Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00521/2016
AA/13548/2015, AA/13687/2015
AA/13688/2015, AA/13689/2015
AA/13690/2015, AA/13691/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 October 2018	**On 22 November 2018**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

IM
NY
MA
HM
AM
ZM
LM
(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr E Fripp, Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are appeals against the decision of judge of the First-tier Tribunal Anstis (the judge), promulgated on 25 November 2016, in which he dismissed the appellants' appeals against the respondent's decisions of 30 November 2015 and 5 January 2016 refusing their asylum, humanitarian protection and human rights claims. Although these appeals were previous considered by a Deputy Judge of the Upper Tribunal, applications for permission to appeal to the Court of Appeal against the Deputy Judge's decision were granted and allowed by consent to the extent that they were remitted to the Upper Tribunal for re-consideration of the question whether the First-tier Tribunal's decision was undermined by a material error of law.

Factual background

2. The appellants are stateless persons of Palestinian ethnicity who were resident in Lebanon prior to their arrival in the United Kingdom. The 1st appellant, born in 1971, is the husband of the 2nd appellant, born in 1980, and they are the parents of the remaining appellants, all of whom are minors born in 2001, 2005, 2009, 2010, and 2012.

3. The factual matrix of the protection claims is the same for all the appellants and is centred on the 1st appellant. The 2nd to 6th appellants are essentially dependent on the 1st appellant's protection claim. I summarise the 1st appellant's account of events supporting the protection claims.

4. The 1st appellant was born and lived in the Al Rashidiya refugee camp in Lebanon. He worked for Fatah, the largest faction of the Palestinian Liberation Organisation (PLO) but suspended his involvement when he moved to Dubai in 2006 to work in construction. He returned to Al Rashidiya in 2013 and renewed his work for Fatah.

5. He was in charge of assisting Palestinian refugees who immigrated from a Syrian refugee camp to Lebanon. He was given $400,000 to spend on the refugees coming from Syria. To this end he went to live in the Ein al-Hilweh refugee camp. He also visited a camp in an area of Lebanon called Arsal, close to the Syrian border, but did so voluntarily without informing Fatah.

6. At the beginning of December 2014, he was approached by [HS], an official of Jund al-Sham, a militant Islamist group, and asked to register their families as Palestinian refugees from Syria to enable them to receive financial support of around $100,000 dollars, and to spy against Fatah. The 1st appellant believed [HS] may have become aware of his activities because the 1st appellant's sister knew [HS]'s sister and his activities were discussed in conversation. The 1st appellant alternatively claimed that [HS] may have discovered his activities "… because everyone knows what is going on in the camp."

7. Having refused to cooperate [HS] threatened to kill the 1st appellant and kidnap his wife and children. The 1st appellant requested a few days to enable him to make appropriate arrangements. The 1st appellant subsequently fled with his family back to the Al Rashidiya camp. Neither in his 1st witness statement dated 7 December 2015, nor in his substantive asylum interview conducted on 8 December 2015, did the 1st appellant make any mention of being detained himself when he and his family fled back to the Al Rashidiya camp.

8. The Lebanese army stopped one of the 1st appellant's brothers at the entrance of the Al Rashidiya camp on 9 December 2014 believing he was the 1st appellant. The brother was questioned about the nature of the 1st appellant's work and whether he went to Arsal and whether he supported the Syrian people financially or by the provision of weapons. The 1st appellant maintains that his brother was questioned by various Lebanese intelligence agencies and by Hezbollah, who believed the 1st appellant had been providing weapons to the Syrian opposition. The brother was released after 24 hours.

9. The 1st appellant was informed a few days later by the People's Committee of the camp that the Lebanese authorities were looking for him and had requested that he hand himself over for the purposes of an investigation into a security matter. The 1st appellant believed Hezbollah was behind this and that he would be tortured by that organisation. After informing the leader of Fatah about his visit to Arsal the 1st appellant was advised to deliver himself for investigation. The 1st appellant also received calls from the Islamic Jihad Movement ordering him to deliver himself to the Lebanese state and threatening that his wife and children would be kidnapped if he did not.

10. Fearing for his safety and the safety of his family the 2nd appellant's father paid $40,000 to an agent to facilitate the journey of the 2nd to 6th appellants to the UK. The 1st appellant's father-in-law then paid a further amount of money to facilitate the 1st appellant's journey to the UK to be reunited with his family.

11. No issue was taken with the identity or nationalities of the appellants. In the Reasons for Refusal Letters the respondent did not however accept that the 1st appellant was involved with Fatah or that the Lebanese authorities, Hezbollah and members of extremist Islamic organisations had any adverse interest in him.

The First-tier Tribunal's decision

12. The judge accurately summarised the basis of the appellants' claims and accurately set out the general principles relating to asylum and humanitarian protection. The judge summarised both the oral evidence from the 1st and 2nd appellants and the expert report prepared by Dr Alan George, dated 8 November 2016, and referred to

an ID card produced by the 1st appellant from the PLO Central Payroll Section describing him as "Payroll Manager" and holding the rank of Lieutenant. The judge additionally referred to various diagrams of the refugee camps and identity cards issued by UNRWA in respect of the appellants. The judge also referred to a translation of two notes, dated 20 June 2015, said to be issued by the PLO's Peoples Committee, referring to the detention of the 1st appellant's brother on 9 December 2014 and that the People's Committee were notified by the Lebanese authorities that the 1st appellant was to surrender himself in respect of an investigation concerning a security case.

13. During cross-examination the 1st appellant was asked why, if he was suspected of aiding the Syrian opposition, the Lebanese authorities had not arrested him as opposed to his brother. At [37] the judge stated,

> "In reply, the Appellant said that he had been detained by the Lebanese army for 6 or 7 hours on his return to Al Rashidiya on 1 December 2014. He said that he had been stopped (along with his wife and children) at the checkpoint at the entrance to the camp. The authorities had requested ID and on checking everyone's ID found that his name was on a list and he was taken away to a holding area for an hour before being driven to the nearby Lebanese army base. He was detained there for 6 hours, but was not questioned or interrogated, and was released following the intervention of Mahmoud Salem, who the Appellant described as being "*a connection between the PLO and Lebanese army*". The Appellant says that Mr Salem had been called upon to intervene by the PLO, and that Mr Salem had taken him back to the camp and told him not to leave the camp."

14. When asked why he had not previously mentioned this the appellant said, "because there was no procedure taken against me legally I did not think there was any need to mention it" and that "no-one asked me anything."

15. The judge quoted from the 2nd appellant's statement signed and dated 24 October 2016, describing their return from the Ein al-Hilweh camp to the Al Rashidiya camp, and in particular, that they were stopped at the Army checkpoint, that after checking details on a database the 1st appellant was taken out of the car and detained, and that he was released after an intervention by the Popular Committee. The 2nd appellant did not mention this to the Home Office as the 1st appellant told her not to mention it as there was no supporting evidence.

16. In the section of his decision headed 'Discussion and Conclusions' the judge noted that the 1st appellant's status as a resident of Al Rashidiya camp was verified by Dr George, and his status as an employee of the PLO/Fatah was supported by the ID card, with which Dr George could find no fault. The judge consequently accepted that

the 1st appellant was a resident of Al Rashidiya camp and worked for the PLO/Fatah as a Payroll Manager.

17. The judge then noted the absence of supporting evidence for the 1st appellant's claim to have been sent to work with Palestinian refugees arriving from Syria in the Ein al-Hilweh camp. None of Dr George's informants in the Al Rashidiya camp had heard of the 1st appellant's work distributing aid, and the judge shared concerns raised by Dr George about the appellant being provided with such a large amount of money, especially given his job as a Payroll Manager. Nor did the judge find it probable that the 1st appellant's sister would casually mention his work to the sister of a notorious extremist, having regard to the potential risk of loose talk.

18. With respect to the 1st appellant's account of a short period of detention by the Lebanese army on his return to the Al Rashidiya camp, the judge stated, at [96]

> "It is remarkable that the first the Appellant would mention of this is in cross-examination at the tribunal hearing. The whole basis of the Appellant's claim is that he is at risk from the Lebanese authorities, so to have not mentioned that he had a period of detention by them is surprising. The various accounts given as to why this was not done - in particular that it was not supported by other evidence - are not satisfactory. As Ms Chopra points out, large pieces of the Appellant's account are not supported by other evidence but that has not prevented the Appellant or his wife from mentioning them, and both appear to have given comprehensive accounts in their asylum interview and witness statements, including details which are not immediately relevant to his claim such as the time spent in the UAE. The omission is surprising and not adequately explained."

19. At [97] the judge stated,

> "I do note that there is an incident described by the Appellant's wife in her witness statement which is consistent with the period of detention described by the Appellant, but this makes it even stranger that full details were not given earlier."

20. The judge then considered the documents purportedly issued by the Popular Committee, noted that the expert was told that these were authentic but that they should be treated with caution particularly given that the 1st appellant was known to have family members who worked for the PLO/Fatah. The judge did not consider it credible that Islamic Jihad, a ruthless organisation, would simply issue threats to the 1st appellant, that the 1st appellant was able to remain safely in hiding for 5 months, and the judge noted inconsistent elements in the 1st appellant's oral evidence to the effect that he was safe under armed guard by members of his family although he previously claimed only his wife and father-in-law knew where he was.

21. The judge then considered the "alternative version of events" as detailed in the expert report. Dr George explained that he contacted "well-placed and trusted sources within the Rashidiya camp", in whom he had "complete faith" and who had conducted this type of research for him before, "with excellent results." Dr George then described an email, sent under condition of anonymity, from one of his sources within the Al Rashidiya camp. This source said that the 1st appellant was known within the camp as a volunteer with a youth organisation called Saweed, but that he had fallen out with the manager of that organisation, Muhammad Maarouf, who had subsequently (as an act of revenge) told the Lebanese army that the 1st appellant was involved with Daesh. The same source went on to say that Mahmoud Salem, described as the person "*charged... with the relations between the Lebanese government and Palestinian camps*" had intervened, and that the 1st appellant had been released after a week in detention "*based on the signed pledge from the popular committee including that, he is prohibited to leave Rashydieh Camp*." The source said that less than a week after his release the Lebanese authorities had asked the Popular Committee to hand over the 1st appellant to them but that he "*had left the camp and fled Lebanon without informing the Popular Committee*". (Judge's decision, at [64])

22. At [65] the judge set out a further extract from Dr George's report where his contact reported that a member of the Popular Committee confirmed the authenticity of the two letters served by the 1st appellant, but cautioned that family relationships were extensive and close in the Palestinian camps and that it was not inconceivable that persons on or close to the Committee might be connected to the 1st appellant's family and might feel honour bound to tell untruths or half-truths on his behalf.

23. The judge properly acknowledged the contrasting evidence given by the 1st appellant and that relayed to Dr George by his anonymous contact. At [103] the judge stated,

> "While this tribunal is not bound by formal rules of evidence, what I have in that account [the account from the anonymous contact] is essentially anonymous hearsay evidence, which would typically be accorded little weight, **regardless of how reliable the expert considered the evidence to be**." [**My emphasis**]

24. At [105] the judge stated,

> "Individually, none of the difficulties outlined above would necessarily mean that the Appellant's account of events is not to be accepted, but taken together the difficulties are too great to be ignored. There are fundamental problems with the Appellant's account of events at Ein al-Hilweh and afterwards (which are, of course, the essential parts of his claim). Because of those problems (outlined above) I do not accept what the Appellant says

> about being at risk from the Lebanese authorities (and others) as a result of an encounter with [HS]."

25. The judge again noted that the 1st appellant did not accept the account of events contained in Dr George's report, as reported by the anonymous source, and that if what was claimed was true then the 1st appellant had every opportunity to seek advice and give a correct account of events. At [108] the judge noted that his task was not simply to assess whether the 1st appellant was telling the truth, but to undertake an overall assessment as to whether the 1st appellant was at risk on return to Lebanon. The judge indicated that there may be cases in which it would be appropriate to find an appellant at risk on an entirely different basis to the one put forward by him, but that this was not such a case. The judge stated,

> "I have said above that I must be hesitant about accepting the evidence of a single anonymous source, no matter how reliable the expert considers them to be, and I cannot in the circumstances accept that evidence, particularly where the Appellant himself disagrees with the evidence."

26. The judge concluded that the 1st appellant had not shown that he was at real risk of persecution on return to Lebanon.

27. The judge proceeded to consider the human rights claim advanced on Art 8 grounds in relation to the conditions in the Palestinian refugee camps are set out in the expert's report. At [111] the judge stated,

> "Conditions in Palestinian refugee camps in Lebanon were the subject of country guidance in MM and FH where it was found that although conditions in the camps (and treatment generally by the Lebanese authorities) were poor they were not sufficient to require a grant of humanitarian protection or to engage articles 2, 3 or 8. I can only depart from country guidance where there are "very strong grounds supported by cogent evidence" (DSG (Afghan Sikhs: departure from CG) Afghanistan) [2013] UKUT 00148 (IAC)), and Dr George's report does not demonstrate such very strong grounds supported by cogent evidence."

28. Nor did the judge consider that the difficult conditions described in **MM and FH** and in Dr George's report was sufficient to establish a claim under paragraph 276ADE(1)(vi). The judge consequently dismissed the appeals.

The grant of permission to appeal to the Upper Tribunal, the application to amend the grounds, and the Upper Tribunal hearing

29. The original grounds took issue with two aspects of the decision. The 1st ground contended that the judge adopted an overly restrictive approach to his consideration of the weight that could be attached to an anonymous source and failed to give sufficient weight to the source's information and to the conclusions reached by Dr George. It

was submitted that the fact that evidence before the Tribunal came from an anonymous source should not, as a matter of general principle, be accorded little weight simply because the source was unknown. There was said to be a failure by the judge to properly consider the reliability of Dr George's source and to properly consider the expert's view of the reliability of his source. It was submitted that the judge failed to consider Dr George's professional opinion, as a well-respected expert, that his source was reliable and Dr George's willingness to base his conclusion that the 1st appellant would be at risk and return on the information received from his source.

30. The 2nd ground contends that, in determining whether there were 'very significant obstacles' to the return of the 1st and 2nd appellant to Lebanon, the judge was not entitled to simply refer to the 2008 Country Guidance case of **MM and FH** and to reject the updated country background evidence of the difficulties facing stateless Palestinians in Lebanon, as detailed in Dr George's report (especially at paragraphs 77 to 92 and 133), without giving further reasons.

31. In granting permission to appeal Upper Tribunal Judge Bruce stated,

> "It is apparent from the determination that the Appellants' case was not free of weaknesses. The grounds are however arguable, particularly in respect of paragraph 276ADE(1)(vi) of the Immigration Rules, the reasoning at paragraph 111 being arguably scant."

32. Following the grant of permission, the Upper Tribunal received, on 4 May 2017, an application to amend the grounds of appeal and to adduce new evidence pursuant to rule 15(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

33. The new evidence consisted of a statement from Elena Georgiou, the caseworker with conduct of the appeals at Duncan Lewis Solicitors, explaining that she made an error when compiling the appeal bundle before the First-tier Tribunal by including an earlier version of the 1st appellant's witness statement, and that this error was not discovered until preparation for the 'error of law' hearing before the Deputy Judge. The 1st appellant's witness statement contained in the bundle before the First-tier Tribunal was signed and dated by him on 6 October 2016. There was however a later statement, signed by him on 25 October 2016. In this later statement the 1st appellant described his arrest and detention by the Lebanese army when he and his family returned to the Al Rashidiyah camp. He described in detail how he was taken to an army base where he remained in a small room for 6 hours before being told he could leave after an intervention by Mahmood Salim. The 1st appellant explained in his statement that he did not previously mention this to the Home Office because he knew the army would not keep a record of what occurred,

and he did not have any evidence of this incident. He did not consider this as an arrest as he was only at the army base for 6 hours.

34. Having considered the witness statement from Ms Georgiou dated 4 May 2017 and the witness statement signed by the 1st appellant on 25 October 2016, and given that the judge believed the 1st appellant raised for the 1st time his claimed arrest and detention during cross examination, I considered the additional ground arguable. There was a long delay in seeking to amend the grounds and the appellants' representatives should have appreciated at a much earlier time their failure to include the most recent statement in the First-tier Tribunal bundle. The fault was not however that of the appellants. Nor has there been any prejudice to the respondent who has been aware of the application since 8 May 2017. Having regard to the guidance provided in respect of delays, including **SSHD v SS (Congo) & Ors** [2015] EWCA Civ 387, and the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, and the Upper Tribunal's case management powers in rule 5, I consider it appropriate to grant permission to amend the grounds. I now refer to the amended ground as the 3rd ground.

35. Both representatives provided skeleton arguments at the 'error of law' hearing. Mr Fripp, on behalf of the appellants, submitted that Dr George was an expert of stature and expressly endorsed the reliability of the source upon whom he relied for information regarding the 1st appellant. the judge's view that little weight would typically be attached to anonymous evidence "… regardless of how reliable the expert considers the evidence to be" drained the overall statement of legal validity and constituted a misdirection. He submitted that the mistake relating to the 1st appellant's latest statement played a material part in the judge's reasoning and that, had the mistake not occurred, the judge may have reached a different conclusion. He submitted that **MM & FH** focused on Article 3 and that, given the developments in respect of Article 8, and in particular the establishment of the 'very significant obstacles' test in paragraph 276ADE(1)(vi) of the immigration rules, it was incumbent on the judge to have given clear reasons for rejecting the Article 8 claim. Ms Isherwood took me through **MM & FH** and submitted that the description of the camp in Dr George's report did not materially differ from the situation considered in the Country Guidance case. She submitted that the judge was rationally entitled to attach less weight to anonymously sourced evidence, that the email from the source had not been provided, and that the inconsistencies between the 1st appellant account and the information provided by the anonymous source further reduced the reliability of the source.

Discussion

36. The First-tier Tribunal's decision, from a highly capable and experienced judge, is generally very well-reasoned. The judge accurately directed himself in respect of the burden and standard of proof and the applicable principles of asylum law. The judge was unarguably entitled to draw several adverse credibility inferences based on inconsistencies in the evidence before him and aspects of the evidence that he found implausible.

37. I am however ultimately satisfied that there is merit in the grounds of appeal. At [103] the judge properly characterised the information provided by Dr George's source as "anonymous hearsay evidence" and noted that such evidence would "typically be accorded little weight". As Mr Fripp accepted, so far as these observations are concerned, there may be no valid objection. The difficulty is with the judge's subsequent assertion that little weight would typically be accorded to anonymous hearsay evidence "**regardless of how reliable the expert considered the evidence to be**." On the basis of this direction, no matter how much confidence a recognised expert has in the weight that can be attached to a particular anonymous source, and regardless of the reasons why the source is anonymous, or the previous reliability of the source, or the consistency of the source's information with other available information, that evidence would only attract little weight.

38. Through his self-direction the judge has essentially excluded a highly relevant consideration, that being the recognised expert's informed view of the reliability of the source, which must be considered when scrutinising what weight to attach to that evidence in conjunction with other relevant considerations. Nor has there been any adequate consideration of the particular process through which the expert's conclusions on the reliability of the anonymous source's evidence has been reached. While the judge was by no means obliged to accept the evidence from an anonymous source, the view taken by a recognised expert of the reliability of the source and the process by which the source's information was obtained are relevant considerations and must be taken into account when assessing the weight that can properly be attached to the anonymous source's evidence. The judge was required to determine reliability in light of all relevant circumstances and could not disregard the expert's considered view of the reliability of an anonymous source.

39. I draw support for this view from the Upper Tribunal decision in **CM (EM country guidance; disclosure) Zimbabwe CG** [2013] UKUT 00059 (IAC)

> "157. Anonymous material is not infrequently relied on by appellants as indicative of deteriorating conditions or general risk. The Tribunal should be free to accept such material but will do its best to evaluate by reference to what if anything is known about the source, the circumstances in which information was given and

> the overall context of the issues it relates to and the rest of the evidence available.
>
> 158. The problem is not one of admissibility of such material as forming part of the background data from which risk assessments are made, but the weight to be attached to such data. It is common sense and common justice that the less that is known about a source and its means of acquiring information, the more hesitant should a Tribunal judge be to afford anonymous unsupported assessment substantial weight, particularly where it conflicts with assessment from sources known to be reliable. In our judgment it is neither possible nor desirable to be more prescriptive than this, and the task of evaluation of weight is a matter for the judgment of an expert Tribunal that is regularly asked to take into account un-sourced data whether submitted by claimants or respondents. Provided a judge is alert to the problems caused by anonymous evidence and the principles we have summarised above, we do not consider that an issue of law arises."

40. Further, headnote (iii) of **MST and others (Disclosure – restrictions – implied undertaking) Eritrea** [2016] UKUT 00337 (IAC) states,

> "*Where uncorroborated and/or anonymous evidence is received, the Tribunal's task is to scrutinise it with caution and to attribute such weight as is considered appropriate.*"

41. The judge was clearly aware of the view taken by Dr George in respect of the reliability of his sources. At [64] the judge quotes from Dr George's report describing his sources as "well-placed and trusted" and in whom he has "complete faith", and notes that the sources had conducted this type of research for him before "… with excellent results." In his report, at paragraph 122, Dr George also stated,

> "It is not realistic to expect local researchers to explain in detail to interviewees why they are making enquiries. Indeed it can be dangerous for them if they do not exercise discretion. I appreciate that the information gleaned in such circumstances cannot be assumed to be beyond reproach. I should explain that my method in this present instance was to ask trusted sources within Rashidiya for background information on [the 1st appellant]. It is not possible to know with complete confidence the reliability of the information. It was not appropriate to ask my researches, for example, to identify precisely each and every person they spoke to, and to explain whether each interviewee had derived their information first hand or second hand. As I have noted, however, Rashidiya is a close-knit community where people generally have good knowledge of each other's lives, in the same way as people in an English village might know each other's business. In my lengthy experience of conducting research in Lebanon and the wider Middle East, it has been very

> rare for information obtained via research of this type to be without any merit. Usually it is accurate, at least in its salient points."

42. For the reasons given above I find the judge misdirected himself in assessing what weight he could attach to the anonymous source's evidence by having no regard to the expert's view of the reliability of the evidence.

43. I am additionally satisfied that the judge failed to adequately engage with the evidence before him or to give adequate reasons for his conclusion that the return of the appellants to the Rashidiya camp would not breach Article 8. At [111] and [112] the judge stated that there were no strong grounds from departing from the decision in **MM and FH** and that the conditions described in Dr George's report did not establish 'very significant obstacles' preventing the appellant's returning. Other than a very brief mention of the discrimination faced by Palestinians in Lebanon in the section of his decision summarising the expert report, the judge does not refer to Dr George's evidence relating to the conditions in the camp, and he does not explain why the evidence contained in Dr George's report is not materially different to that considered in the aged Country Guidance case. Dr George relied on several reports post-dating the Country Guidance case detailing the difficulties faced by Palestinians in area such as employment, health, social exclusion, education, housing, access to social services and free movement. While the judge did not have to provide lengthy and detailed reasons relating to each of these areas, it was nevertheless incumbent on the judge to at least explain, albeit in summary terms, why the current conditions in the camp did not reach the 'very significant obstacles' test. While the judge may ultimately have reached the same conclusion had he engaged with the evidence, I am not satisfied that he would inevitably have done so.

44. I turn to the third ground. In **E & R v SSHD** [2004] EWCA Civ 49 the Court of Appeal considered the circumstances in which a mistake of fact could amount to an error of law. At [66] the Court stated,

> "In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of CICB. First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not been have been responsible for the mistake. Fourthly, the

> mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning."

45. It is not in dispute that the First-tier Tribunal was not provided with the 1st appellant's most recent witness statement. The witness statement before the judge, signed and dated 6 October 2016, did not contain the 1st appellant's description of being detained for several hours when he and his family returned to the Rashidiyah camp. The statement that should have been before the judge, that signed and dated 25 October 2016, did contain, at paragraphs 16 to 20, a very detailed description of the incident. The judge therefore made a mistake in stating, at [96], that the 1st appellant first mentioned his detention by the Lebanese authorities in cross-examination at the First-tier Tribunal hearing. The mistake is established as the 1st appellant previously mentioned this in his statement of 25 October 2016, although not before the First-tier Tribunal.

46. The appellants' solicitors admit to having make a mistake by filing the wrong version. It is therefore apparent that the appellants' solicitors were responsible for the mistake. This would, on its face, mean that there has been a failure to meet one of the ordinary requirements established in E & R. The appellants representatives caused the mistake, albeit inadvertent. The Court of Appeal were however not seeking to lay down a precise code and the error by the solicitors does not, on its own, necessarily mean that an error of fact amounting to an error of law has not been established. It is necessary to consider all material circumstances.

47. The Court of Appeal also concluded that the mistake must have played a material, although not decisive, part of the Tribunal's reasoning. At [96] the judge considered it "remarkable" that the 1st appellant first mentioned his alleged detention in cross-examination, and at [97] the judge finds the 1st appellant's late disclosure "even stranger" given that the incident was described in the 2nd appellant's statement. The 1st appellant did not disclose this incident in his first statement, or in his asylum interview, and the judge's reasoning at [96] would apply with equal force to these earlier instances of non-disclosure. I am however ultimately satisfied, albeit not without some hesitation given the nature and extent of the judge's other adverse credibility findings, that the judge's mistake in finding that the incident was first described in cross-examination, and the adverse inferences drawn as a result, may have made a material difference to the judge's conclusions.

48. Having considered the nature and circumstances of the mistake, and the weight placed on it by the judge, I find that the judge, through no fault of his own, made a mistake of fact amounting to an error of law.

49. Having identified material errors of law, and given that the credibility of the 1st and 2nd appellants will need to be revisited in light of my

findings, I am satisfied it is appropriate to remit the matter back to the First-tier Tribunal for a de novo hearing.

Decision

The First-tier Tribunal's decision contains material legal errors and is set aside.

The case will be remitted to the First-tier Tribunal for a de novo hearing before a judge other than judge of the First-tier Tribunal Anstis.

15 November 2018

Signed
Upper Tribunal Judge Blum

Date