linked to the land dispute (at the relevant time, they were living in the UK, having been granted student visas). Their mother, who was and is resident in Albania, was also threatened at around the same time and has continued to be threatened.

### **Proceedings in the First-tier Tribunal**

4. The hearing at the First-tier Tribunal took place on 2 October 2023. At the commencement of the hearing, the Judge refused an application made by the appellants to adjourn, the grounds for the application being that the appellants sought to rely upon police records created following their reporting of the June 2021 incident. Counsel for the appellants informed the Judge, and provided documentary evidence to support the submission, that the police records existed and would be available by 27 October 2023.
5. The judge refused the application on the grounds that [9]:
  - (1) there was no good reason for the appellants’ solicitors not having made the request to the police in time for the relevant material to be available at the appeal hearing;
  - (2) the evidence sought would not add to the appellants’ case because the Judge was prepared to accept that the appellants did report the alleged incident to the police and the details contained in the report would do no more than confirm the account contained elsewhere in the evidence.
6. In dismissing the appeal, the Judge found that the accounts of the threats made to the appellants and their mother were not credible [42]. This finding being determinative of the appeal, the Judge did not go on to consider the question of internal relocation and sufficiency of protection.
7. In concluding that the account of the appellants in respect of the June 2021 incident was not credible, the Judge took into account the following factors [39]:
  - (1) the appellants had been consistent in their accounts of the incident having taken place;
  - (2) the appellant’s reported the incident to the police but that did not demonstrate that the incident actually happened;
  - (3) having observed the appellants giving oral evidence, the Judge formed the impression that their evidence had been rehearsed and was reinforced in this view by the fact that one of the appellants had been “caught unaware” when asked a question about a subject matter not covered in his witness statement, namely whether it was light or dark at the time of the alleged incident; and

(4) the Judge found that, if the incident had indeed occurred, the appellants would have been able to remember whether it was light or dark at the time of the incident.

### **Grounds of appeal and the Upper Tribunal hearing**

8. The grounds of appeal pleaded that the Judge erred in refusing the application to adjourn because it deprived the appellants of a fair hearing (ground 1) applying Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). As stated above, Mr Basra for the Respondent conceded that the error was made out. Two further grounds were pleaded, relating to the Judge's assessment of expert evidence and her approach to the assessment of the credibility of the appellants' mother, neither of which I need to determine given my conclusion in relation to ground 1.
9. I granted the application to admit the evidence obtained from the police pursuant to rule 15(2) of the Upper Tribunal Procedure Rules, on the basis that it was necessary to admit the evidence in order for me to assess the merits of ground 1.

### **Decision**

10. Whilst I have sympathy with a busy First-tier Tribunal Judge and the undoubted need to progress cases expeditiously, I have reached the conclusion that she erred in refusing the application to adjourn.
11. The Judge was entitled to take into account that there was no good reason why the appellants' solicitors had not obtained the evidence in time for the appeal hearing. However, she failed take into account relevant factors that supported the granting of the application, namely that (i) the failing was that of the appellants' solicitor, not the appellants who, given their relatively young ages, were entitled to rely upon their solicitors obtaining the evidence; (ii) the failing of the solicitor was no more than an oversight by otherwise experienced, competent and reliable solicitors; (iii) an adjournment would rectify the problem because the material did exist; and (iv) the adjournment would be brief, as the police had stated they would disclose the evidence no later than 27 October 2023.
12. The other factor relied upon by the Judge was her view that the potential evidence, though relevant, would have little, if any, probative value. However, the evidence, which I have now seen, demonstrates that the account given by the appellants to the police in June 2021 is consistent with subsequent accounts. This consistency is capable of supporting their credibility, given that, whilst they would have had access to the written account of the asylum interview at the time of the preparation of their witness statements, they did not have access to a transcript of the oral account they had given to the police. Certainly, this consistency is capable of being given far greater weight in the assessment of credibility than the appellants' inability to remember whether it was light or dark at the time of the incident; indeed, it is questionable whether any such adverse inference should have been drawn at all given that the appellants were only 16 years old in June 2021 and gave their oral evidence approximately 2 ½ years after the incident.
13. Take into account all these factors into account, in my judgment the refusal of the adjournment application did deprive the appellants of a fair hearing.

### **Notice of Decision**

14. The decision of the First-tier Tribunal involved the making of a material error on a point of law such that I set aside the decision.

### **Remaking decision**

15. As indicated at the error of law hearing, I concluded that the appropriate forum for remaking is the First-tier Tribunal because the assessment of the credibility of the accounts of the appellants about events in the UK will be relevant to the assessment of the credibility of the mother's account about events in Albania and therefore necessitates fresh findings of fact on the key issue in the case. In reaching this decision, I apply paragraph 7.2 of the Senior President's Practice Statement.

### **Directions**

16. The following directions apply to the future conduct of this appeal:
- (1) The appeal is remitted to the First-tier Tribunal.
  - (2) The appeal is not to be listed before First-tier Tribunal Judge Moon.
  - (3) No findings of fact are preserved.

**C E Welsh**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**2 January 2024**