Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/04673/2018**
HU/07268/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
on 21 February 2019	**On 13 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SUTHERLAND WILLIAMS

Between

(1) MR HARDIK KIRITKUMAR PANCHAL
(2) MRS SHEETAL SURESHBHAI PANCHAL

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jones, Home Office Presenting Officer
For the Respondent: Mr M Biggs, Counsel, instructed by AY & J Solicitors

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Black ('the judge'), promulgated on 30 August 2018, dismissing the appellants' appeals against the respondent's decision to refuse their claims for indefinite leave to remain.

Overview

2. The appellants are citizens of India. They appealed against the decision of the respondent to refuse them indefinite leave to remain under paragraphs 322(5), 276B, 276ADE and Appendix FM of the Immigration Rules.

3. Relevant to this onward appeal is the respondent's contention that the first appellant's earnings, as declared to Her Majesty's Revenue and Customs ('HMRC'), differed significantly from the income he had declared to the Home Office following two Tier 1 leave to remain applications made in March 2011 and September 2013 respectively.

4. The respondent's case was that there had been a clear benefit to the first appellant either by failing to declare his full earnings in order to reduce his tax liability and/or falsely representing his earnings to the Home Office to meet the points requirement for a Tier 1 visa.

5. This deception, it was advanced, meant it was undesirable to permit the first appellant to remain, and thereby the first appellant did not meet the requirements of the long residence rules.

6. The appellant accepted a mistake had been made and it was not in dispute that the first appellant had declared a lower income to HMRC than he had to the respondent in his two leave to remain applications (see paragraphs 29 and 30 of the judge's determination).

7. The central issue was whether the first appellant had made a genuine mistake or had been deceitful. If the appellant's case of genuine mistake was accepted, he and his wife would have been entitled to indefinite leave to remain.

8. Following a hearing, the judge found that there had been deceit, and the appeal was dismissed.

9. In the grounds of appeal to this Upper Tribunal, drafted on 30 November 2018, those representing the appellants' submitted that the judge had materially erred in dismissing these appeals because:

    1. The judge had made conflicting and contradictory findings, in particular at paragraph 54 of the decision, where it was stated the first appellant had sought copies of his tax returns and it was only at that stage discrepancies had come to light – something the judge had accepted;
    2. The judge had made irrational findings, thereby undermining the safety of the determination;
    3. There had been procedural unfairness, as a number of the findings made in the determination were not put to the first appellant, and as such the appellants had been deprived of an opportunity to address any residual concerns the judge had.

10. On 1 November 2018, First-tier Tribunal Judge Parkes refused permission to appeal on the basis that the decision, when read as a whole, was clear and that Judge Black had taken the view, as the judge was entitled to do, that the first appellant had been dishonest.

11. The above decision was considered again by Upper Tribunal Judge Grubb on 22 January 2019. He concluded that there was arguably an error of law in relation to the judge's apparent acceptance of the explanation in terms of when the discrepancy came to light and the judge's final conclusion. He therefore granted permission to appeal on grounds 1. and 3., refusing permission in relation to ground 2.

12. On 25 January 2019, Upper Tribunal Judge O'Connor gave directions in relation to the listing of this matter, including a timetable for the service of evidence.

13. It is against the above background that this matter was listed before me.

Ground 1 – conflicting /contradictory findings

14. The focus of this first appeal ground centres on paragraph 54 of the judgement. The relevant paragraph reads as follows:

> '54. The first appellant's evidence is that he had been told by an immigration lawyer that his tax affairs would be checked in connection with his proposed application for indefinite leave to remain on the grounds of long residence. He says he then sought copies of his tax return from HMRC and it was at that stage that the discrepancies came to light. I accept that.'

15. The appellant's representative maintains this demonstrates that the judge unequivocally accepted that aspect of the appellant's evidence and that '*it can only mean that it is accepted that he was not aware of the discrepancies until the tax returns arrived much later as part of the application process and, as such, he did not have the intention to mislead when the tax return was actually filed*'.

16. The judge sets out the first appellant's version of events at paragraph 39:

> 'He was asked in the questionnaire when and how he discovered he had made an error in his tax return and replied: "in the year 2016, I seek the advice of immigration lawyer as I was preparing for my settlement application *(sic.)*. I then came to know that I should be reviewing all my income records. Upon requesting information from HMRC and records of my previous earnings, I came to know that there was a discrepancy in the tax year 2012/13". He states that, on discovering the error, he contacted his accountant and asked him to review and inform HMRC of the amended records. The appellant applied for indefinite leave to remain on the grounds of long residence on 18 August 2016'.

17. The first appellant said the reason he had not reviewed and verified the information prior to its submission to HMRC was '*due to changes within my family circumstances, i.e. my father was diagnosed with cirrhosis of liver in May 2014…. Further, my wife's pregnancy [in] early 2014 and the birth of my first child in November 2014 created additional responsibilities on me*'.

18. Importantly, in this regard, the judge goes on to state at paragraph 41:

> 'HMRC wrote to the first appellant on 10 November 2016 with a notice of further assessment for the year ending April 2014. A copy of the letter was sent to Gohil's Accountancy Services Limited. This letter refers to the first appellant having notified that there was additional tax to pay which was not previously declared. It was too late to amend his tax return. *The date of this letter is consistent with the first appellant having discovered the discrepancy in that year'.* [My emphasis added.]

19. Those representing the appellant make the point that the date of the letter he subsequently received from HMRC was consistent with the first appellant discovering there had been a discrepancy in 2016 and therefore it cannot be said he knew about the error on the tax return previously – meaning at the time it was submitted it came down to genuine mistake.

20. The case law with regard to declared earnings disputes is summarised by the judge at paragraph 21 and 27 of the decision, wherein the cases of *R (on the application of Khan) v Secretary of State for the Home Department (Dishonesty, tax return, paragraph 322(5))* [2018] UKUT 384 (IAC) and *Secretary of State for the Home Department v Shehzad and Chowdhury* [2016] EWCA Civ 615 are cited. Of particular relevance is paragraph 32 *et seq* of *Khan*, where Martin Spencer J held:

> 32. The starting point seems to me to be that, where the Secretary of State discovers a significant difference between the income claimed in a previous application for leave to remain and the income declared to HMRC (as here), she is entitled to draw an inference that the Applicant has been deceitful or dishonest and therefore he should be refused ILR within paragraph 322(5) of the Immigration Rules. However, it does not follow that, in all such cases, a decision to refuse ILR will be lawful. Where an Applicant has presented evidence to show that, despite the prima facie inference, he was not in fact dishonest but only careless, then the Secretary of State is presented with a fact-finding task which must be carried out fairly and lawfully. In that regard, she needs to remind herself that a finding that a person has been deceitful and dishonest in relation to his tax affairs with the consequence he is denied settlement in this country is a very serious finding with serious consequences and therefore the evidence must be

cogent and strong although, as the authorities show, the standard of proof remains on the balance of probabilities.

34. It is apparent in the instant matter that the judge was satisfied the respondent had demonstrated that on both occasions, namely in March 2011 and September 2013, his claimed earnings were significantly in excess of those declared to HMRC. The judge concluded that the respondent was entitled to take the view on the evidence and on the balance of probabilities that either the first appellant had not earned the income claimed or that he had misrepresented his income in order to demonstrate that he was entitled to the award of points for an income within the required bracket. In other words, the *prima facie* inference of deception was made out.

35. The judge then correctly considered whether the other evidence available helped determine if the error in relation to the tax return was dishonest or merely careless (*per* para 34 of *Khan*).

36. It is important at this point to note the judge was considering two separate tax returns and two Tier 1 (General) applications. The request in 2016 deals with the tax year 2013/14. The judge observes at paragraph 43 that there was no specific reference to the tax return for the year ending 2010/11 having been amended, i.e. the one that relates to the first appellant's income from dividends as claimed in his March 2011 Tier 1 application.

37. According to the judge, the first appellant was asked why the 2010/11 tax return was incorrectly submitted and the appellant said he had not thoroughly verified the records because he was undergoing changes in his family life, i.e. his father's illness and wife's pregnancy. He maintained that he had included evidence about the amendments for 2010/11 when he submitted the amended tax return. Nonetheless, the judge found that there was no specific reference to any amendments made to the income declared to HMRC with regard 2010/11.

38. The judge concluded that the first appellant had known that in order to remain in the UK as a Tier 1 general migrant, he had to demonstrate he earned between £40,000 and £49,999 to be awarded the requisite number of points under the points-based scheme. The judge noted that the first appellant had not provided in the tax questionnaire an adequate explanation for the discrepancy in his claimed income for that first year, as against the income declared to HMRC.

39. The judge considers the credibility of the appellant's account for the tax year 2010/11 at paragraph 48:

> 'as regards the failure to declare his income from dividends for the tax year 2010/11… it is unlikely that the first appellant, who is an intelligent man with the benefit of professional accountancy advice from the outset of setting up his company, did not appreciate he had to pay tax on his income from dividends…. I do not accept that

simply because he had instructed an accountant he did not look at the tax return before he signed and submitted it; indeed, he told me he would normally look at it…. It is not suggested that the first appellant's personal circumstances were stressful at the time he set up the company and filed through his accountant the tax return relating to his income in 2010/11…'

40. The judge's approach in this regard reflects paragraph 33 of *Khan (supra)*:

> 33. It is further the case, in my judgment, that for an applicant simply to blame his or her accountant for an "error" in relation to the historical tax return will not be the end of the matter. Thus, the Secretary of State is entitled to take into account that even where an accountant has made an error, the accountant will or should have asked the taxpayer to confirm that the return was accurate and to have signed the tax return, and furthermore the Applicant will have known of his or her earnings and will have expected to pay tax thereon...

41. The judge then went on to refer to the fact that the appellant, over a period of 8 years, had been working at a Co-operative store as a duty manager. The store manager refers to 'high levels of intelligence and understanding' and that the first appellant met 'every challenge, deadline and goal presented'. The judge states there was no mention of any stress or any other difficulties at work. His wife did not miscarry until early 2014, so that could not be an explanation for the error in March 2011. Neither, on the judge's finding, could the first appellant's father's illness, diagnosed in May 2014, account for the omission.

42. The judge accepts that the second Tier 1 declaration for the tax year 2012/13 was probably filed in 2014 or later, and that in principle the second appellant's miscarriage and his father's illness and subsequent death might have had an impact, but the judge adds: '*There is no evidence that this was actually the case. The letter of support from the supervisor at the Co-op suggests otherwise. Nor is there evidence of other matters, other than his tax affairs being late or inappropriately drafted…'*

43. Notwithstanding the appellants representative's submission that the judge had *unequivocally* accepted the evidence that the appellant was not aware of discrepancies until the tax returns arrived much later, in my finding such an assertion is not made out, particularly when this decision is read as a whole.

44. For example, the first appellant's explanation for failing to declare all of his income one year was that he had inadvertently failed to provide the relevant invoices to his accountant. There were, he said, 20 missing invoices. The judge was not satisfied with that explanation: *'It is unlikely that, having kept such a record,*

neither he nor his accountant failed to identify that some 20 invoices were missing and had not been provided to the accountant for the preparation of tax returns. Had such a spreadsheet been provided, as the first appellant says, such a discrepancy would have been immediately noted'.

45. Further, the judge notes that while the first appellant maintains that he was working through his own limited company in IT and computers, the second appellant stated that neither she nor the first appellant were self-employed, but only referred to them as working at McDonald's and in the Co-op respectively. The judge concluded that was a significant discrepancy that went to the crux of the appeal: *'I would expect the second appellant to know whether her husband was self-employed at the date of application, particularly if he had been running a company since 2010, as he claims'.*

46. Paragraph 54 therefore cannot be read in the type of isolated vacuum that I was urged to consider. I do not read it to be saying that the judge accepts that the errors made on the two tax returns were innocent or unintentional, in the sense of being a genuine mistake. I think it means what it says: that in 2016 the judge accepted that the appellant had been told by an immigration lawyer that his tax affairs would be checked, that he therefore sought copies of those tax return from HMRC, *'and it was at that stage that the discrepancies came to light'*.

47. The judge was not saying that those discrepancies were innocent or that the initial tax returns were a result of a genuine mistake. It is clear from what goes before that the judge did not think that. Rather than find inconsistency, that appears to me to be a more natural interpretation of the determination as a whole.

48. I draw further support in that conclusion from what follows at paragraph 54 *et seq*: the judge doubts the first appellant's evidence about his son's first language; expresses a reservation about who was actually dealing with the appellants financial affairs, something the first appellant had claimed at one point he did himself; and the judge was entitled to find that the first appellant had not disclosed any correspondence with his accountant regarding the events which led to the amendment of his tax returns, (albeit the judge gave no adverse weight to the lack of any explanation for the absence of such evidence, since it was not put to him).

49. Significantly, the judge found at paragraph 59: '*Generally, the first appellant's oral evidence was confused and muddled. He frequently did not answer straightforward questions, but gave detailed, rambling and irrelevant responses. His oral evidence was evasive, vague and confusing….*'

50. And at paragraph 60:

> 'I find the appellants are not credible or reliable witnesses. They have fabricated and embellished their evidence to demonstrate the first appellant has a reasonable or innocent explanation for the discrepancies in the figures claimed for his earnings and

> declared by way of income. I am satisfied that the first appellant did not earn the sums claimed to the respondent in March 2011 and September 2013. The fluctuations in the profit and loss accounts are sufficiently concerning as to suggest that the first appellant had inflated his earnings to enable him to be awarded points as a Tier 1 (General) migrant.… I am satisfied the first appellant sought to deceive and did deceive the respondent in the two applications and that he had no entitlement to the award of points… I am satisfied the first appellant knew he did not earn sufficient income from his work for the Co-op and that he set up the company as a means to demonstrate additional income… for the award of points as a Tier 1 migrant.… I am satisfied the first appellant acted dishonestly in claiming in March 2011 and September 2013…'

51. Any notion therefore that the judge intended to accept without demure the first appellant's explanation is clearly misplaced. Comments made by the judge in relation to the letter of 2016 make no difference to the overall outcome. No error of law can in my judgement be properly founded by taking an isolated statement out of context.

52. I therefore agree with Ms Jones that the interpretation that the appellant seeks to place on paragraph 54 is misconceived and flies in the face of what is otherwise a well-reasoned and clear judgement. I therefore dismiss ground 1.

Ground 3 - procedural unfairness

53. The force of the second ground of appeal to be granted permission was that a number of the findings made in the determination were not put to the first appellant and, as such, he was deprived of the opportunity to address those concerns.

54. Counsel placed particular reliance on the findings of Bingham LJ in the case of *R v Chief Constable of Thames Valley Police, ex parte Cotton* [1990] IRLR 344, citing the following extract from the judgement:

> "While cases may no doubt arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all the circumstances unfair, I would expect these cases to be of great rarity. There are a number of reasons for this:
>
> 1. unless the subject of the decision has had the opportunity to put his case it may not be easy to know what case he could or would have put if he had the chance.
>
> 2. As memorably pointed out by Megarry J in *John v Rees* [1970] Ch 345 at page 402, experience shows that what is confidently expected is by no means always that which happens.
>
> 3. It is generally desirable that decision-makers should be reasonably receptive to argument, and it would therefore be unfortunate if a complainant's position became weaker as the decision-maker's mind became more closed.

> 4. In considering whether the complainant's representations would have made any difference to the outcome the court may unconsciously stray from its proper province of reviewing the propriety of the decision-making process into the forbidden territory of evaluating the substantial merits of a decision.
>
> 5. This is a field in which appearances are generally thought to matter.
>
> 6. Where the decision-maker is under a duty to act fairly the subject of the decision may properly be said to have a right to be heard, and rights are not to be lightly denied."

55. The above was subsequently adopted by the President of the Upper Tribunal, McCloskey J in *MM (unfairness; E & R) Sudan* [2014] UKUT 105 (IAC); and the case of *Secretary of State for the Home Department v Maheshwaran* [2002] EWCA Civ 173, handed to me during the course of the hearing, where Schiemann LJ held at paragraph 4:

> 4. Undoubtedly a failure to put to a party to litigation a point which is decided against him can be grossly unfair and lead to injustice. He must have a proper opportunity to deal with the point. Adjudicators must bear this in mind. Where a point is expressly conceded by one party it will usually be unfair to decide the case against the other party on the basis that the concession was wrongly made, unless the tribunal indicates that it is minded to take that course. Cases can occur when fairness will require the reopening of an appeal because some point of significance - perhaps arising out of a post hearing decision of the higher courts - requires it. However, such cases will be rare.

56. Schiemann LJ went on however to add that the requirements of fairness are very much conditional on the facts of each particular case. While it is open to a tribunal to put a particular inconsistency to a witness, that will not always be the case, particularly if a party is represented.

57. While undoubtedly the above principles will and do have relevance in appeals such as this, they need to be read through the lens that an appellant will still need to establish that there is a real, as opposed to a purely minimal possibility that the outcome would have been different as the result of any omission; (*per* McCloskey J in *MM* (para 16), citing Simon Brown J's judgement).

58. Secondly, it is also correct to observe that in the above cases the courts were considering the much broader topic of a litigants rights to a fair hearing, procedural unfairness and unfairness resulting from a mistake of fact, rather than the more narrow confines submitted in the instant appeal relating to the contents of the judgement itself.

59. The short answer to the point being advanced in the instant appeal may be that the appellants were given the opportunity to put their case and were represented by counsel. However, to understand the complaint in context, it is necessary to consider the 3 grounds where it is said the judge did not put the point to the

appellant during the course of the hearing, found at paragraphs 37, 50, and 53 of the judge's decision.

Paragraph 37

60. In terms of paragraph 37, having considered in the preceding paragraphs the 'remarkable differences' in the declared incomes, and the discrepancies that arose as a result, the judge turns to who actually provided the self-assessment tax returns submitted to HMRC. The judge notes that when asked, the first appellant stated that in both cases the self-assessment tax returns were submitted by his accountant, Mr Gohil. The judge then goes on to note that in terms of 3 corporation tax returns, a different accountant is referred to, this time 'VZ Accountancy Services Ltd.' Only a later letter from HMRC to the appellant's company, dated 17 December 2015, refers to Gohil Accountancy Services Ltd as acting for the first appellant. This information the judge found was inconsistent.

61. The judge then proceeds to make the following comment:

> 'It is unlikely that the first appellant would have instructed two firms of accountants, concurrently, to deal with the company's tax affairs.'

62. I was asked to consider the above comment in the context of Bingham LJ's conclusions. It was advanced that the unlikelihood of the appellant having two sets of accountants at the same time had never been put to the first appellant, and as a result, the first appellant had never been given the opportunity to respond to it.

63. While I understand the basis of the concern, I do not share it. The representative is attempting to view such an expression of opinion in isolation. I cannot see that anything turns on this particular point or that this sentence forms any great significance to the overall reasoning of the judge.

64. The judge has adequately explained why reservations were held. It was a tension in the evidence that was not resolved. The appellant was represented by counsel who could have asked about it had they wish to do so.

65. I attempted to seek clarification during the course of the hearing before me about the involvement of VZ Accountancy Services, and Counsel informed me that he could not speculate about that and then confirmed that he did not have instructions why VZ featured. The point he said was that the appellant had not been given an opportunity to deal with it. I hesitate to comment further.

66. In my judgement, the appellants and others had every opportunity of clarifying this point during the course of the evidence or by way of evidence from the accountants themselves. There is no obligation on a judge to raise every conceivable point that may or may not have sway when they come to consider their judgement. The judge in this case has set out the key factors on the central

issue under consideration. The judge's findings in relation to the appellant not being a credible or a reliable witness were supported by a number of other factors, beyond this one sentence, and I therefore find no unfairness in the judge's approach in this regard.

Paragraph 50

67. The second point raised in the grounds of appeal was that the judge had self-calculated the first appellant's estimated invoices and then drawn conclusions that those figures were markedly different from the turnover of the company. Again, it was argued this matter had not been put to the appellant.

68. The relevant part of the judgement reads as follows (paragraph 50):

> The first appellant also told me the reason he had failed to declare all his income in 2013/14 was because he had inadvertently not given all relevant invoices to his accountant. There were, he said, 20 missing invoices. I have not been provided with copies of those invoices. He said he contracted with his clients to work on long-term projects which might last a year or two. He said each invoice was for between £1500 and £3500. He said he would be paid upfront and, mostly at the end of the project. *I calculate the approximate sums due on those 20 invoices was between £30,000 and £70,000.* [My emphasis added.]

69. Counsel argues that that calculation was never put to the appellant and that he might have been able to provide some form of explanation. It was suggested there was detailed evidence that made this pivotal to his case.

70. However persuasively counsel sought to argue the point, ultimately the judge was simply reflecting that these were significant sums that appeared to be out of step with the turnover of the appellants company in the years it had been trading. If there were 20 missing invoices, and each invoice was for between £1500 and £3500, it appears to me the judge was entitled to conclude that the approximate sums due on those invoices would have been between £30,000 and £70,000. That stood with the evidence that the appellant had given. The notion that such a statement was something that Bingham LJ might have had in mind in order to establish a ground of appeal appears to me to be misconceived.

71. The explanation the appellant gave for not including these invoices was that he had simply failed to pass them onto his accountant. This suggests to me that they were available to him (and not, as counsel hypothesised, the result of some delayed transaction or contract that may have had several years to run).

72. The judge was stating what flowed from the evidence. It was within the gift of counsel who represented the appellant at the time to ask questions about any statement the appellant had made in relation to these missing invoices or advance further evidence. The mere fact that the judge has looked at the evidence given and approximated what that would mean in terms of turnover appears to me to

be perfectly within the judicial function and there can be no question of any error of law.

Paragraph 53

73. The third point that the appellant characterised as amounting to procedural unfairness concerns paragraph 53, where the judge considers the increase in the appellant's income at times he was due to make his application for leave to remain.

74. The inference was that the first appellant had inflated his income to score more Tier 1 points. The assertion made by his representative was that this was never put to the appellant and that it was perfectly plausible for applicants to work harder in the years that they needed greater income levels.

75. It is clear from the judge's recital of the respondent's case that the Home Office was maintaining that the first appellant had misrepresented his earnings at various times to HMRC and/or to the respondent for the purpose of either reducing his tax liability or the purpose of obtaining leave or both. (See, e.g., pages 3 and 4 of the respondent's refusal letter, dated 30 January 2018.) This would amount to either deflating or inflating the said income figures.

76. The appellants could therefore not claim to have been taken by surprise by the Home Office's case in this regard, as reflected in the judge's comment.

77. It appears to me that if there 'may have been a number of reasons why his income increased', then that was a matter for evidence had the first appellant wished to adduce the same.

78. Beyond the above, when asked about what the evidence was for suggesting this was never put to the appellant, counsel's reply appeared to be that while it may have been suggested in the Secretary of State's refusal letter, it was never raised in the questionnaire.

79. For my part, and even being generous towards the point, I cannot see any prejudice caused to the appellants in the judge observing that the figures for the company's annual turnover were higher in the years when the first appellant applied for leave to remain as a Tier 1 (General) migrant. The findings the judge made in terms of profit and loss support this. The judge had not closed the door on other possibilities, simply stating that a reasonable inference to be drawn from this is that 'at best, the first appellant had attempted to manage his business in such a way as to invoice clients in the months before he was due to apply and at worst, the figures were unreliable'. In the context of the other findings, I find nothing material in the judge making that observation.

Conclusion

80. Even looking at matters in the round, I cannot find that the above three examples of alleged procedural unfairness would have materially changed the outcome of this appeal. The decision is well constructed and well-considered, and even when viewed together or holistically, these points would not in my judgement have made a marginal or any difference to the outcome of this appeal. While I apply appropriate caution in so concluding, to my mind there is no element of speculation on that point. The decision of the judge is clear, it is comprehensive and it is wide-ranging.

81. The presenting officer, Ms Jones, was entitled, in my view, to say that these were mere assertions without any evidence. She was correct to state that these were examples of the judge reflecting on what had been said by way of evidence and drawing reasonable conclusions. I agree with her that this is an otherwise cogent, rational and well-reasoned decision on the evidence. The presenting officer was also correct to observe that the appellant was not only represented by counsel at the hearing below, but had prepared a full statement where he addressed some of these points, clearly understanding the case that he had to answer.

82. In response, counsel for the respondent said he would like an adjournment for the obtaining of the record of proceedings and potentially further directions. He suggested that the Secretary of State had not asserted any disagreement to the procedural fairness points in terms of the matters not having been put and if they were disagreeing, then he would like the opportunity to obtain evidence. Not only did this application come late in the day, but it appears to overlook the directions that Judge O'Connor gave in terms of the service of evidence, and furthermore would be unlikely to resolve the issue of what was said at the hearing, because a record of proceedings is not a verbatim account. I can see no purpose at all in adjourning matters. Counsel's confidence that the appellant would have been able to deal with these things if they had been put to him was framed in part on speculation.

83. For the above reasons, I dismiss these appeals. The proceedings at first instance were adversarial and it was the function of the judge to make findings on the evidence presented, and that is what the judge has done.

84. Both parties were agreed that the second appellant's appeal (HU/07268/2018) fell or succeeded on the basis of the first appellant's grounds. I therefore also dismiss that second appeal.

Notice of Decision

The appeals are dismissed.

No application was made for anonymity in this appeal. The general rule is that hearings are held in public and judicial decisions are published (*A v BBC* [2014] UKSC 25) and I saw no reason to depart from the general rule in this case. Both the appellant's representative and the Secretary of State's representative agreed that any anonymity direction could be dispensed with.

Signed 

Date 4 March 2019

Deputy Upper Tribunal Judge Sutherland Williams