



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/00231/2015

Appeal Numbers:

AA/00232/2015

THE IMMIGRATION ACTS

Heard at Newport

On 5 July 2016

Determination

Promulgated

On 15 July 2016

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**A C and S C
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Simmonds of Duncan Lewis Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I/we make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellants. This direction applies to both the

appellants and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Background

2. The appellants are citizens of Angola who were born respectively on [] 1994 and [] 1992. They arrived in the United Kingdom on 3 October 2012 and, two days later, made claims for asylum. There followed the usual screening interviews and asylum interviews. Their applications were refused in decisions taken on 15 December 2014 and 16 December 2014 respectively.
3. They appealed to the First-tier Tribunal and, in a decision promulgated on 5 May 2015, Judge A Cresswell dismissed both appellants' appeals on all grounds. They sought permission to appeal to the Upper Tribunal. Following an initial refusal by the First-tier Tribunal, on 12 August 2015 the Upper Tribunal (DUTJ Davey) granted the appellants permission to appeal.
4. On 2 September 2015, the respondent filed a rule 24 notice seeking to uphold the decision.
5. Thus, the appeals came before me.

The Claims

6. The basis of each appellants' claims are twofold. First, the appellants claimed that they had been trafficked to the UK. Secondly, the appellants claimed that their father was an activist in FLEC-FAC in Angola (in fact a General) and the cause of Cabinda independence from Angola. The appellants claimed that they were at risk on return because of their father's political involvement and also because they had been involved, for example, in distributing leaflets supporting the Cabinda cause.

The Judge's Decision

7. Judge Cresswell did not accept the appellants' evidence and their account. First, he did not accept that they had been trafficked to the UK having previously gone to the Netherlands only to be returned to Angola by the Dutch authorities in 2010. He rejected the appellants' account that it was implausible, if they had been trafficked, that they would have been left at the airport in the UK by their traffickers and been told to say they were minors. This was implausible, the judge reasoned, as it was bound to attract the attention of the authorities.
8. Secondly, the judge did not accept the appellants' account that their father was an activist in FLEC-FAC as claimed. The judge identified inconsistencies in the appellants' evidence; did not accept that the evidence of an expert (Dr Tallio) assisted the appellants' claims and rejected the evidence, relied on by the appellants, to establish that their father was politically active as they claimed. The judge also drew adverse

inferences against the appellants based upon a television interview which, in contrast to their claims, did not show them in circumstances of hardship or poverty.

The Appellants' Grounds

9. Mr Simmonds of Duncan Lewis, Solicitors represented the appellants before me. They had previously been represented by a different firm of solicitors. The grounds of appeal, upon which the appellants were granted permission, were not drafted by the appellants present or past legal representatives. Although they lacked the focus of professionally drafted grounds, DUTJ Davey nevertheless saw arguable merit in the points raised. However, to assist the Tribunal, when granting permission DUTJ Davey invited the appellants to submit shortened or condensed grounds for the UT hearing. Mr Simmonds duly, and helpfully, did so in his skeleton argument. In that skeleton argument he raised eight grounds of appeal. I would summarise those grounds as follows.
 1. The proceedings were unfair as the appellants had difficulty in understanding the interpreter when giving evidence.

Reliance is placed upon the evidence of "ED" (at page 13 of the UT bundle) who attended the hearing and was told by the appellants after the hearing that there were "many difficulties" with the interpreter and that they felt that the interpreter was "not interpreting correctly".
 2. The judge erred in law in finding that the appellants were not at risk because of political activity by themselves.

Reliance is placed upon a leaflet (which they claim to have distributed in 2007 prior to leaving Angola) contained within the UT bundle at page 15 and in translation in an additional bundle at page 3).

Further, the judge wrongly discounted the expert's evidence (Dr Tallio) in support of their claim based upon their father's involvement in FLEC-FAC.
 3. The judge erred in law by wrongly concluding that there were inconsistencies in the evidence of the appellants at their screening interviews and subsequently at their asylum interviews given that they had accepted that they lied in their screening interviews because they had been told by their traffickers to give the same story as they had given previously in the Netherlands.
 4. The judge erred in law in concluding that supporting evidence, which it was said linked the appellants' father to FLEC-FAC, was evidence from a bona fide political opponent and, in any event, concerned the appellants' father.

Reliance is placed upon copies of the appellants' birth certificates and a web page that shows that the author of the evidence is part of FLEC-FAC (see pages 25-27 of the FtT bundle).

5. The proceedings were unfair as the appellants' (then) legal representatives failed to produce evidence in their possession from FLEC-FAC confirming that the writer of the supporting evidence was connected to FLEC-FAC.

In addition, in relation to the appellants' claims based upon trafficking, it was unfair that the respondent had failed to put before the Tribunal the "First Responder Report" which demonstrated that the appellants were under the control of another person on arrival in the UK which was consistent with them being trafficked.

6. The judge had mistakenly taken the view that there was an inconsistency between the appellants' evidence about their living situation in Angola (as one of considerable poverty) based upon a photograph showing them wearing clothing and jewellery.

Reliance is placed upon evidence from "LA" a Dutch national stating that she purchased the items for the appellants when they were in the Netherlands.

7. The judge erred in law in concluding that the appellants had not been trafficked. In particular, his reasons that their arrival in the UK, when they were told to present themselves as minors, was implausible was not supported by the Home Office guidance, *Safeguarding Children who may have been trafficked* at para 2.14 that in some cases "the traffickers insist that the child applies for asylum".
8. The judge erred in law in assessing the evidence, in particular in taking into account that documents were only in copy form; relying on an inconsistency between the appellants' evidence and that of "LA" as to the date their father went missing; and in taking into account that the appellants had "voluntarily returned" from the Netherlands to Angola in 2010 when, in fact, they had not left voluntarily but had been removed.

Reliance is placed upon evidence from the Dutch authorities (at pages 94-104 of the UT bundle).

The Respondent's Submissions

10. In his submissions, Mr Richards, on behalf of the Secretary of State, sought to uphold the judge's decision.
11. At the outset, he accepted (in ground 3) that in para 21(xxv) of his determination the judge had wrongly identified an inconsistency in the evidence of the appellants in both their asylum interviews, namely that as

part of their account they had, at one point, been collected from their school by their father's driver. Mr Richards accepted that there were no inconsistencies in their asylum interviews on this point when, during the course of the submissions, the asylum interviews were subject to close analysis. Nevertheless, he submitted that that error was not sufficient to overturn what was a well-reasoned determination with defensible findings.

12. First, Mr Richards submitted that the appellants had confirmed during the hearing that they understood the interpreter (see para 2 of the determination). He submitted that the appellants were legally represented by Counsel and there was no record in the determination, nor was it suggested now, that Counsel had intervened because there were difficulties with the interpretation.
13. Secondly, Mr Richards submitted that the bulk of the grounds were, in fact, no more than an attempt to assert errors of law which were no more than a disagreement with the judge's findings. He submitted that the new evidence relied upon could and should not be admitted applying the principles in Ladd v Marshall [1954] 1 WLR 1489 as it could have been obtained previously and therefore did not satisfy the first requirement in Ladd v Marshall that the new evidence could not "with reasonable diligence" have been obtained for use at the hearing. He reminded me that the appellants were professionally represented.
14. Thirdly, as regards the "First Responders Report" held by the Secretary of State, Mr Richards submitted that there was no unfairness in not producing this for the Judge as, subsequent to this document, there had been an adverse "reasonable grounds" decision on the trafficking issue. The "First Responders Report" was, therefore, of little relevance. The fact that there was now a reconsideration pending of that "reasonable grounds" decision did not affect the legality of the judge's findings and decision.
15. Fourthly, Mr Richards accepted that the first appellant had, in her evidence, given evidence about her appearance in the photograph in Angola which the judge had taken into account in doubting her credibility. She had said that the clothes and jewellery were bought for her in the Netherlands and that her sister helped her with her appearance. Nevertheless, Mr Richards submitted that this was not a material error.
16. Finally, Mr Richards submitted that in reaching his adverse credibility finding, the judge was entitled to take into account that documents were photocopies and he had given detailed reasons in para 21(xviii)-(xxiv) for giving "little weight" to Dr Tallio's report.
17. Mr Richards submitted that the judge's findings and decision were legally sustainable.

Discussion

18. As will be clear from the above, there are a wide range of points raised by the appellants challenging the judge's decision. The judge's decision is a detailed one with his reasoning running to over 30 paragraphs (see paras 21(i)-(xxxii)). Although I do not accept all of the grounds put forward by Mr Simmonds are made out, I do accept a number of the grounds are made out and amount to material errors of law when taken into account cumulatively.
19. Before I turn to the submissions which I accept, I begin however with Mr Simmonds first ground, namely that the proceedings were unfair because the appellants could not understand the interpreter. That ground is not, in my judgment, made out.
20. First, the judge himself noted that there was no difficulty with the appellants and interpreter understanding one another (see para 2). Secondly, as Mr Richards pointed out in his submissions, during the course of the hearing no objection was made by the appellants' Counsel nor was there any suggestion from the appellants themselves that there were difficulties. Thirdly, there is no direct evidence from the appellants, in the form of witness statements, addressing this issue. The only evidence is from ED who reports what was said by the appellants to her after the hearing. The only matter reported directly by her in that letter (at page 13 of the UT bundle) is that the first appellant answered some of the questions in English and was told by the judge to use the interpreter. That is not an uncommon practice giving the individual the opportunity to use an interpreter or give evidence in English. Switching in and out of using an interpreter and English can cause confusion at a hearing and leave a judge unsure whether, in the absence of interpreted questions and answers, the individual has understood what is being asked of them. Nothing more can, in my judgment, be read into what is reported by ED in her letter. Fourthly and most importantly, Mr Simmonds was unable to point to any aspect of either appellant's evidence which was not correct or in some way affected by a failure in the interpretation and which the judge took into account adversely to the appellants. Even if, therefore, there were difficulty for the appellant in the interpretation as claimed it had no impact upon the fairness of the proceedings or otherwise so as to amount to an error of law.
21. I have begun with that ground, namely ground 1, even though I have rejected it because it raised a challenge to a fundamental aspect of a hearing, namely its fairness. It is right, therefore, that despite my conclusion that the judge's decision cannot stand that I make clear that this ground forms no basis for my conclusion and decision.
22. I turn, then, to the other grounds relied upon by Mr Simmonds.
23. Central to each of the appellants' claims was that their father was an activist in FLEC-FAC (a General) and as a result of that they were at risk from the Angolan authorities. The judge did not accept that the appellants' father was such an individual as they claimed.

24. In support of their claim, the appellants relied upon a letter from a Mr “N” who attested that their father: “is one of our activists working in the field in Cabinda ... and is currently under our protection in Mayombe Forest.”
25. Before the judge, Mr Nelson gave evidence about Mr “N”. Mr Nelson, together with his wife, were supporting and assisting the appellants in the UK. At para 21(x) the judge summarised Mr Nelson’s evidence as follows:
 - “(x) Mr Nelson told me that he had searched the Internet for exiled Cabindans connected with FLEC-FAC and the name of Mr “N” had come up and a telephone number had been found. He said that the first appellant had spoken to Mr “N” by telephone in Portuguese and she told him that he had told her that he knew of her father. Mr Nelson told me that a French friend of his from Bridgend had also spoken to Mr “N” and she confirmed to Mr Nelson what the first appellant had said to Mr Nelson, i.e. that he said he knew of the Appellant’s father. Mr “N” had told the French friend, Anne, that he would speak to the Directorate of the Cabindan Government in exile and this subsequently led to the letter from Mr “N”.”
26. At para 21(xii) the judge examined the evidence and concluded that there was “no evidence” that Mr “N” was a representative of “Cabinda” by which the judge meant FLEC-FAC as follows:
 - “(xii) I do have concerns about whether the information about the claimed father of the Appellants actually comes from an official source, note that there is no evidence that the man referred to by Mr [N] is actually the father of the Appellants and note also my concern that Mr [N] would be able to provide the statement about Mr Candido that is provided in the affidavit. I note that all of the documents are copy documents only. Whilst there was a copy of a passport page of Mr [N], his name was spelt Mr [N2] whereas the name signed to on the attestation was spent Mr [N]. An earlier part of the attestation spells the name as Mr [N2]. It would be a most unusual occurrence for a person to misspell his own name, I find. I am also provided with 2 web pages which refer to Mr [N] on one and Mr [N2] on the other. There are no original documents from FLEC-FAC and I can see no evidence that Mr [N] or Mr [N2] is actually a bona fide representative of Cabinda. Nor does it seem plausible that Mr [N] could locate the father of the Appellants and yet the Appellants seemingly be unable even to this date to have any contact with their father.”
27. I have used “N1” and “N2” to reflect two different spellings whilst maintaining anonymity.
28. Mr Simmonds made two submissions in relation to this.
29. First, (within ground 4) he submitted that there was evidence linking Mr N to FLEC-FAC. That was contained in the web pages copied at pages 25 and 26 of the First-tier Tribunal bundle. At pages 26 and 27, there is a set of minutes of a meeting of FLEC-FAC in Paris on 27 September 2014 referring to Mr N as a “press spokesman”. At para 27, the website refers

to Mr N (albeit with a slightly different spelling) but clearly capable of being understood as being the same man as an individual who “headed the delegation” received by the Portuguese President in May 2003. A photocopy of Mr N’s passport is at page 25.

30. In para 21(xii), the judge has, in my view, failed to take into account the evidence before him that links Mr N to FLEC-FAC in disregarding his evidence that the appellants’ father is a FLEC-FAC activist.
31. As part of his submission, Mr Simmonds pointed to the photocopy of birth certificates and their translations at pages 29-30 of the First-tier Tribunal bundle which, he submitted, linked the appellants to their claimed father. In truth, these documents are very poorly photocopied and very difficult to read. Nevertheless, there was evidence from the appellants themselves and some supporting evidence from “LA” (at pages 31-35 of the FtT bundle) which were capable of linking the appellants to the man referred to by Mr N.
32. Secondly, (within ground 5) Mr Simmonds relied upon evidence that, he submitted, linked Mr N to the FLEC-FAC which had been submitted by the appellants to their previous legal representatives but which their legal representatives had not placed before the judge. The evidence in translation is at page 6 of an additional bundle submitted for the UT hearing. It is dated 23 December 2013 and is from Anzita Henriques Tiago, President of FLEC-FAC which refers to Mr N as an “Advisor to the President of the FLEC-FAC”. Mr Simmonds drew my attention to an email (at pages 76-77 of the UT bundle) from Mrs Nelson to the appellants’ previous legal representatives which, in addition to a number of other documents, attached this document. Mr Simmonds pointed out that the appellants had made a complaint to their previous legal representative concerning the failure to submit this document to the judge in support of their claim. He drew my attention to the complaint at page 73 of the UT bundle. As I understood him, there is as yet no response to that.
33. Mr Simmonds submitted that, albeit through no fault of his own, the judge’s finding was flawed. This evidence was now admissible to demonstrate that the proceedings were unfair. Mr Simmonds accepted that the appellants could not fully comply with the Ladd v Marshall principles as this was a document which was available to the appellants at the day of the hearing. It was not, therefore, a document which could not be obtained by using “reasonable diligence” at the date of the hearing. However, Mr Simmonds submitted that the proceedings were nevertheless unfair and he relied upon MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC). He further submitted that the Tribunal should not “visit upon” the appellants the fault of their former legal representatives. He relied upon the case of FP (Iran) v SSHD [2007] EWCA Civ 13.
34. In my judgment, the evidence from the President, Mr Tiago is admissible in order to establish that the judge, albeit through no fault of his own, made a material error of fact amounting to an error of law. The Ladd v

Marshall principles, allowing for the admission of material in an appellate hearing, require:

- (1) The new evidence could not with reasonable diligence to have been obtained for use at the trial (or hearing);
- (2) The new evidence must be such that, if given, it would probably have an important influence on the result of the case (though it need not be decisive);
- (3) The new evidence was apparently credible though it need not be incontrovertible.

35. That position was affirmed in public law case in R (Iran) v SSHD [2005] EWCA Civ 982, especially at [31]-[33]. The principles are not an inevitable 'straight-jacket'. Departure from the stated "principles" for admissibility may be justified in exceptional circumstances in the interest of justice (see E&R at [91] and R(Iran) v SSHD [2005] EWCA Civ 98. In admitting the evidence, the "fault" of the appellants' legal representative is relevant in determining its admissibility (see FP (Iran)).
36. Likewise, the principle that a mistake of fact may amount to an error of law was recognised in E & R v SSHD [2004] EWCA Civ 49 especially at [63]-[66]. The requirements are that:
 - (1) There must be a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter;
 - (2) The fact or evidence must have been established, in the sense that it was uncontentious and objectively verifiable;
 - (3) The appellant (or his advisors) must not have been responsible for the mistake;
 - (4) The mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning.
37. The principles are helpfully drawn together and adopted by the Upper Tribunal in MM - to which I was referred by Mr Simmonds - at [14]-[23].
38. Here, it is clear from the material that the appellants provided the relevant documentation to their former legal representatives. The former legal representatives did not put that material before the First-tier Tribunal Judge. The material was clearly relevant to his assessment of the appellants' claim and, in particular, their credibility. There was no fault on their part and they have made a complaint to the solicitors about their conduct.
39. Applying the approach in MM, drawing together the earlier case law, I accept that the 'new' evidence is admissible. The error is as to the established fact, in my judgment, that there was no evidence linking Mr N to FLEC-FAC. That is a verifiable fact. I do not understand Carnwath LJ to exclude from consideration fault by legal representatives. Each case must turn upon its own particular circumstances. Here, the appellants, in

the words of Carnwath LJ in E & R at [63] “could not fairly be held responsible for the error”. That is, in my judgment, significant. The error was material to the Judge’s determination of the appellants’ credibility and their claims. There was a mistake of fact, amounting to an error of law, as a result of the failure to put before the Judge the documents held by the appellants’ former legal representatives. The proceedings were, as a result, unfair.

40. As a consequence, I am satisfied that Mr Simmonds has made good the substance of ground 4 and ground 5 of his skeleton argument.

41. In addition, Mr Richards accepted the substance of ground 3. This arises out of the judge’s reasoning in para 21(xxv) which was as follows:

“(xxv) The Appellants now say, effectively, that they told lies at the screening interview because they were instructed by their traffickers to repeat the story they had told the Dutch authorities and that, thereafter, they told the truth. There are, however, inconsistencies not resolved by that explanation. For instance, the [first appellant] said at the screening interview that a priest had come to her school and told her that a brother and male cousin had been killed and named her older sister as being alive, but at her asylum interview said that her older sister had been killed. Thus there was not simply a case of alteration of dates in the retelling of the story told to the Dutch authorities. Similarly, the [second appellant] had said at the screening interview that her eldest brother had been killed and that her older sister was on the run too, whereas at the asylum interview she said that her older sister had been killed. During her asylum interview, she had said that it was her father’s driver, not the priest, who had come to the school, which presents a difference in the accounts of the two women.”

42. The appellants accepted that in their screening interview they had not told a truthful account. Their explanation was that their traffickers told them to tell the same story as they had told the Dutch authorities earlier. In their asylum interview, however, they told the truth. In para 21(xv) the judge states that there are “inconsistencies not resolved by that explanation”. The judge then goes on to give as the example of this differences between the accounts of the first and second appellant given in their asylum interview as to who it was collected them in a car from their school – inconsistently one saying it was their father’s driver and the other saying it was a priest.

43. Mr Richards accepted that that was not an inconsistency that could be identified in reading their respective interview records. He accepted that both had said that it was their father’s driver who had collected them and that the priest was involved thereafter in finding them. Given the concession, I need not set out their answers in their asylum interviews which are as Mr Richards accepted (see Q100 (A1) and Qs 10 and 51 (A2)). As a consequence, there was no inconsistency in their accounts although there was, of course, an inconsistency between what they said in

their screening interviews (which they accepted was false) and what they said consistently with each other in their asylum interviews. That inconsistency could be taken into account but only if the judge did not accept their explanation as to why they had said what they had said in their screening interview. That was, of course, not part of his reasoning in para 21(xxv) which parks the explanation and then goes on to say that nevertheless there are inconsistencies between what they say in their asylum interviews. That reasoning is flawed and taken with the other matters I identify contributes to the cumulative materiality of the errors which I accept.

44. The errors I have so far identified relate either directly to the appellants' account and their claimed risk on return because of their father or relates to their general credibility. There are in addition, in my judgment, two difficulties with the judge's reasoning in relation to their trafficking claim.
45. First (as raised in ground 6), at para 21(xiii) the judge commented upon and took into account what he perceived to be an inconsistency between their claim to have lived in poverty in Angola and the photographs he had seen, in particular of the first appellant, wearing jewellery and clothing inconsistent with that. Mr Richards accepted that the first appellant had said in her evidence that these clothes and jewellery were bought from her in the Netherlands and that the sister helped with her appearance. This raised evidence of an explanation contrary to the implication that he drew. The judge made no reference to that evidence in reaching his view in para 21(xiii). That, in itself, was an error. In addition, there is now evidence from "LA" (at pages 78 and 79 of the UT bundle) that she bought the first appellant the items. Mr Simmonds submitted that this evidence was admissible under Ladd v Marshall principles as it was not a matter that it was known was relevant to the judge's decision at the hearing. That may not be wholly correct given that it was at least raised in cross-examination with the first appellant. However, its importance may well not have been understood until the judge's reasoning was available. I bear in mind the importance of at least some flexibility in applying the Ladd v Marshall principles in public law cases, in particular those involving asylum claims. In my judgment, the evidence is both admissible and establishes a mistake of fact (as to relevant evidence) amounting to an error of law by the judge.
46. Secondly (as raised in ground 7), in assessing the credibility of the appellants' claim to have been trafficked at para 21(xvii) the judge stated as follows:
 - “(xvii) The account of trafficking is not plausible in a number of respects. The account given suggests that the Appellants were brought to the UK by a trafficker and then left at the airport, which would suggest a wasted investment by the traffickers. Also, the Appellants say that they lied at the screening interview because they had been told to do so by the traffickers and that they had been told to say they were minors. I find it very unlikely indeed that traffickers would advise two young women whom

they were leaving to pass through the airport on their own to say that they were minors, when this would be bound to attract the attention of the authorities.”

47. Mr Simmonds submitted that the Home Office’s guidance, in particular at para 2.14 on trafficking children was relevant in that it said:
- “Some groups of children are instructed by their traffickers to avoid contact with authorities. In other cases the traffickers insist that the child applies for asylum as this gives the child a legitimate right of temporary leave to remain in the UK.” (Emphasis added)
48. In my judgment, this material was relevant to the issue of whether the appellants’ accounts of being trafficked were “plausible”. Although this was a public document, the respondent should have produced it in order to assist the judge (see AA (Afghanistan) v SSHD [2007] EWCA Civ 12 at [28]). It is an aspect of the “shared interest” in asylum cases of decisions being taken on the best information and achieving a correct result (see E & R at [64] and [66]). Applying Ladd v Marshall principles, I accept that the material is admissible. The first Ladd v Marshall principle must be applied with an element of flexibility in cases of this nature. It appears that the issue of plausibility of the appellants’ accounts may only have been raised in the judge’s determination and, therefore, the need for this evidence was not obvious. The evidence was clearly relevant and credible given its source. It was material to the Judge’s determination of credibility and to his actual reasoning in para 21(xvii).
49. For these reasons, I am satisfied that Mr Simmonds, on behalf of the appellants, has made good the substance of grounds 3, 4, 5, 6 and 7. Although the judge’s reasons are detailed, I am not persuaded that had the errors not been made the judge would necessarily have reached the same findings and conclusion on the appellants’ claims, in particular the credibility of their accounts.
50. I have not found it necessary to consider grounds 2 and 8 although I would remark, in relation to ground 2 that the FLEC pamphlet produced before me makes no mention of the appellants and is not, on its face, directly linked to the appellants and I have considerable doubt whether applying Ladd v Marshall and E & R this new evidence, even if admissible, demonstrated any error of law based upon a mistake of fact by the judge. Likewise, I have not dealt with Mr Simmonds’ submission that the judge’s reasoning that led him to give “little weight” to the expert’s report at para 21(xviii)-(xxiv) was inadequate in law. Suffice it to say that on rehearing before the First-tier Tribunal, it will be for the judge at that hearing to consider this (and any other) experts reports in the context of all the evidence relied upon by the appellants at that hearing. Given my view on the materiality of the errors in the grounds I have dealt with above, I need say nothing about ground 8.

Decision

51. The decision of the First-tier Tribunal to dismiss each of the appellants' appeals involved the making of a material error of law.
52. The judge's findings and decision cannot stand and are set aside.
53. Given the nature and extent of the fact-finding, and applying para 7.2 of the Senior President's Practice Statements the proper disposal of these appeals is to remit them to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Cresswell.

Signed

A Grubb
Judge of the Upper Tribunal

Date:15 July 2016