



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/12417/2019  
HU/12419/2019

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business  
On 2 March 2021

Decision & Reasons Promulgated  
On 23 April 2021

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR MD MIJANUR RAHAMAN - FIRST APPELLANT  
MRS MAHFUZA AKTER - SECOND APPELLANT  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: M P Jorro, Counsel instructed by Wildan Legal Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge Thorne promulgated on 13 January 2020 dismissing the appeal against the Secretary of State 's decision to refuse the appellants (husband and wife) leave to remain on human rights grounds under Appendix FM and paragraph 276ADE of the Rules. The appeal was heard on 9 December 2019.

*The application for permission to appeal.*

2. It was argued in the grounds of appeal that the First-tier Tribunal Judge failed to consider material matters, made a material mistake of fact and acted procedurally improperly and procedurally unfairly by failing to consider the appellants' post hearing written submissions and the additional documents filed with them, which had been filed, post hearing, on 18 December and that the judge mistakenly found that as of 7<sup>th</sup> January 2020 (the date of the determination) no skeleton argument authorities had been received by him (paragraph 21), when in fact they had been submitted. Had the First-tier Tribunal Judge considered the material the outcome the appeal might have been different.
3. The judge erred in failing to accept or consider the material and to provide legally adequate reasons when addressing the arguments advanced in the appellant's written submissions filed on 18 December 2019 and identified in the appellants' oral submissions at the hearing on 9 December 2020.
4. There were two specific grounds.
5. The first ground identified that the appellants' solicitors filed and served written submissions and further documents in relation to the second appellant's medical needs regarding her pregnancy on 18 December 2019 and this was confirmed by the enclosed witness statement.
6. Although the material was filed and served on 18 December and two days after the seven day window afforded by the judge, the submissions explained the reasons for the delay. The judge's reasoning suggested that had he been aware that the documents were filed on 18 December he would have considered them and further the judge's reasoning was predicated on an incorrect plea that "as at today's date (7 January 2020 - the date of the determination) no skeleton argument or authorities has been received by me (sic)".
7. The Tribunal was invited to consider this material which was enclosed, and it was said to be plain that had the written argument been considered, the judge might have reached a different conclusion and at the very least the judge's reasoning would have been different as he simply failed to understand and engage with the substance of the appellant's position in the written submissions.
8. The medical documents provided additional support to the first argument advanced and might have influenced the outcome of the appeal and the judge simply failed to consider this evidence.
9. As a result the judge acted procedurally unfairly and irregularly by failing to take into account arguments advanced by the appellants and their attempt to rely upon further evidence and he failed to consider material matters because his reasoning was based on a material mistake of fact that is that the submissions had not been filed.

10. It was irrelevant given the nature of the grounds that the judge might have been blameless or that some other problem arose which meant that the documents did not reach the judge.
11. In the second ground, the appellants relied on arguments advanced on 18 December 2019 with written submissions in support of this ground and that the Tribunal was requested to consider this document in full and the arguments advanced are summarised below.
12. The two arguments were identified and raised in oral argument, but the judge did not engage with them. If he had done, these arguments might have made a difference and they were as follows:
  - (1) The second appellant's pregnancy and medical situation meant the appellants' family could not be expected to leave the UK for the time being so that the appeal had to be allowed applying Sections 84 to 86 of the Nationality, Immigration and Asylum Act 2002 as amended.
  - (2) The appellants had been the victim of an historic injustice in that the application for further leave to remain made by the first appellant on 1 September 2014 should have succeeded in the light of the evidence now properly before this Tribunal. The earlier determination of the First-tier Tribunal was no obstacle to this submission because applying the principles set out in **Devaseelan v SSHD [2002] UKIAT 00702** the previous findings and evaluation could and must be departed from.
13. In relation to the second appellant's pregnancy and her medical situation, it was an important point of principle under the current statutory scheme that the judge is required to decide whether removal at the date of the respondent's decision appealed against and at the date of the First-tier Tribunal determination, would breach Article 8. Further under the statutory scheme there was no need to establish any long or medium term entitlement to remain pursuant to the ECHR.
14. The correct approach for the judge was to consider the circumstances of the appeal at the time determination. As is argued in the written submissions and supported by the evidence adduced at the hearing on 9 December 2019 and further supported by the additional evidence filed with the written submissions, it would be disproportionate to expect the appellant's family to leave the UK during the second appellant's pregnancy in all the circumstances and the judge did not engage and make all the required findings in respect of this argument. It would be disproportionate to expect the appellant's family to leave the UK during the second appellant's pregnancy in all the circumstances.
15. The judge did not engage with all the required findings in respect of this argument and the judge's analysis was undermined by the material error of law.
16. The second argument was based on the manifest error which was now apparent in the respondent's and the First-tier Tribunal's decision to find that the first appellant's business was not genuine and so his application for further leave to remain on 1

September 2014 did not succeed. Paragraph 30 of the judge's own reasoning entailed that the decision to refuse the 1 September 2014 application was incorrect because he acknowledged, as per paragraph 49, that the business the first appellant relied upon, was trading and therefore was genuine, contrary to the respondent's decision to refuse the appellant's 1 September 2014 application which was upheld by an earlier determination of the First-tier Tribunal.

17. As argued in the later full written argument the evidence clearly showed that this was so. The judge failed to properly consider the legal implications of this and the determination as a result of overlooking the appellant's written submissions.
18. Whilst the judge made an adverse finding as to the first appellant's credibility and character at paragraph 49, this could not answer the argument under consideration. The judge did not factor this adverse manner in a sustainable analysis of the second argument advanced by the appellants.
19. The argument was not necessarily fatally undermined as a result of the finding at paragraph 49. Applying the correct legal principles and bearing in mind the arguments advanced in the 18 December 2019 written submissions not least because of the involvement of the second appellant, the appeal should have been allowed.
20. The judge's determination was undermined by a material error of law.

*Rule 24 notice*

21. The Secretary of State responded inter alia disagreeing that the matter could be dealt with on the papers and pointed out that the respondent did not have access to the file.
22. It was submitted that the fact that the judge did not consider the further evidence submitted on 18 December was not material because at its highest the appellant's medical evidence was that she could not travel as of 18 December for the time being not that she could not travel at all.
23. The appellant was seeking to rely on additional evidence concerning the business that overturned a previous decision of the Tribunal particularly on the flexibility of specified evidence. At paragraph 69 having considered the evidence the judge was entitled to find this did not dislodge the previous decision. As per the running of the business the judge did not find the appellant credible, at paragraph 49, having heard the contradictory evidence from the appellant and the witness. There was no historic injustice, and the other evidence did not support the appellant's assertions thereon.
24. In particular it was noted that the appellants did not challenge:
  - (a) The credibility of the appellants in the business.
  - (b) The ability of the appellant to obtain employment in Bangladesh.
  - (c) The appellants' family in France could support them on return and the appellants received financial support from Bangladesh whilst being in the UK.
  - (d) The appellant would be able to get a job and accommodation on return.

- (e) The appellants are able to speak the language.
  - (f) The appellants would be able to re-establish themselves on return.
  - (g) The appellant would not be at risk of persecution.
25. It submitted that if an error were found this did not impact on the other findings and they were sustainable.

*The Hearing*

26. At the hearing Mr Jorro submitted that the judge did not deal with the Article 8 proportionality exercise because of the procedural irregularity. There was evidence submitted to the judge not considered and the procedural irregularity led to unfairness. The permission was granted on the basis of a failure to consider the further submissions although Mr Jorro accepted that the pregnancy had been successful because the child had been born. His submissions focussed on the historical injustice in relation to Section 85. I pointed out to him that this had not been raised in the application to the Secretary of State nor in the grounds of appeal, but Mr Jorro responded that it had been raised in the oral submissions and the later written submissions albeit these had not been submitted on time. Nevertheless, he submitted, there was a procedural irregularity.
27. Mr Jorro argued that the further submissions showed, on the evidence now available before the First-tier Tribunal relating to the appellant's business having been registered for corporation tax in 2015 and genuinely trading and generating income, that the respondent had been wrong to conclude in January 2015 that the appellants had not been running a genuine business and this erroneous conclusion led to the refusal of Article 8. The earlier decision of 2015 had made a series of findings in relation to Section 85 and the exclusion of evidence. The provisions regarding the points-based system immigration rules at the time had now been amended and Section 85A was no longer in force. Mr Jorro observed that the judge could depart from the previous tribunal decision and with regards the Article 8 proportionality assessment consider the historical injustice as per **Ahsan [2017] EWCA Civ 2009**.
28. Mr Tufan submitted that even if there were an error of law there was no materiality. He pointed to the need for finality in litigation. The 2015 Tier 1 appeal was previously dismissed and permission to appeal that 2015 decision was refused as was a Cart Judicial Review by the Court of Appeal. At paragraph 30 of the First-tier Tribunal decision in 2015, the judge also found the appellant's ability to run a viable and credible business lacked credibility. Even if the fresh documents were looked at in terms of Article 8 that finding would still stand, and those submissions could not have changed the final result of this case. The fact that Section 85 was no longer in force could not mean that the previous decision was unjust. In 2015, paragraph 41-SD(e) of the Immigration Rules, the point scoring attributes had not been satisfied and there was no justification to revisit this. **Ahsan** was on a very different factual basis referring to cheating of the ETS and was a different issue. Mr Tufan submitted that the judge should not have given those directions but there was no material error of law.

## Analysis

29. In the *oral* submissions before the First-tier Tribunal Judge Thorne there were two key aspects to the appellants' Article 8 claims. First the second appellant was pregnant, and it was submitted she could not fly home to Bangladesh or receive proper treatment there for her pregnancy and secondly, the "historical injustice" in relation to the previous 2015 First-tier Tribunal determination dismissing the first appellant's visa application.
30. At paragraphs 13 and 14 the judge set out the following:-
- "13. He [the appellant] explained how on 01/09/14 he had applied for an entrepreneur visa and how he had incorporated a business, Blue Oceans Business Solutions Ltd (BOBS) for that purpose. He said that he invested about £51,000 in the business. R refused the application on 06/01/15. His appeal was dismissed by an Immigration Judge after a hearing on 23/07/15. A1 exhausted his appeal rights on 01/02/16. His subsequent judicial review application was refused by the High Court on 17/03/16 and subsequently the Court of Appeal on 26/04/17. In the mean-time he made unsuccessful applications under the Tier 2 visa Rules and the EEA Regulations. He had spent a lot of money on the IVF treatment and on these various applications and appeals.*
- 14. In cross examination he said that BOBS stopped trading on 26/04/17 after the Court of Appeal decision. He also accepted that he had no leave to remain in the UK since 2014. He lived with A2 and paid £450 a month in rent and bills. He was unemployed as he was not permitted to work in the UK but relied on financial support from A2's cousin and a friend called Philip Ruark-Davies had given him about £3000 since January. He described this as a gift. A1 said that he had savings of about £4000."*

Then at paragraph 21 Judge Thorne said the following:

- "21. I then heard oral submissions during which Mr. Biggs said that the appeals should be allowed on the basis of the difficulties of the appellants integrating in Bangladesh and because of A2's medical difficulties and IVF treatment. He also said there had been what he claimed was an "historic injustice" in relation to the previous decision of the Immigration Judge and the decisions of the High Court and Court of Appeal in relation to the previous entrepreneur visa application. He said this was similar to "the Gurkha cases". He accepted that the "historic injustice" point was not in the grounds of appeal and apologized for not producing a skeleton argument or any of the authorities then sought to rely upon and that no prior notice of this argument had been given to R or the Tribunal. In the circumstances I allowed an adjournment to allow him to serve a skeleton argument and authorities on R and the Tribunal within 7 days and allowed R to respond if necessary by 06/01/20. These directions were issued orally and subsequently in writing by the Tribunal. As at today's date no skeleton argument or authorities has been received by me."*

31. I make various points. First, the Tribunal, in the lead up to the appeal hearing, had issued a direction to the appellants on 9 September 2019 in the following terms, “The appellant must send copies of all documents to the Tribunal and to the other party a bundle of all documents you wish to rely on in support of the appeal (sic).” The direction clearly indicated that the documents on which the appellant tended to rely should be provided in time for the appeal hearing.
32. Secondly, the direction of Judge Thorne related to the historical injustice and not to the pregnancy of the appellant.
33. Thirdly, the direction of Judge Thorne had a deadline of 16 December 2019. In the event Counsel’s further submissions were actually dated 18 December 2019 and faxed to the court in the afternoon of 18<sup>th</sup> December 2019. There was no explanation in the submissions for the delay and merely attached, a statement from a solicitor Mr M Khan that the submissions had been received from counsel on 18<sup>th</sup> December 2020 and faxed to the Tribunal.
34. Those submissions included an attempt to re-argue the respondent’s interpretation of the evidence at the hearing and attached further evidence in the form of letters from the Assisted Reproduction and Gynaecologist Centre dated 3 and 16 December 2019. Neither of these letters made any reference to the second appellant’s fitness to fly.
35. At the hearing before me Mr Jorro conceded that the appellants had now had their child and thus the materiality in relation to the pregnancy of the child was not as it was in December 2019. Mr Jorro did not abandon this ground of appeal but sensibly chose not to pursue it with the vigour that he might have done. That said, the matter was fully considered by the First-tier Tribunal Judge Thorne at paragraphs 54 to 56 of his determination. The judge did not accept that the second appellant would be unable to access suitable medical treatment in Bangladesh and he stated there was simply inadequate independent reliable evidence about this. Judge Thorne considered the letter from the IVF centre dated 7 November 2019 and that it stated ... *“Due to complications associated with early pregnancy and the risk of miscarriage it has been recommended that [A2] does not fly at present”*. It was open to the judge to conclude that this related to the early stages of pregnancy and not that her long-term medical condition prohibited flying throughout the pregnancy. The judge was entitled to *“...conclude that A has now passed the early stages of pregnancy, she has not proved on the balance of probabilities that there would be a risk of her returning to Bangladesh now or in the future”*.
36. On the evidence before the judge, his interpretation of the medical evidence was open to him in relation to both the future storage of eggs for IVF and in relation to the appellant’s medical condition and fitness to fly.
37. The appellants had been directed to submit relevant documentation prior to the Tribunal hearing and further had experienced Counsel to argue the point on their behalf. There was no requirement for further submissions and further medical evidence in relation to the appellant’s pregnancy and I am not persuaded that the direction from the judge encompassed or envisaged any further submissions or

evidence in relation to the pregnancy or medical condition of the second appellant; the judge properly considered the evidence before him. I note the submissions that were subsequently forwarded on 18 December 2020 attempt to reargue the matter taking issue with the respondent's submissions before the judge at the First-tier Tribunal hearing.

38. Mere disagreement about the weight to be accorded to the evidence or the interpretation of the evidence which is a matter for the judge should not be characterised as an error of law further to **Herrera v Secretary of State for the Home Department [2018] EWCA Civ 412**. In this respect there was no procedural irregularity as it was open to Counsel to make full submissions at the hearing when he had the opportunity. Thus the arguments in relation to proportionality of removal and the relevant date on which the assessment of proportionality should be made are otiose. Further the child is now born and if the matter were re-determined any error which I make clear I do not find, would not be material.
39. I turn to the second aspect of the challenge and the challenge to the 2015 decision. Neither in the application to the Secretary of State nor in the grounds of appeal to the First-tier Tribunal was there any mention of historical injustice.
40. The material parts of Section 85 of the Nationality, Immigration and Asylum Act 2002 read as follows:

*"85. Matters to be considered*

(1) *An appeal under section 82(1) against the decision shall be treated by the Tribunal as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).*

...

(5) *But the Tribunal must not consider a new matter unless the Secretary of State has given the Tribunal consent to do so.*

(6) *A matter is a "new matter" if -*

(a) *it constitutes a ground of appeal of a kind listed in section 84, and*

(b) *the Secretary of State has not previously considered the matter in the context of -*

(i) *the decision mentioned in section 82(1), or*

(ii) *a statement made by the appellant under section 120."*

41. I can accept that the grounds of appeal raised Article 8 in relation to the appellants' private life but as conceded at the hearing and recorded by the judge the factual substance of the claim relating to historical injustice was not raised until the hearing itself and the Secretary of State did not consider this matter. The judge in his final paragraph at 69 stated:

*"69. In addition I conclude that A1 has failed to establish that he is the victim of an "historic injustice" in relation to the previous decision of the Immigration Judge and the decisions of the High Court and Court of Appeal in relation to the previous entrepreneur application, similar to "the Gurkha cases". I conclude that I have no grounds (or power) to go behind the decision of the Immigration Judge and the decisions of the High Court and*



*Court of Appeal in this matter. I also conclude that nothing in those judgements or the subsequent correspondence to HMRC or documents concerning BOBS establish valid grounds upon which I can allow the appeals under human right considerations."*

The judge correctly directed himself that he had no grounds upon which he could allow the appeal under human rights considerations.

42. The judge indeed had no jurisdiction to consider a new matter without the consent of the Home Office Presenting Officer because as the appellant's representative identified, historic injustice was not in the grounds and there is no record that the Home Office Presenting Officer conceded that this matter should be admitted. Even if the judge considered he had had power to do so, which he did not without the consent of the Secretary of State, the judge had no jurisdiction to consider the matter further to Section 85.
43. Even if the judge had jurisdiction, although he invited the parties to make submissions by 16 December 2019, no submissions were provided until 18 December 2019 and were thus outside the deadline given and without explanation for the delay. Simply, those grounds had not been properly put either to the Secretary of State nor to the judge in the appeal grounds, and when further submissions were submitted, they were submitted late and without explanation for the delay.
44. **SD (treatment of post-hearing evidence) Russia** [2008] UKAIT 00037 held that  
*'In the rare case where an immigration judge, prior to the promulgation of a determination, receives a submission of late evidence, then consideration must first be given to the principles in Ladd v Marshall [1954] 1WLR 1489. Under those, a tribunal should not normally admit fresh evidence unless it could not have been previously obtained with due diligence for use at the trial, would probably have had an important influence on the result and was apparently credible. If, applying that test, the judge was satisfied there was a risk of serious injustice because of something which had gone wrong at the hearing or this was evidence that had been overlooked, then it was likely to be material. In those circumstances, it will be necessary either to reconvene the hearing or to obtain the written submissions of the other side in relation to the matters included in the late submission'.*
45. This appeal did not fall into the rare category as described in **SD**. Additionally, there had been every opportunity prior to the hearing to submit further evidence before the First-tier Tribunal which had not been undertaken.
46. Even if it were conceded that, as a new matter it could have been considered, and even if the judge failed to consider submissions (that were not before him), was that failure material?
47. The judge's view was that he had no grounds and had no power to go behind the First-tier Tribunal of 2015. In my view that was correct. The principle of res judicata and the finality of litigation is not ousted by **Devaseelan v Secretary of State for the Home Department** [2002] UKIAT 00702.

48. Although the grounds state that the submission did not depend on a challenge to the August 2015 decision of the First-tier Tribunal as determined in accordance with the then applicable law, that is in effect what was being sought with new evidence being placed before the Tribunal and it was in fact a departure from the decision of 2015 that was being requested.
49. In **R (Boafo) v the Home Secretary [2002] EWCA Civ Auld LJ** at paragraph 26 confirmed that an unappealed decision of an Adjudicator is binding on the parties.
50. The court, however, in **TB (Jamaica) [2008] EWCA Civ 977** at paragraph 35 observed
- “Of course, different considerations may apply where there is fresh evidence that was not available at the date of the hearing, or a change in the law, and the principle has no application where there is a change in circumstances or there are new events after the date of the decision.”*
51. That said in **AA (Somalia) [2007] EWCA Civ 1040**,
- “12. I turn to LD (Algeria) [2004] EWCA Civ 804, also known as Djebbar, a decision dated 30 June 2004. This was another second appeal case. An unsuccessful attack was made on behalf of the appellant, LD, upon Devaseelan. The Court approved the guidelines saying:*
- “30. Perhaps the most important feature of the guidance is that the fundamental obligation of every special adjudicator independently to decide each new application on its own individual merits was preserved. The guidance was expressly subject to this overriding principle.”*
- 13. The Court then set out part of paragraph 37 of Devaseelan, starting with the words:*
- “The first adjudicator's determination ... is not binding on the second adjudicator; but, on the other hand, the second adjudicator is not hearing an appeal against it ... the outcome of the hearing before the second adjudicator may be quite different from what might have been expected from a reading of the first determination only.”*”
52. What is clear from these determinations is that it is possible where there is a change in the law, for a second Adjudicator to make fresh considerations but the second Adjudicator is not hearing an appeal against that first decision and that in my view is what the appellant was attempting to do in this case.
53. In essence it was submitted that because Section 85A of the Nationality, Immigration and Asylum Act 2002 no longer existed, fresh evidence could be brought to revisit the 2015 decision. The repeal of Section 85A, however, does not have retrospective effect as can be seen from the material parts of Section 16 of the Interpretation Act 1978,
- (1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears, –*

(a) *revive anything not in force or existing at the time at which the repeal takes effect;*

(b) *affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;*

(c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;*

(d) *affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;*

(e) *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;*

*and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.*

54. Additionally, even if there were a change in the law, it was not the case that the evidence to be brought forward was not available at the date of the appeal before the Tribunal in 2015; it was not fresh evidence. Owing to the nature of the appeal the evidence had to have been in existence at the date of decision in 2015. The application to be decided by First-tier Tribunal Thorne was the Article 8 claim not a rehearing of the 2015 decision which had already been appealed to the Court of Appeal.
55. However entirely separately from the point scoring attributes, whereby the appellant could not enlist the aid of evidential flexibility under paragraphs 41-SD, the judge in 2015 specifically identified that there was a huge discrepancy between the appellant's claimed profit of £147,000 and actual profit of £4,000 and thus there was a "lack of credibility in terms of the appellant's ability to run a viable and credible business". It should be noted that the appellant was appeal rights exhausted in the Court of Appeal and that there was no legal error found in that First-tier Tribunal decision of 2015.
56. This is not a case which may be described as involving historical injustice in terms of that described in **Patel v Secretary of State (historic injustice; NIAA Part 5A) [2020] UKUT 00351 (IAC)**. There was no wrongful 'non-operation' by the Secretary of State of her immigration functions. The matter was properly litigated before the courts under the relevant legal provisions in force at that time. The First-tier Tribunal in 2015 applied the statutory provisions of Section 85 and even found for positive reasons and from the evidence supplied by the appellant at that time, (the submission of the bank statements) that the business venture was not credible. That Section 85A has now been repealed does not undermine the decision in question.
57. **Ahsan** cannot assist the appellant and relates to an entirely different factual matrix, a different part of the Immigration Rules and a distinct set of facts. **Ahsan** referred to TOEIC cases where appellant students (Tier 4 General) were accused of cheating and because of, inter alia, the seriousness of that allegation the out of country right of appeal was considered an inadequate remedy, they were granted an in-country right of appeal for the facts to be considered. Flowing from a decision of the First-tier

Tribunal that an appellant had not cheated an appellant was entitled to be placed in a similar position as if the Secretary of State's decision had not been made. The appellant here, in 2015, had applied for a Tier 1 Entrepreneur visa, was not accused of cheating but simply that his business venture was not found to be credible, and his case can be distinguished because crucially the decision was made in country by the First-tier Tribunal.

58. In any event the further submissions referred only to the documentation, the corporation tax registration already in the papers and the evidence of Mr Ruark-Davies. The judge found the evidence of Mr Ruark-Davies to contradict that of the appellant with regard to his business. Furthermore, prior to stating he had no grounds or power to consider this matter, First-tier Tribunal Judge Thorne found the evidence of the first appellant and his witness Mr Ruark-Davies at paragraph 49 to be contradictory and lacking in credibility. The judge specifically stated in relation to the first appellant, *'I do not accept that he was an honest and credible witness about his income and employment in the UK'*.
59. Even if this were not a new matter, the submissions take the case no further forward bearing in mind the rejection by the judge of the evidence of the appellant whom he found not credible and the relevant findings in 2015. The Court of Appeal upheld that decision. I am not persuaded that there was procedural irregularity not least because the appellants failed to comply with the deadline set by the judge but moreover because those submissions could not take the matter forward. As such I consider there to be no materiality to the alleged defect or impropriety of a procedural nature in the proceedings at first instance as per **MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC)**.
60. The decision of the First-tier Tribunal will stand and the appeal remains dismissed.

No anonymity direction is made.

Signed *Helen Rimington*  
Upper Tribunal Judge Rimington

Date 12<sup>th</sup> April 2021