Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers:
(1) IA/02707/2009
(2) IA/03425/2009
(3) IA/06333/2009
(4) IA/06336/2009
(5) IA/06340/2009

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 22 September 2014 & 24 September 2014	**On 5 November 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

1 **CHARITH WIJESUNDERARA WEERATHNA**
2 **ANURUDDHA RUKMAL RATNAWEERA**
3 **NISHANTHA SIYAMBALAPITIYA**
4 **PRABHA KUMARI SIYAMBALAPITIYA**
5 **VIDARSHI KUMARI SIYAMBALAPITIYA**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms C Bayati, Counsel, instructed by Polpitiya & Co Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. I have not made an order pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 restricting reporting in this case. It does not involve issues of international protection and although there were arguments concerning the welfare

of children these did not raise the kind of deeply personal or potentially embarrassing issues that I think should be excluded from the public domain.

2. As I explained when I gave directions on 10 July 2012, these appellants are represented by the same solicitor and their appeals raise points arising from their contact with the Cambridge College of Learning. In simple terms it is the respondent's case that the first three appellant were involved in a scam and got caught.

3. Stripped of the necessary legal niceties, it is essentially the respondent's case that the first, second and third appellants supported an application for leave to remain as a Tier 1 (Post-Study Work) Migrant with a certificate from Cambridge College of Learning. This purported to be proof of success on a course entitled "Post Graduate Qualification in Business Management" but it was a false certificate handed to them by the college without their doing any work. According to the respondent the Cambridge College of Learning had never offered such a course and the certificates were false documents raised to show that the appellants had attained a certain academic standard when they had done noting of the kind. The appellants did not meet the requirements of paragraph 245Z(c) of HC 395 because they did not have a relevant qualification and the applications were refused, additionally, under paragraph 322(1A) because the appellants had used a false document to pretend that they were qualified.

4. The fourth and fifth appellants are the dependants of the third appellant.

5. The first appellant appeals a decision dated 16 January 2009. On 27 January 2011 the Court of Appeal remitted his case to the Upper Tribunal to conduct a de novo hearing.

6. Then second appellant appeals a decision of the respondent dated 22 January 2009. In his case a decision of the First-tier Tribunal was set aside by the Upper Tribunal after a hearing on 20 July 2011 and was ordered to be re-made. The Tribunal's reasons for finding an error of law are set out in an appendix to this decision.

7. The third and fourth appellants are married to each other and the fifth appellant is their daughter. On 9 January 2012 the Court of Appeal remitted their cases to be heard by the Upper Tribunal at the same time as it heard the appeal in the case of the second appellant.

8. The third, fourth and fifth appellants appeal decisions of the respondent on 12 February 2009.

9. The fourth appellant appellant's application was refused with reference to paragraph 319C(b) of the HC 395 because she was not the partner of a person being given leave to remain as a Tier 1 migrant and the fifth appellant's application was refused because with reference to paragraph 319H(b) because she was not the child of such a person.

10. Where the respondent has chosen to rely on paragraph 322(1A) of HC 395 the respondent must prove that false documents have been submitted in respect of the application. Otherwise the applicant must prove that his or her circumstances satisfied the requirements of the rules. Although the appeals raise common

issues, each appeal has been decided on its own merits. These appeals do not raise issues of international protection. The standard of proof is the balance of probabilities. Each of the appellants relies on article 8 of the European Convention on Human Rights. Essentially this involves a balancing exercise where proper purpose of maintaining immigration control has to be weighed against the interference with peoples' private and family lies inherent on removal. The respondent must show that any interference is proportionate.

11. Although there are many papers in this case the appellants' solicitors have organised two bundles, the first comprising three volumes and the second a single supplementary bundle served close to the hearing. Most of what I needed to read was within these bundles and it has assisted me considerably to be given properly prepared, indexed and paginated bundles.

12. When I outline the evidence I do, in places, comment on the quality of that evidence and indicate my findings. I confirm that I reached no conclusion without first considering the evidence as a whole and any contrary impression that anyone gets because, for example, of the order in which I consider points, is wrong. This is not an empty, formal self-direction. I have, for example, made comments on the challenge to the reliability of the evidence of Ms Ullah near to the beginning of the decision because I consider it the best way of explaining my decision but I certainly did not begin my analysis of facts by make those findings.

13. It is, I think, uncontroversial to say that the Cambridge College of Learning came to an undistinguished end. Certainly in the summer of 2008 the United Kingdom Border Agency was concerned by the number of applications received from people seeking to remain in the United Kingdom as Tier 1 (Post-Study Work) Migrants who supported their applications with certificates from the Cambridge College of Learning. The Border Agency satisfied itself that the supporting certificates were false documents issued to misrepresent the bearer's qualifications. These concerns eventually resulted in a test case coming before the Tribunal in June 2009. Three Senior Immigration Judges (Storey, P R Lane and Pinkerton) sat on the case and were assisted by Mr Ian Macdonald QC for the appellants and Mr G Clarke, counsel, instructed by Treasury Solicitors for the respondent.

14. The decision was reported as **NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031** and the head note of that decision is in the following terms:

> "Cambridge College of Learning (CCoL) never ran a postgraduate diploma in business management course or a postgraduate diploma on IT course. Accordingly for a person applying for leave to remain under a Tier 1 (Post-Study Work) Scheme to rely on a certificate of an award of such a diploma following the course will amount to a false representation and so will fall foul of paragraph 322(1A) of the Statement of Changes in Immigration Rules HC 395. Such a person will also be unable to meet the requirements of para 245Z because he or she could never have undertaken such a course."

15. Unsurprisingly that decision did not end litigation arising from alleged students of the Cambridge College of Learning and two more decisions of the Tribunal were reported. In **Khan and Tabassum (CCoL: postgraduate certificate)**

Bangladesh [2011] UKUT 00249 (IAC) the Upper Tribunal (Senior Immigration Judge P R Lane) said in the head note:

> "(1) those who assert they were awarded postgraduate certificates in business management (and IT) by Cambridge College of Learning, after completing relevant courses they will have to surmount the important and obvious problem that, if such certificate courses had been run and examined by CCoL, and certificates awarded to successful candidates, the witnesses who gave evidence to the Tribunal in NA and Others (Cambridge College of Learning) Pakistan [2009] UKIAT 00031 and who were found credible, would have said so. There was no credible evidence before the AIT in that case to suggest that any postgraduate courses in business management or IT were taught or examined by CCoL. It follows that, whilst the evidence in each case must be individually assessed, NA and Others is indicative of there being no such thing as a genuinely issued CCoL postgraduate certificate in those subjects and it is therefore necessary for a claimant seeking to rely on such a certificate to adduce cogent evidence in support.
>
> (2) For the correct way to approach the use of the determination in **NA and Others**, see paragraphs 32 to 40 of the Upper Tribunal's determination in **TR (CCoL cases) Pakistan [2011] UKUT 33 (IAC)."**

16. In **TR (CCoL cases) Pakistan [2011] UKUT 33 (IAC)** the Tribunal (Senior Immigration Judge Storey, Senior Immigration Judge Perkins) said:

> "(1) Just because findings of fact made by the Tribunal in their reported case are not binding does not mean that Immigration Judges are free to take account or not to take account of such findings at will: (a) the determination may contain an account of the record of evidence; (b) the Tribunal may have made findings of fact and if these relate to the same factual matrix then they should be followed unless there is good reason to revisit them: see **A (Somalia) [2007] EWCA Civ 1040**.
>
> (2) Cases in which the Secretary of State alleges that a claimant falls foul of para 320(1A) of Statement of Changes in Immigration Rules HC 395 as amended, it will be important to follow the guidance given by the Court of Appeal in **AA (Nigeria) [2009] EWCA Civ 773** that knowing deception is needed to show false representations.
>
> (3) Given the nature and extent of the evidence found by the Tribunal in **NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00033** to point overwhelmingly to a conclusion that CCoL never ran any postgraduate diploma in business management or in IT, a claimant who relies solely on documents specific to his or her own (claimed) studies in order to maintain the contrary must be scrutinised closely."

17. I note, too, that the appellants asked for disclosure of certain documents in the possession of the Secretary of State. Eventually the Secretary of State refused saying disclosure could not be made without an order of the court and by letter dated 4 August 2010 the clerk to the First-tier Tribunal wrote to the appellants' solicitors on the instructions of Senior Immigration Judge Pinkerton. The letter said:

> "One of the reasons for reporting **NA and Others** was for that appeal to be a lead case in relation to all other Cambridge College of Learning appeals. It was a lengthy hearing in which the evidence was considered in detail and facts were found. If any challenge has been made to the reported decision it has not been successful. The findings therefore stand. You requested disclosure of various

> items in your letter of 22 April 2010 but it is noted that all those items were referred and considered in **NA**. There is no justification for directing disclosure as you have requested and the appeal should proceed to a full hearing on 12 August 2010."

18. I was not asked to order any disclosure and I have no reason to think that the appellants have been improperly deprived of evidence that might have assisted them.

Respondent's Case

19. The respondent wishes to rely on the evidence and comments on that evidence in the case of **NA**. One of the reasons for finding that the respondent had proved that there never was a postgraduate qualification in business management was the evidence of Saamia Ullah. The appellant's solicitors had found a "LinkedIn" profile page of Ms Ullah in which she appeared to say things that were contrary to things said to the Tribunal in **NA**. As is widely understood at the time of writing "LinkedIn" is a form of internet based social media favoured by professional people in which, typically, they outline their career histories. A letter was sent to her professional address inviting her to attend the appeal hearing and to contact the solicitors. There was no response to that request. The Tribunal was asked to issue a witness summons and the application was put before me. I declined to issue a witness summons. The appellants wanted the summons but they did not know what the witness was going to say. They did not want to call her but to cross examine her. If the respondent did not want to call her then getting her to the hearing centre would not have achieved anything useful. The appellants had raised their concerns with the respondent and if the respondent chose not to call the witness the appellants could make submissions based on their contentions and the respondent's failure to respond.

20. Before me Mr Tarlow confirmed that he did not wish to call Ms Ullah and was not asking for a witness summons.

21. When I came to decide the case I did not find the challenges to Ms Ullah's evidence arising from alleged subsequent inconsistent statements to be damaging. The appellants' proved Ms Ullah's LinkedIn profile page by a statement from the appellants' solicitors and, in the absence of any contrary evidence, I am quite satisfied that the summary produced is how Ms Ullah seeks to identify herself on LinkedIn.

22. At paragraph 23 of the decision in **NA** it is recorded that:

> "Ms Ullah said that she has been employed at CCOL, originally on a part-time basis, since January 2006, becoming Head of Business Management from January 2007 until the college closed."

23. This contrasts with the LinkedIn entry which says that she was head of business and management at Cambridge College of Learning from January 2005 until December 2008. I cannot reconcile these two things. If she started working in January 2005 as claimed on LinkedIn she was wrong to say that she was employed from January 2006 unless she first worked for the college in a self-employed capacity. If she became head of business management from January

2007 she was wrong to say on her LinkedIn page that she was head of business management from January 2005 until December 2008.

24. Again, according to paragraph 23 in **NA** Ms Ullah had said:

> "I am certain that no courses were and have been running for postgraduate diplomas of any type at [CCOL], nor are we an organisation that can award such a qualification".

25. Superficially this does contrast rather with a claim on the LinkedIn page to have delivered lectures for fifteen business modules "to Post-Graduate and Graduate students". However, Ms Ullah does not identify any postgraduate course that she taught at the Cambridge College of Learning. I find the use of language interesting. When Ms Ullah wrote about her work at the Cecos London College from January 2004 until December 2004, she said expressly that she was "delivering lectures for postgraduate and graduate level business studies students". Similarly, when she was talking about her work as the head of business and management at 360 GSP College from January 2009 to December 2009 she was "delivering lectures at postgraduate and graduate levels for the Association of Business Executives". However, under the entry for Cambridge College she refers to: "Delivering lectures for fifteen business modules (both taught and researched) to postgraduate and graduate students."

26. I do not think this is coincidence. Ms Ullah is an educated person who can be expected to express herself carefully and accurately. I find that she is telling the truth and is contrasting her work at the Cambridge College of Learning where some of her students were graduates with her work at other institutions where she did teach post-graduate course. It may be that she is presenting her history in the most favourable light but she did not actually claim to have taught a postgraduate level course at Cambridge College of Learning. I do not accept that there is any conflict established between her evidence in **NA** and her claims in LinkedIn on that point.

27. Ms Ullah claims in her LinkedIn page that she was involved in:

> "initiating and maintaining productive contact with the Home Office – UK, educational consultants and awarding bodies such as Edexcel, ABE, BAC and universities across Europe to support intelligence on educational and curricular standard applicable to our institutions".

28. This is a vague phrase. The reference to "initiating and maintaining productive contact with the Home Office" could describe her role in exposing some of the failings of the college in **NA (Cambridge College)**. She does not actually claim to have been involved in college communications with the Home Office. She may have been involved in initiating contact with the Home Office to support intelligence on educational and curricular standards.

29. It is regrettable that she did not respond to the queries from the appellants' solicitors. It is also regrettable that the Home Office were not more anxious to assist the Tribunal by engaging with her and possibly calling her as a witness. They did not and I find that read carefully the evidence in LinkedIn is not so very much at variance with the evidence in **NA** as the appellant suggested. Indeed

other than the inconsistencies over dates, which I find to be inconsequential, I do not accept any inconsistencies have actually been established.

30. In **NA and Others** the Tribunal received and analysed oral and other evidence from people associated with the college and that evidence, and the Tribunal's findings about that evidence, is relevant to the case before me. It was never the respondent's case that the Cambridge College of Learning was a bogus college per se. It appeared to have operated legitimately at least until the second half of 2008 and even after that date it continued to run and arrange genuine courses. The respondent's concerns were about the claims that the college offered postgraduate diploma courses, particularly in business management or information technology. The Tribunal set out in summary much of the oral evidence it received on behalf of the Secretary of Safe. It is plain that it found the evidence credible.

31. Two of the witnesses were officials from UKBA. Their evidence showed that students at Cambridge College of Learning were expected to have an identity card and were expected to have a four figure identification number.

32. Very detailed evidence was taken from Mr Muhammad Faisal Munir Malik and Miss Saamia Ullah. Mr Malik was essentially an IT trainer. He said that he knew Ms Ullah as a person who had run business studies courses at the college. He was not aware of the college having a "board of examiners". It was rare for students not to have an identity card name and he was only familiar with four digit student identity numbers.

33. It was Ms Ullah's evidence that she was "The head of department for business and management within CCoL. In performance in this role she managed the Entire Association of Business Executives (ABE) Department". She had heard rumours about postgraduate diplomas from CCoL being sold outside the campus and stated:

> "I am certain that no courses were and have been running for postgraduate diplomas of any type at [CCoL], nor are we an organisation that can award such a qualification".

34. She worked at the college between 9.30 am and 5.00 pm on Wednesdays, Thursday and Fridays. She had started work in January 2006 and remained at the college until it closed. She had not seen any postgraduate diploma courses at all, or heard of them being taught, or seen students purporting to follow them or met any staff members purporting to teach them. She was confident that a postgraduate diploma course in business management from the Cambridge College of Learning did not exist. She did not think it possible for the college to have offered a postgraduate course leading to a diploma from the Cambridge College of Learning without her knowledge.

35. She was asked to explain why her name was not on the current college website list of college staff. She was not able to explain that. She said she was sure her name was there in early December 2008 because she remembered showing it to a police officer in the course of investigations.

36. According to paragraph 27 of the determination in **NA**:

> "Ms Ullah said that she had nothing to do with college communications with the Home Office: reception and the college administration did that".

37. Without in any way suggesting that the decision in **NA** was wrong on the evidence before the Tribunal that decided it, the present appellants insist that the Cambridge College of Learning did provide a postgraduate diploma course in business management and they studied that course. I have set out the above summary of the relevant evidence in the case of **NA** as it helps identify the issues that I will be expected to resolve.

38. I consider now the oral evidence which is before me.

Appellants' Evidence

First Appellant

39. The first appellant, Charith Wijesunderara Weerathna, gave evidence. He had made a statement dated 23 September 2011.

40. There he said that he was a graduate of the University of Colombo in Sri Lanka with a degree of Bachelor of Arts (Honours) in international relations. He also studied law at the Law College of Sri Lanka and enrolled as an internee in law in Sri Lanka.

41. He entered the United Kingdom as a student on 18 January 2007. His wife accompanied him and their son was born in the United Kingdom on 28 May 2008.

42. He claimed to have been awarded the degree of postgraduate diploma in business management by the Cambridge College of Learning having completed his studies in August 2008. He set out the procedural history of his case.

43. He said that before coming to the United Kingdom he had worked as a marketing executive with a firm in Colombo. He came to the United Kingdom to study for a designee Master of Laws at Cecos College.

44. When he attended a familiarisation course he was told that the course he wanted to study was not running because not enough people had applied to join it. He was disappointed. His employers in Sri Lanka told him to follow a management course and so in September 2007 he applied to the Cambridge College of Learning to undertake a postgraduate course in business management.

45. He said he had to pay a course fee of £3,400. He paid by instalments and was never given an identity card. He said how the course was assessed and how he was examined. He did not submit work in his first term because his wife was pregnant and needed his support.

46. He said there were about 25 to 30 students following the course of studies. He particularly remembered the second and third appellants. They became friendly because they were from Sri Lanka with similar backgrounds. He regarded it as a serious matter to be accused of producing false documents to support an application for permission to stay in the United Kingdom. It is something that could impact adversely on his future employment and he did not want to return to Sri Lanka with these immigration issues unresolved.

47. In answer to questions in cross-examination he repeated some of his history in coming to the United Kingdom. He confirmed that he had only kept one copy of

one of the eight assignments that he had completed. He had no copies of lecture notes. The course was completed in 2008 and he "probably binned everything". He identified two lecturers on the course, Mr Opoku and Miss Mulikat Omolara Ojulari. He understood that Miss Mulikat Omolara Ojulari had returned to Nigeria and that Mr Opuko had been approached by solicitors but would not speak to them.

48. He expressed his disapproval of the standard of the course. He said the lecture notes were not worth keeping.

Second Appellant

49. The second appellant, Mr Anuruddha Ratnaweera, gave evidence. He adopted statements made on 7 March 2010, 14 April 2010, 13 July 2011 and 3 October 2011.

50. In his statement of 7 March 2010 he identified himself as the husband of Mrs M P Nishamali K C Ratnaweera and the father of Kulanya who was born on 2 September 2002. The family lived together in the United Kingdom.

51. He arrived in the United Kingdom in February 2003 to pursue higher studies. His wife and daughter joined him in February 2004. He said that since arriving in the United Kingdom he had been a genuine and full-time student mostly in the field of information technology. He had completed an MSc in September 2007 awarded by the International University of America. Lectures were held at the London College of Business. He wanted to gain more knowledge of information technology and enrolled at the London College of Business to study for the degree Master of Philosophy which he hoped he could convert into the degree of Doctor of Philosophy. He found the course too demanding and with commendable frankness said he "found it difficult to cope with the workload".

52. He gave up on that course and enrolled with the Cambridge College of Learning for a postgraduate diploma in business management. He was admitted to the college on the basis of his previous qualifications.

53. His course fees were £3,400. He paid £500 but was not issued with an identity card until he paid the course fees in full. He explained how the course comprised eight modules.

54. He said that his daughter was only 1½ years old when he came to the United Kingdom and had lived for a further six years and so had spent most of her life in the country. She was doing well at school and he did not want her disturbed.

55. In his statement of 14 April 2010 he gave more details about his links with Cambridge College.

56. He said the college gave him a four digit identification number. The number of the certificate is an eleven digit number. It began with the number 8 (the certificate was issued in October 2008) and was followed by his date of birth and the four digit student number. He did not bother with an identity card. He understood he could not have one until he had paid all the fees and by the time he paid all the fees he saw little point. He described the facilities of the college and the layout and the rooms and identified Mr John Opoku and Miss Mulikat Omolara Ojulari as tutors. He said he had eight modules to complete.

57. He did not know Miss Saamia Ullah. He had no contact at all with her at the college. Neither did he know Mr Muhammad Faisal Malik. When he changed course from a M Phil postgraduate diploma he told the Home Office by letter of his intentions and reasons. He relied on information on the website that the college was a recognised body. He did not have any receipts about his payment. He said they were misplaced during the time that he moved house. He paid cash for his final payment as it was close to his final examination.

58. His further statement of 13 July 2011 was in response to directions of Senior Immigration Judge Storey given on 10 July 2011.

59. He said that on 25 January 2008 he downloaded the Cambridge College of Learning website article on the Post Graduate Diploma in Business Management course. He printed it on normal white A4 paper so it would be almost impossible to distinguish the original from subsequent copies. He was unable to find the original downloaded document. He said that he had to inform UKBA of his change of studies and that his wife downloaded the document.

60. His final statement was dated 3 October 2011. There he identified the first appellant as a fellow student at the Cambridge College of Learning. They came to know each other because they attended the Cambridge College of Learning. He had downloaded the website article on 25 January 2008 about the Post Graduate Diploma in Business Management and had given copies to the first and third appellants. He said how he had already provided to the Tribunal the work sheet for the first four subjects taught.

61. He was cross-examined.

62. He confirmed he had come to the United Kingdom first in February 2003 as a student intending to study a Masters degree in computer science but his command of the English language was not good enough for the course.

63. He did the course in computer science at the Central College of Professional Studies which he completed in 2005. He confirmed that on that course past papers were available and made notes. The course included feedback and timetables. He said that the course at the Cambridge College of Learning cost £3,400 and he paid a £500 deposit for which he had no receipt.

64. He did not have an identity card at his time at the college. He believed the college kept records because a register of sorts was taken at the start of the session. He identified Mr John Opoku and Miss Mulikat Omolara Ojulari as the course tutors.

65. He confirmed that the course that he said he took at Cambridge College was his fifth course in the United Kingdom and the standard of teaching was not the same as the other courses he had experienced. He gave rather hesitant evidence about the examinations and said there were no past papers available but tutors discussed past questions. He was shown documents in the bundle purporting to come from Cambridge College of Learning which he confirmed were provided by the college.

66. He was asked if he was aware that it was possible to change text on the website from the observer's computer but he did not think that it was. I note at this point

that Mr Tarlow asserted that such changes were possible. I would not be surprised if that was correct but I have no evidence before me to substantiate the assertion and no personal knowledge, still less judicial knowledge, to support the claim. I have made by decision on the basis that such changes cannot be made.

67. The document at page 38 was a course handout but it did not bear any identifying marks linking it to the Cambridge College of Learning. He said it was given by tutors.

68. In summary, he was shown documents that purported to come from the college and he said they did come from the college.

69. In re-examination he confirmed that although they were not given formal mock examinations he had answered practice questions in tutorials.

Third Appellant

70. The third appellant, Mr Nishantha Siyambalapitiya, gave evidence. In fact he was the first witness to give evidence but nothing turns on that.

71. He adopted a statement dated 18 May 2010. There he explained that he is the husband of the fourth appellant and the father of the fifth appellant who was born on 11 October 2002. He and his wife have a second daughter, Vinushi Kumari Siyambalapitiva, born on 26 November 2008.

72. He said that he came to the United Kingdom on 19 February 2004 as a student and his wife and daughter joined him in December of that year.

73. He said that he was a genuine student. He had previously studied human resource and management technology and had done a human resource management course at the University of Luton in 2004. He completed a postgraduate diploma in information technology in June 2006 and a Master of Science in information technology at the International University of America in August 2007. He applied to study for a PhD in information technology at the London College of Business. The degree would have been awarded by the International University of America. The course was due to begin in October 2007 and last until September 2010. He was given a student visa extension to study until the end of December 2008 but the course was more than he could manage at that time in his life and he decided to "study a business course where I can gain business exposure".

74. He said that in October 2007 he joined Cambridge College of Learning to gain a qualification in postgraduate diploma in business management. He said he was admitted to that course because of his previous qualifications and he handed over the application for his previous education qualifications to the college reception at the start of October 2007. He was offered a place within a few days to study a Post Graduate Diploma in Business Management. He accepted the offer and started the course on 15 October 2007. He missed the two week induction that had taken place immediately before that.

83. The course fee was £3,000. He paid £1,000 deposit. He asked for a college identity card and was told he would not have that until the full course fee was paid. He paid the remaining balance in instalments during the two terms and the final payment soon before taking the examination. He had not asked for an

identity card. His interest was getting a qualification in business management. He saw no need for an identity card. He used his passport to identify himself when he presented himself for examinations.

87. He said the business management course was assessed by means of examinations and assignments. He studied four subjects per term, totalling eight subjects for two terms. Each subject was assessed by one examination one assignment. The examinations were conducted by the college in the classroom invigilated by lecturers. He completed eight assignments in his course of study. He had copies of seven of the assignments having misplaced one. He also did informal assessments which did not account for the final result. Those documents have been lost.

90. The first term went from October 2007 to February 2008 and he sat examinations in January 2008 in subjects including financial appraisal of proposed projects, making information decisions, developing the executive management and strategic management. The second term was from March 2008 to September 2008. He sat examinations in July 2008. The subjects were "critical thinking and research skills in management", "improving marketing strategies", "leading change in organisations" and "leading project implementation".

91. During the same period he completed assignments entitled (a) "Analyse [sic] of current strategies of Amzone.com" (b) "How the market can be segmented in terms of improving the marketing strategies of the organisation to patina its final objectives" (c) "Implementing a constructive project on luxury apparent complex", (d) "Critical review of organisation and its information system"; (e) "Analysing of organisational change programme in health industry"; (f) "How to improve executive management performances in relation to executive team approach and review of eldership modules".

92. According to the statement, all assignments were discussed individually after they had been marked. The results were given in the class and posted on a notice board.

93. The classrooms were fitted with tables and chairs and could accommodate 25 to 30 students. He attended lectures on Tuesdays, Wednesdays and Thursday and the teaching was between 10:00 am and 5:00 pm. The modules were taught in the form of lectures and some group discussion.

94. He described the college as a two floor building with a basement and ground floor. There were six or seven rooms in the basement which were mostly classrooms. Depending on room availability he had lectures in several class rooms but mainly in the basement. The grounds had some six or seven rooms and they comprised the principal's office and the staff room, library and a study room.

95. He said he accessed the course syllabus, curriculum and the course outline on line via the college website. The course reading lists were given during the lectures and the course timetables were displayed on the notice board.

96. He said there were about ten academic and non-academic staff in all. He particularly identified Mr John Opoku and a Miss Mulikat Ojulari as the two lecturers who taught his course modules. There were also visiting lecturers who delivered subject modules.

97. He said the lecturers gave out course hand outs and narratives during the lectures to aid the case studies.

98. Mr John Opoku taught him developing executive management, making information decisions, strategic management and improving marketing strategies. Miss Mulikat Ojulari taught him leading change in organisation, critical thinking and research skills management and leading project implementation. The visiting lecturers taught financial appraisal, proposed capital projects and others. Some of the modules were taught by either Mr Opoku or Miss Mulikat.

99. He also made a statement dated 3 October 2011 supporting the first appellant.

100. There he said that he was a fellow student of the first appellant at the Cambridge College of Learning. They did not know each other before attending the Cambridge College but became friendly as a result of meeting at the college. He said the "Cambridge College of Learning Qualification Hand Out For Post Graduate (level 7) Certificate" was handed over to all the students in our "client" who was in the same class.

101. He said that the two of them and a third friend, Anuruddha Rathnaweera, (the second appellant), applied for post-study work visas after completing the above course. All the applications were refused for the same reasons that they had submitted false documents. They appealed together and to some extent prepared their cases together.

102. He insisted that he did study for a postgraduate diploma in business management at Cambridge College of Learning and that even after the Cambridge College of Learning was closed the details were on their website On 31 March 2009 he downloaded from the Cambridge College of Learning website staff details.

103. He said he had already provided the Immigration Tribunal with a worksheet for the first four subjects taught during the first term as part of the strategic management module describing the human resource strategy. He confirmed the documents were given to him and the other students in class.

104. He said after his application for a visa as a post-study work was refused his solicitors wrote to the Department for Innovation, University and Skills asking about the status of the Cambridge College of Learning and was told that it had been included by order of a listed body but was suspended on 4 December 2008.

105. The bundle included additional papers supporting the appellants' cases.

106. In the case of the third appellant there was a letter purportedly from the Cambridge College of Learning containing a multi-digited student reference and identifying the appellant by date of birth and confirming that he was studying for a postgraduate diploma in business management. The letter appears to come from the Cambridge College of Learning but it is only in the form of a photocopy, albeit overprinted with a stamp bearing the name Cambridge College of Learning, and an address but no envelope or printed stationery that may have made it more difficult to obtain.

107. In similar form there is a transcript of academic record dated 8 September 2008 showing the appellant's marks in eight different subjects. He scored between 57% and 64%.

108. The postgraduate diploma in business management allegedly awarded by the Cambridge College of Learning also appears in the bundle.

109. There is also what purports to be a printout from the Cambridge College of Learning website. The date is shown as 31 March 2009 and Mr John Opoku and Miss Mulikat Omolara Ojulari are identified as members of the college staff. Mr Malik's name appears but Ms Ullah's does not.

110. There is a bundle marked "Qualification Handout" said to be for the postgraduate certificate or diploma in business management which is identified as a level 7 course. Behind that and separately there is what appears to be a syllabus or possibly a course outline describing it as a level 6 course. The document is entitled "Developing the Executive Manager".

111. There is also a later unit called "Strategic Management of Human Resources" said to be at level 7. There is what purports to be a printout from the Cambridge College of Learning website which refers to a list of available courses including a postgraduate certificate in business management. It bears the copyright mark "2007" but I cannot tell from examining it if that was when the background page was created or whether every item on that page was supposed to have been part of the 2007 copyright. The printout before me which is in photocopy form is dated 25 January 2008. It too shows a copyright mark for 2007 and appears to have been printed on 29 January 2008.

112. There is a page from the Cambridge College of Learning website referring to a postgraduate diploma in business management identifying Cambridge College of Learning as the awarding body and there is a scheme of work at postgraduate level 7 qualification in business management (the certificate/diploma) setting out in considerable detail the work required and topics covered. However I can see nothing on that document which links it to the Cambridge College of Learning.

113. The third appellant adopted his statements before me and was cross-examined.

114. He confirmed he had come to the United Kingdom intending to study and said that he did make his own notes and lectures. He said that he had attended courses before he went to the Cambridge College.

115. He accepted that he had accumulated a lot of paperwork and notes by the time he had finished studying for his MSc. He applied to the Cambridge College of Learning in September or October 2007. He paid the fees in instalments by cash. He attended the college on Tuesdays, Wednesdays and Thursdays and sometimes on Friday.

116. He identified Miss Mulikat Omolara Ojulari and Mr Opoku as lecturers and said the assignments were intended to be between 2,000 and 3,000 words long. He said they were given feedback individually but not in writing on a sheet. The college compared adversely with other colleges he had experienced.

117. The papers that he said were from the course appear in the bundle starting at page 142 and handwritten notes start from page 209. He said the manuscript

writing identified was his own. He did not have identity card. He could not have one until he had paid all his fees.

Fourth Appellant

118. The fourth appellant, Dr Prapha Kumari Sivambalapitiya, gave evidence. She adopted her statement of 16 May 2012.

119. Here she identifies herself as the wife of the third appellant and mother of two children Vidarshi Kumari Sivambalapitiya born on 11 November 2002 and Vinushi Kumari Sivambalapitiya born on 26 October 2008. It follows the children are now nearly 12 and nearly 6 years of age.

120. She arrived in the United Kingdom in December 2004 with the eldest daughter who was then aged 2. The youngest daughter was born in the United Kingdom. She described hers as a "very happy family".

121. The fourth appellant was qualified as a medical practitioner in Sri Lanka but resigned her work as a doctor in government service to join her husband, the first appellant, in the United Kingdom.

122. She said she would not be able to rejoin the Sri Lankan health service. It was Sri Lankan government policy that it would not employ a person who had been absent for five years or more.

123. She was currently working as a medical notes summariser for a medical practice in Cambridgeshire. She said how the daughters were particularly well settled and integrated in their new life in the United Kingdom. The eldest daughter was studying at school and the younger one was at pre-school. The children only spoke the English language and had close friends. The elder girl was particularly keen on the school choir but was involved with other activities as well her studies.

124. She said that having to leave the United Kingdom would make their lives "very chaotic" and suggested it would have a "huge negative impact on our lives". She was worried about how her daughters would manage because their only experience of education was in British culture and they only spoke the English language. In oral evidence she particularly drew my attention to the reports of Diana Jackson on the family.

125. In answer to questions from Mr Tarlow she confirmed that she had not been able to pass the exams necessary to practice as a medical "doctor" in the United Kingdom.

Other Evidence

126. Mrs Sudeepa Ruwanmalil Sunnadeniyage gave evidence adopting her statement of 23 September 2011.

127. There she identified herself as the wife of the first appellant. She entered the United Kingdom as the dependant of a student in January 2007. Their son was born in the United Kingdom on 20 May 2008 and so is now 6 years old.

128. Her son is settled at school and was studying in the English language and could not converse in any other language.

129. She is also concerned about his immunisation courses being completed although with the passage of time it would appear that they have been completed satisfactorily and nothing turns on that.

130. As an illustration of the way they were settled in the community she said they regularly attended Elim Pentecostal Church in Nuneaton and take part in church activities there.

131. She confirmed that her husband was an honest person and could not believe that he would ever submit false documents for the course.

132. She relied on Diana Jackson's report on her family.

133. She was not cross-examined.

134. Manamendra Patabadige Nishamali Krishathi Chamindika Ratnaweera gave evidence. She adopted her statement of 17 May 2012. She identified herself as the wife of the second appellant. They married in Sri Lanka in 2001 and have one daughter here, Samali Kulanya Ratnaweera, who was born on 2 September 2002 and so is now just over 12 years old.

135. She explained that she worked in Sri Lanka as a medical laboratory technician. Her husband arrived in the United Kingdom in February 2003 and she and her daughter joined him in February 2004.

136. She had been gainfully employed in the United Kingdom, first working for BP and from April 2010 for a company in Watford.

137. She explained how her daughter started nursery in 2005 and then school. She was a good student who enjoyed her studies and extra curricular activities. She threw herself into school life and was involved in the gardening club, violin lessons, chess club, drawing and swimming. She described her as accustomed to the British way of life. She only spoke the English language and all her friends were in the United Kingdom.

138. She worried about how she would adapt in the event of return. She could not resume her career in Sri Lanka because she was out of practice.

139. She too relied on the report from Diane Jackson and she was not cross-examined.

Diane Jackson's Report

140. In the case of each of the appellants I have an independent social worker's report dated September 2014 prepared by Diane Jackson who identifies herself as an independent social worker. The report says that her curriculum vitae is appended but in fact it was not appended in the bundle but an abbreviated curriculum vitae dated August 2014 is before me.

141. Miss Jackson's qualifications include a Bachelor's degree in sociology and psychology awarded in 1972 and a diploma in applied social work and certificate of qualification in social work awarded at Goldsmith's College University of London in 1975. She has worked as a social worker for the City of Westminster, the London Borough of Brent, and the London Borough of Hackney and as a guardian ad litem panel member for Worcester County Council. I have no reason to think she is anything other than a competent qualified expert witness who has

expressed truthfully her opinions and findings about the families she has considered.

142. The wife and son of the first appellant are dependent on the outcome of his appeal. The son Navida Wijesunara Weearathna, was born on 28 May 2008. There are similarities in the report. This is unsurprising. Again without being in any way unappreciative of Miss Jackson's efforts, nothing that she says about the impact that removal would have on a child who had spent all his life, or at least all the time that he can remember, in the United Kingdom surprises me.

143. The first appellant and his family are nominally Christian and are involved in an Elim Pentecostal Church. The first appellant's family are Buddhist although the first appellant was baptised "a couple of years ago". The first appellant's parents live in Milan in Italy. His father had had to leave Sri Lanka because of his political activities and Navida is particularly close to his grandfather.

144. I stress I have read the whole report but I find a quotation from the family pastor, Pastor Michael Brown, incorporated in the report to be particularly illuminating and I set out below part of it. Pastor Brown said:-

> "Navida is there every Sunday, of course, with his parents and attends the Kingdom Kids Sunday School class where he also socialises with the other attendees. He is popular with the older folk, in particular. Navida was born in the UK and has been brought up here in our country. English is the language he communicates, both in church the other kids and at school, although he is picking up a little Sinhalese at home. So in many important ways, his culture, world view, understanding of life and so on, are British. Sri Lanka is an unknown country for him. For him to be extricated from school and forced to repatriate at this stage after so many years would be a huge upheaval, not simply a matter of adjusting. It would take several years to adjust culturally and linguistically as well as educationally. He would also be uprooted painfully from all he has known in his young life, he would lose all his friends, and this, as well as the culture shock he would undergo if they did return to Sri Lanka, would have a tremendously negative emotional impact upon him."

145. Pastor Brown does not claim any particular expertise in dealing with young people and does to explain why he believes it would be a matter of "several years" before Navida could adjust but I understand his concerns about a young person who has grown up in the United Kingdom being removed to a country with which he has no connections.

146. At paragraph 4.3.2 of the report it is noted that the first appellant and Navida's mother are concerned at how he would cope in Sri Lanka because he is not bilingual. They said he understands "about 60% of Sinhala and he does not speak it and when they ask him something in Sinhala he replies in English. When [the first appellant's mother-in-law] communicates by Skype, Navida does not understand that."

147. Ms Jackson indicates that Navida has special needs and I have considered the speech and language therapy department of the South Warwickshire NHS Foundation Trust initial scans summary on Navida. I find that his parents are appropriately concerned about his welfare. The report does not support a finding that Navida has significant speech difficulties although the fact that Navida

hears Sinhala and English at home shows that he has some contact with the language.

148. In the case of the family of the second appellant Ms Jackson noted that their daughter, Samali Kulanya Ratnaweera, was born in September 2002 and so is now 12 years old. The second appellant said that his mother and sister lived in Sri Lanka. His father and brother-in-law had died in the Boxing Day tsunami in 2004. Samali had passed her 11 plus examination in September 2013 and obtained a place at her first choice of secondly school. The second appellant was particularly worried about how she would cope. The family could not afford to send her to an international school in Sri Lanka and she could not communicate or read and write in Sinhalese. Clearly she is a bright young woman. The school speaks well of her particularly her ability in maths. I have seen a copy of a letter she sent to the Prime Minister expressing her concern about poor conditions for animals kept in marine parks in the United State of America. It is not quite clear what she expects the Prime Minister to do about such things but I accept the sincerity of her concern and regard the letter as the work of a confident and aware young person who wants to make her mark on the world.

149. A letter from her head teacher is not only very enthusiastic about her personal character and attitude to learning but refers to her "huge amount of potential for continuing to achieve at very high levels".

150. Miss Jackson is concerned that Samali is of an age when she might feel anger towards her parents in the event of her having to remove. The report says at paragraph 5.4.1:

> "I have written above about the practical difficulties Samali would encounter, i.e. her lack of spoken and especially written Sinhala combined with what I understand is a very different education and social system. In my view the major problem in removal to Sri Lanka would be a matter of Samali being able to adjust to the loss of all that is familiar to her, i.e. her school, her friends, her teachers, the responsibilities she is beginning to take on and the opportunities to develop herself and her talents outside school. The letter from Rachel Kirk [head teacher] indicates a young person who has seized the opportunities available in the United Kingdom. It is my opinion that if Samali is removed to Sri Lanka, her sense of loss will make it impossible for her to regain her footing in a completely different, and to her, an alien environment."

151. In the cases of the third, fourth appellants Ms Jackson noted that there are two daughters of that family; the fifth appellant who was born in November 2002 and the other born in October 2008.

152. I have read all of the information in the reports. I note that there is some evidence of community integration on behalf of Siyambalapitiya family and I have read all nine chapters of "The Golden Purse" by the fifth appellant.

153. I do not mean in any way to diminish the achievements of the family or the importance of the evidence by summarising it as an example of a nuclear family where the children are supported and encouraged to take part in the life of the school. Without detracting from other things, I set out below parts of the letter from Dr C Marshall, the head teacher of Wheatfields Primary School. Dr Marshall says:

> "Vidarshi, in particular, is at a crucial point in her education. She joined Wheatfields Primary School in her Reception year and has therefore spent her entire primary education at the school. She is, now, at the point of transfer to St Ivo Secondary School in St Ives. Any move to disrupt her education, would, in my opinion, be extremely damaging both socially, emotionally and academically.
>
> Vidarshi is, in all respects, a model pupil at school. She is absolutely committed to her learning and receives outstanding support from her family. As a result, she will eave Wheatfields attaining standards that are significantly beyond what is normally expected of children at the end of year 6. This illustrates the extent to which Vidarshi and her family are fully integrated into this country's education system, as well as their determination to succeed. Moreover, Vidarshi is a popular and happy child, with a wide and secure friendship group. I have no doubt whatsoever that when Vidarshi moves on to St Ivo School she will continue to excel in all aspects of her learning. She is a credit to both the school and her family.
>
> Vinushi, too, has settled very well into the first year of her primary school career at Wheatfields and again, any suggestion that her education could be disrupted would be extremely concerning.
>
> Both children are fully integrated into all aspects of school, life and I am sure that this is also the case for them out of school."

154. Dr Marshall did not explain why it would be extremely damaging and I do not know if Dr Marshall has any personal knowledge of the education system in Sri Lanka. However, the point is that the children are well settled in the United Kingdom and removing them is disruptive is well made and is something that I must bear in mind.

Argument

155. Miss Bayati produced a skeleton argument. It points out, correctly, that I must decide if the Secretary of State has shown on a balance of probabilities that the first three appellants have used false documents in support of there Tier 1 (Post-Study Work) Migrant applications. In the case of the first, second and third appellants the respondent's case could hardly be simpler. They each supported their application with a postgraduate diploma in business management from the Cambridge College of Learning which, the respondent says, was a false certificate because the Cambridge College of Learning never offered such a course.

156. Miss Bayati contended that contrary to the findings in **MA** there was now evidence before the Tribunal to show there was a legitimate postgraduate qualification in business management offered by the Cambridge College of Learning at the material time and that therefore the appellants' case is capable of being true and in fact is true. She argued, correctly, that I must have regard to evidence not available to the AIT in **NA** and although its findings are a necessary starting point they do not necessarily indicate how I should decide the case.

157. The evidence of Ms Ullah is important. She appeared before the Tribunal in **NA** in answer to a witness summons and was called by the Secretary of State. She was cross-examined by leading Counsel in what was known be a test case. She insisted that she was in post at the material time and that no postgraduate course in business management, which was her area of particular expertise, was

taught at the college. That remains important evidence and it as not been undermined by the alleged inconsistencies in the LinkedIn page.

158. As explained above when I considered the evidence the only clearly established inconsistency is in a date about when she started work and I can see no basis on which that could be thought material.

159. I accept that there is evidence provided by the appellants appearing to show that details about the post graduate course were on the Cambridge College of Learning website on 25 January 2008. As correctly set out in the skeleton argument, the page of the website provides an overview of the diploma, details of the modules covered, the level of qualification, mode of study (full-time), entry requirements, mode of assessment and awarding body.

160. The evidence of that there were reference to the course on the college website is not very good. The documentary evidence before me is in the form of a photocopy which could very easily have been mocked up. Certainly it is on a piece of paper dated 25 January 2008. The part emanating allegedly from the college is copyright 2007 which might suggest it predates the 2008 download but does not prove anything. Further, I have no way of knowing independently of the appellants if it was in fact downloaded on 25 January 2008 as alleged.

161. I accept that the second appellant wrote to the respondent in January 2008 asserting that he was attending a post graduate course at the Cambridge College of Learning (bundle page 878) but it would have been wholly appropriate for a person to write to the Home Office and explain his absence from the course that he might be expected to attend and claim to be attending another course. It is the respondent's case that the first, second and third appellants have been involved in trickery and planned deceit. It neither hinders nor assists the respondent's case to see evidence suggesting that the claim to be attending a post-graduate course at the Cambridge College of Learning was long standing.

162. Similarly the alleged course work in the bundle is not helpful. The appellants have had time to consider their positions. The allegation against them is that they had taken part in a very blatant act of deceit. It is consistent with that they would have produced documentation tending to show they were on the course. None of the documents are particularly compelling. Not all of it bears the name of the college and could have been obtained from another college altogether or even from different courses attended by the appellants. It has some evidential value and assists rather than frustrates the appellants but it not determinative.

163. Neither am I impressed with the staff list identifying John Opoku as a tutor in 2009. It does not mean he was working at the college in 2008. It does not mean that Ms Ullah was wrong to say he was not there in 2007. A possible reason for identifying Mr Opoku is that he was part of the plan to pretend to run a course. The same can be said of Miss Ojulari.

164. It is difficult to prove negatives by relying on evidence that was not produced but I do find it a relevant omission in this case that the appellants have not been able to produce a witness prepared to say that he or she actually taught the disputed course. I appreciate that explanations have been offered but they are not persuasive. I do not understand why a person returning to Nigeria (if that is

what happened) has made him impossible to contact. I have not been told of any attempts to use social medial to contact the people concerned. It makes no sense to me that a person involved in teaching a legitimate course would be in any way reluctant to come forward and claim that he or she had taught it. They would have nothing to lose. If they are out of the jurisdiction they can still make statements.

165. None of the appellants who claim to have attended the college had a college membership card. None of them had persuasive evidence about how they paid their fees. I can accept that a person might have wanted to stage payments and some people are more trusting than others when it comes to financial transactions. Nevertheless, I regard £500 as a large sum of money to pay in cash. Further, a legitimate business would not be anxious to have that kind of sum in cash. If all student fees were collected like that the cash sums would be enormous and require expensive security. It makes much more sense to me that a business would encourage payment by cheque or card. I regard it as a very unsatisfactory element of the appellants' cases that they each claim to have paid these large sums by cash and none of them have proper records. I also find it significant that none of them have proper evidence that they students at the college. That surely is what a college membership card is intended to be for and they each deny ever receiving one.

166. In her skeleton argument Miss Bayati contends that the fact that Ms Ullah was ignorant of the course sits uneasily with the fact that the course was advertised on the website and means that Ms Ullah is an unreliable witness. I prefer the explanation that the evidence on the website is unreliable. I can think of no remotely sensible reason for Ms Ullah to attend the Tribunal and say how she worked at the college and knew nothing of a course taking place if that was not the case. I do not see how she could be mistaken and I cannot see why she would be dishonest.

167. The Tribunal in **NA** could not make any conclusions on the reference number and I can do no better. I find that point is completely unilluminating. It may be that a four figure reference number was more typical but it may be there were different reference numbers and different circumstances. It is a point that proves nothing.

168. I have reminded myself that much of the evidence relied on by the Secretary of State is second hand and the Secretary of State has not assisted by encouraging the attendance of a person whose account was being challenged. Nevertheless, I am faced with evidence from an apparently credible source that the contested course never existed.

169. I set against this the claims made by the appellants that they attended the course. Certainly if there was nothing in dispute the entry on the website would be of considerable significance and the documents produced by way of course notes and handouts would be of some assistance. However none of these things is determinative. I do not have anywhere a good set of course notes or a detailed explanation of what happened on a course. I do have students who have no more than oral evidence that they paid their considerable fees and claim never to have had an identity card.

170. I remind myself that the allegation here is that each of the appellants who claims to have attended the college is being blatantly untruthful. This is not a matter of mistake or different interpretation of the existing Rules or even exaggeration. It is a very clear allegation by the Secretary of State that the first three appellants have pretended to have studied a course that never existed. Whilst the standard of proof on the respondent is the balance of probabilities I should not be easily persuaded that the appellants have behaved so badly.

171. However the evidence that the course never existed comes from the very clear assertion of a witness who had no identifiable incentive to have been untruthful and was in a position to give informed evidence.

172. None of the evidence produced by the appellants is particularly persuasive. Even cumulatively it goes no further than even suggesting or supporting the idea that a course took place. There is no evidence that the students concerned ever paid their fees beyond their oral testimony and no evidence that they were part of a college by being given membership cards. Nobody has come forward who claims to have taught the course. Even when I remind myself of the positive things said in the papers about the appellants, including their education and personal qualities, I find the most probable explanation for the differences between their evidence and the respondent's evidence is that the course was never offered and they have gathered together documents to try and pretend that it did.

173. In the case of the second, third, fourth and fifth appellants there have been applications to amend the grounds of appeal to rely on paragraph 276B of HC 395. If successful this would entitle them to remain on the basis of ten years' lawful residence. However, it is a requirement of that Rule that an applicant relying on paragraph 276B does not fall for refusal under the general grounds of refusal (paragraph 276B(iii)). I find that each of these appellants do fall for refusal under the general grounds of refusal because paragraph 322(2) requires that applications are normally refused when previous application have been refused because the application was supported by false documents.

174. Before me Miss Bayati submitted that the appellants who had been in the United Kingdom for more than ten years satisfied the requirements of paragraph 276A(1). This is similar to 276B but 276B applies to people seeking indefinite leave to remain whereas as 276(Article 1) applies to a person seeking an extension of stay on the grounds of long residence.

175. There has been no application under this Rule and it is not something on which I intend to make a primary decision. This is because a person must satisfy 276B(ii) and show that there are "no reasons why it would be undesirable for him to be given indefinite leave to remain". This is something that the Secretary of State must decide first in the context of the specific application. For my part there are considerable reasons for finding it undesirable for the adult male appellants to be given indefinite leave to remain and, in my judgement, they extend to the other appellant who are tainted by them even if innocent of the deception.

176. It follows that I have no hesitation in dismissing the appeals under the rules.

177. I must consider the appeals with reference to Article 8 of the European Convention on Human Rights.

178. Clearly removing the appellants now would be an interference with their private and family lives. It is also clear that removal would be lawful subject to human rights considerations and for the proper purpose of enforcing immigration control. I have considered very carefully the evidence about the degree of integration these appellants have made in the United Kingdom. I accept that they are in many ways industrious people with strong family values. A casual observer in the hearing room would have seen them give evidence in excellent English, respectfully answering Mr Tarlow's questions and generally presenting themselves in an attractive and obliging way.

179. I am satisfied that that the first three appellants here have deliberately and dishonestly pretended to have completed a course of study to support an application to extend their stays. What they did was very wrong. Not only were they seeking an advantage to which they were not entitled under the Rules but they were acquiescing in a cynical plot to undermine the Rules by issuing meaningless certificates. In so doing they strained the whole system of immigration control. It is wrong that honest businesses have to compete with the antics of the Cambridge College of Learning and it is wrong that honest immigrants seeking to stay in the United Kingdom attract suspicion or even contempt because of the bad behaviour of others. It is wrong that public funds have to be expended in policing immigration control because experience has shown that some people will behave very badly if they do not think they will be called to account.

180. If find that there are compelling reasons for removing the first three appellants.

181. Their dependent wives are in a slightly different position. Although they presented to me as intelligent, able women I cannot say with certainty that they knew that their husbands were cheating the system. However their sole basis for being in the United Kingdom is to be with their husbands. They have not established a right to remain under the rules and I see no sensible basis for concluding that their removal with their husband's is other than a proportionate interference with their private and family lives.

182. The difficulty is the children. The applications leading to these appeals predated the introduction of appendix **FM** on 9 July 2012. However I am bound by section 117 of the Nationality, Immigration and Asylum Act 2002, as amended although it may be that this adds nothing of practical significance to the binding jurisprudence.

183. I remind my that this is a NOT a deportation case and so the public interest does not require the person's removal where (a) the person has a genuine and subsisting parental relationship with a qualifying child (as is clearly the case here) and (b) it would not be reasonable to expect the child to leave the United Kingdom (see section 117B(6)).

184. None of the children in this case is a British citizen but a child who is not a British citizen is a "qualifying child" if (b) she has lived in the United Kingdom for a continuous period of seven years or more; (see section 117D). The fifth appellant (the child of the Third and Fourth appellants) is a "qualifying child". She was born on 11 November 2002 and entered the United Kingdom in December 2004

and so has close to 10 years residence. Her sister, born in 2008, is not a "qualifying child". The First Appellant's son, Navida, was born on 28 May 2008 and so is not a "qualifying" child. The Second appellant's daughter was born on 2 September 2002. She entered the United Kingdom in February 2004 and so is a "qualifying child".

185. However, I do not read section 117B(6) as meaning that removal is not in the public interest. Such an interpretation would nullify much of the section 117. Rather the public interest does not insist on removal where it would not be reasonable to expect the child to leave the United Kingdom.

186. Section 117B(5) requires that "little weight should be given to a private life established by a person at a time when the person's immigration status is precarious". I am satisfied that their status became precarious, if it was not already precarious, when their applications for further leave were refused in 2009 so much of the private life relied upon attracts "little weight". I am bound by that but I think that I would have reached the same conclusion even without this statutory obligation.

187. Each of the children whose rights have to be considered in this case has either been in the United Kingdom for a very significant period of time or for all of their lives. They are wholly innocent of the shenanigans of their fathers and it is not their fault that the hearing of the appeals was delayed. That said I find that the delay in listing the appeals is only a small factor in extending their stay. The real reason for their long stay is their fathers' dishonest pursuit of permission.

188. Miss Bayati appropriately referred to the decision of the Supreme Court in **Zoumbas v SSHD [2013] UKSC 74**. She particularly relied on paragraph 10 of the judgment of Lord Hodge which is headed "The Legal Framework". Lord Hodge said:

> "Those principles are not in doubt and Miss Drummond on behalf of the Secretary of State did not challenge them. We paraphrase them as follows:
> (1) The best interests of the child are an integral part of the proportionality assessment under Article 8 ECHR;
> (2) in making that assessment, the best interests of a child must be a paramount consideration, although not always not only the primary consideration; and a child's best interests do not of themselves have the status of the paramount consideration;
> (3) Although the best interests of the child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently and more significant;
> (4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in place;
> (5) It is important to have a clear idea of the child's circumstances and of what is in a child's best interests before one asks oneself whether these interests are outweighed by the force of other considerations;
> (6) To that end there is no substitute for a careful examination of all relevant factors when the interests of the child are involved an in Article 8 assessment; and
> (7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

189. At the risk of being trite, I recognise that the best interests of a child should be a primary consideration.

190. It is difficult to make clear findings about the conditions the children will face in the event of their return. This is because the fathers who gave evidence before me have not been honest about crucial parts of the case.

191. I do accept that it will be difficult for any of the adult appellants to resume their careers and I accept the evidence of Dr Sivambalapitiya that she could not take up a place in the health service in Sri Lanka that she left more than five years ago. The evidence of any remaining family links in Sri Lanka for any of them is rather skimpy.

192. I do not accept that they would be returning to destitution in Sri Lanka and indeed it was not suggested that this was the case. It is self-evident that the appellants are articulate people, fluent in the English language, and with more than a little nous. I am confident that they will be able to find gainful employment in Sri Lanka and will be able to establish themselves there.

193. The children will be affected by the language change as well as living conditions. Exactly how much grasp they have of Sinhala is difficult to tell. It is to the credit of the parents that they did not exaggerate the difficulties. I find that the children have little understanding of the language and are naturally fluent in English. I do not believe that the children could not learn Sinhala. Experience suggests that children can be remarkably adept in picking up foreign languages and in many cases the younger they are the easier they find it to do. It is, from the appellants' point of view, a rather ironic feature of this case that because they are members of strong families where the support for the children is considerable, removal becomes easier to justify. The parents will do well for the children in Sri Lanka just as they have in the United Kingdom.

194. Nevertheless the children will lose much. They have no knowledge of life outside the United Kingdom and have done well in the United Kingdom. If they remained they could be expected take full advantage of the education system and removing them will unsettle them. I have no difficulty in concluding that the best interests of the children require that they remain in the United Kingdom with their parents where they are settled. That, from their point of view, would be an ideal result.

195. However, I am also aware of the decision of the Court of Appeal in **EV (Philippines) and/ors v SSHD [2014] EWCA Civ 874**. Although they have lived in the United Kingdom for a considerable time the children are not British nationals. Removing them from the United Kingdom may well be removing from the country where they aspire to be nationals but that is not something they have yet achieved. They have not established a right to remain there unless on human rights grounds.

196. In **EV** Lewison LJ was particularly concerned with a case where a "parent thus relies on the best interests of his or her children in order to 'piggy back' on their rights" (paragraph 49). He said at paragraph 58:

> "In my judgement, therefore the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one

> parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?"

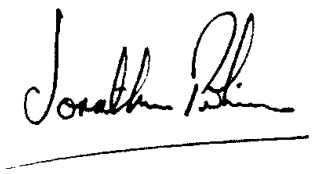
197. This clearly is echoed in the requirements of the Immigration Rules but I remind myself that I am making a decision based on the jurisprudence of which the decision in **EV** is an important part.

198. I do remind myself that one of the children, particularly, has been in the United Kingdom for more than ten years and that this represents the greater part of a young life by someone who can be expected to be establishing a private and family life outside the home. I remind myself, too, that none of the children here have any experience of life outside the United Kingdom and they are happy and settled and doing well. The fact is their parents have no right to remain unless removal would contravene their human rights.

199. I remind myself of my findings concerning the need to maintain immigration control by removing the first, second and third appellants. Given their behaviour I would consider it outrageous for them to be permitted to remain in the United Kingdom. They must go and in all the circumstances I find that the other appellants must go with them.

200. It follows therefore that applying the law as I understand it and the facts as I found them I dismiss each of these appeals.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 3 November 2014

APPENDIX

APPELLANT: **Amuruddha Rukmail Ratnaweera**

RESPONDENT: **Secretary of State for the Home Department**

CASE NO: **IA/03452/2009**

DATE OF INITIAL HEARING IN UPPER TRIBUNAL: 20 July 2011

PANEL: **The Hon. Mr Justice Keith**

Senior Immigration Judge P R Lane

Representation:

For the Appellant: **Ms F Allen, Counsel, instructed by Polpitiya & Co, Solicitors**

For the Respondent: **Mr S Walker, Senior Home Office Presenting Officer**

REASONS FOR FINDING THAT TRIBUNAL MADE AN ERROR OF LAW, SUCH THAT ITS DECISION FALLS TO BE SET ASIDE

1. The appellant, a citizen of Sri Lanka born on 25 June 1973, arrived in the United Kingdom in February 2003 with leave to enter as a student. The appellant subsequently obtained from the respondent variations of that leave, in the same capacity. In February 2004 the appellant was joined in this country by his wife and his daughter, who had been born in Sri Lanka on 2 September 2002. The appellant's wife and daughter are dependants on his present claim.

2. On 2 October 2008 the appellant applied for leave to remain as a Tier 1 (Post-Study Work) applicant, pursuant to the respondent's points-based Rules. In support of that application, the appellant admitted evidence to the effect he had attended a course at the Cambridge College of Learning, leading to the award to him in August 2008 of a Postgraduate Diploma in Business Management, issued by CCOL.

3. On 22 January 2009 the respondent refused the appellant's application because the respondent was "satisfied that all the document submitted [by the appellant] from the Cambridge College of Learning were false because the Cambridge College of Learning had never offered a legitimate postgraduate qualification in business management" (letter of 22 January). Accordingly, the respondent awarded the appellant 0 points under Appendix A of the Immigration Rules, as opposed to the 75 points which the appellant had claimed under that provision. Further, the respondent was not satisfied that the appellant had satisfied the requirement to have a knowledge of English equivalent to level C1 on the Council of Europe's Common European Framework for Language Learning and to have provided an original English language test certificate from an English language test provider. Nor was the respondent satisfied the appellant had a knowledge of English equivalent to level C1 and had obtained an academic qualification deemed by the relevant authority to meet or exceed the recognised standard of a

bachelor's or master's degree or a PhD in the UK and which the relevant authority had confirmed was taught or researched in English to that level. The respondent considered further that the appellant had not shown he had an academic qualification deemed by the relevant authority to meet or exceed the recognised standard of a bachelor's or master's degree of PhD in the UK from an educational establishment in one of the countries listed in paragraph 2(c) of Appendix B.

4. For these reasons, the respondent concluded that the appellant had failed to prove compliance with paragraph 245Z of the Immigration Rules. Additionally, because of the appellant's submission of what the respondent considered to be false documentation, the appellant's application was refused under paragraph 322(1A) of the Rules since "false representations have been made or false document or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge) or material facts have not been disclosed, in relation to the application".

5. The appellant applied against the respondent's decision refuse to vary his leave. His appeal was heard at Taylor House by an Immigration Judge on 12 August 2010. The Immigration Judge dismissed the appellant's appeal. On 2 December 2010 the Upper Tribunal granted the appellant permission to appeal to it. The grounds upon which permission to appeal were granted, and which stand as the notice of appeal, contended that the Immigration Judge had erred in law in respect of the two matters which had been before him.

6. The first of those matters concerned the issue of whether the appellant had legitimately studied for, and obtained, a Postgraduate Certificate in Business Management from CCOL. In NA & Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031 the Asylum and Immigration Tribunal found that CCOL never ran a Postgraduate Diploma in Business Management course or a Postgraduate Diploma in IT course and that, accordingly, for a person to rely on a certificate of an award of such a diploma following such a course would amount to a false representation within the ambit of paragraph 322(1A). Such a person would also be able to meet the requirements of paragraph 245Z because he or she could never have undertaken such a course. Before the Immigration Judge in the present case, it was submitted that the AIT's findings in NA & Others needed to be considered in the light of, and by reference to, the fact that the present appellant had adduced in evidence what were said to be photocopies of pages from the CCOL website, accessed on 25 January 2008, which listed, amongst the available courses at that college, a "Postgraduate Certificate in Business management", and which also gave an overview of the course, together with a list of the modules, the level of qualification, mode of course, entry requirements, nature of the college's assessment and the awarding body (CCOL).

7. The appellant's grounds of appeal contended that the Immigration Judge had failed completely to have regard to this evidence. This was of significance, given that the AIT in NA and Others recorded that "there was no specific mention of any CCOL PgDip courses on the college website nor among any of the college literature produced the appellants " (para 140). In the grant of permission to appeal to the Upper Tribunal, Senior Immigration Judge Storey stated that

"whilst it may have been legitimate for the [Immigration Judge] to conclude after analysis that this piece of evidence could not be regarded as sufficient to displace the findings made in NA (findings, based on the very considerable and diverse body of evidence), the [Immigration Judge] made no such analysis and I consider [the appellant] has identified an arguable error in this regard".

8. At the hearing on 20 July, Ms Allen, for the appellant, developed this ground, by reference to her skeleton argument on 19 July. In particular, she drew attention to the case of TR (CCOL cases) Pakistan [2011] UKUT 33. At paragraph 33 of the determination in that case the Upper Tribunal said:

> "33. It follows from our earlier observations on the status of NA and Others that we think it would be an error for an Immigration Judge to dismiss a CCOL-related appeal solely on the basis that NA & Others made a finding of fact that the college never ran PgDip courses. A fortiori it would be wrong to base the dismissal on para 322(1A) grounds without examining whether the particular individual concerned did or did not use knowing deception. There is still a fundamental duty of individual consideration."

9. In the present case, the Immigration Judge's findings are set out at paragraphs 17 to 23 of the determination. In these paragraphs, there is no reference whatsoever to the website documentation, submitted by the appellant. At paragraph 19, the Immigration Judge had specific regard to a lever arch file of documents (submitted at the hearing and returned by the Immigration Judge to the appellant at its conclusion), containing course notes and handouts. The pages asserted to be from the CCOL website were, however, not included in the lever arch file but were to be found in a separate appeal bundle submitted by the appellants. The fact that this particular material was relied on at the Immigration Judge hearing is evident from paragraph 15 of the determination where, summarising the submissions made on behalf of the appellant by Ms Bayati of Counsel, the Immigration Judge recorded here as saying that "The conclusion that there was no information concerning the courses on the internet was disproved by the fact that the appellant had downloaded information on courses run by CCOL in January 2008 and this course was referred to".

10. Despite the issue of the website being a narrow one, the Upper Tribunal as concluded that the Immigration Judge erred in law in failing to have any regard to it in the course of reaching his findings. As Senior Immigration Judge Storey indicated when granting permission, it might well have been legitimate for the Immigration Judge to have concluded, notwithstanding this evidence, that the appellant fell within paras 322(1A). He might for example, have taken the view that if CCOL was providing certificates for a course which was not offered, the website had to pretend that the course was being offered. However, we do not consider it can be said that such a result would have been inevitable and that the Immigration Judge was bound to have dismissed the appeal in these circumstances. We have therefore concluded that the Immigration Judge's findings in relation to the CCOL issue cannot stand. We accordingly set aside under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 that part of the Immigration Judge's decision. In accordance with Practice Statement 7 of February 2010, the re-making of this part of the decision is for the Upper Tribunal to undertake, provided in section 12(2)(b)(ii) of the 2007 Act.

11. Although Article 8 had not been raised in the original grounds of appeal to the Tribunal, it is apparent that the Immigration Judge permitted those grounds to be advanced, by reference to a document entitled "Additional grounds of appeal", contained at pages 5 and 6 of the appellant's appeal bundle before the Immigration Judge. Those additional grounds contended that the respondent had failed to have proper regard to the rights of the appellant's family under Article 8 of the ECHR; in particular, the rights of the appellant's daughter, who was around 1½ years old when she arrived in the United Kingdom and who had at that point lived in the United Kingdom for over 5½ years. Reference was made to the withdrawn policy DP5/96, in support of the submission that "where a child had resided in the UK for 7 years as a starting point it would be unreasonable for her to return to her home country". Amongst the documentary evidence before the Immigration Judge were various educational reports on the appellant's daughter (consistently named Samali, rather than Kulanya, which is the name given to her in paragraph 1 of the appellant's statement of 7 March 2010). The appellant sought to rely on these documents to show that his daughter had settled well into education in this country and would suffer in this regard if she were compelled to return with her parents to Sri Lanka.

12. As Mr Walker for the respondent very properly conceded on 20 July, the Immigration Judge's consideration of Article 8 was wholly inadequate. That consideration is set out at paragraphs 22 and 23 of the determination and contains no analysis of the human rights position of the appellant's daughter. Shortly before the Immigration Judge hearing, the Upper Tribunal case of LD (Article 8 – best interests of child) Zimbabwe [2010] UKUT 278 (IAC) had been published. That case emphasised that, in the context of Article 8, the interests of minor children and their welfare are required to be a primary consideration in the balance of competing considerations. Although, at the time of the immigration decision in the present appeal, section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children) had not come into force, the Supreme Court judgments in ZH (Tanzania) [2011] UKSC 4 make it plain that the Immigration Judge in the representative case should have approached the issue of Article 8 by reference to what the best interests of the appellant's daughter might be. Whilst those interests would not necessarily be determinative, particularly since the daughter is not a British citizen, it was not possible for the Immigration Judge properly to determine the Article 8 issue without any regard to the daughter's best interests.

13. On 20 July the Tribunal accordingly found that the Immigration Judge's decision on Article 8 was wrong in law and fell to be set aside under section 12 of the 2007 Act. As a result of the Tribunal's conclusion on the CCOL issue (paragraph 9 above) the result is that that the entirety of the decision in the appellant's appeal falls to be re-made by the Upper Tribunal.

Signed:

Senior Immigration Judge P R Lane

Judge of the Upper Tribunal

21 July 2011