Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/33039/2013
IA/30835/2013
IA/30840/2013
IA/33039/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 18th July 2014	**On 30th July 2014**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NIROSHA DILRUKSHI REID
NILAMAGE JUDGE PRADEEP JANAKA NUGERA
NILAMAGE HORSHINI SATHMA NUGERA
NILAMAGE SHENAL RANSITH NUGERA

Respondents

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondents: No appearance

DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department and to avoid confusion, I shall refer to her as "the claimant". The respondents are all citizens of Sri Lanka and

were born respectively on 18th March 1975, 25th September 1967, 7th January 1996 and 7th March 1994. They made application for leave to remain in the United Kingdom.

2. On 21st June 2013 the claimant refused to vary leave to enter or remain. The respondents appealed that decision and their appeal was heard by First-tier Tribunal Judge Jacob Jones at Hatton Cross on 31st January 2014. The main respondent arrived with her dependent husband and two children in the United Kingdom with entry clearance as a Tier 4 Student on 14th September 2009 and they were all granted leave to remain until 31st August 2010.

3. The first named respondent completed her certificate in business management at the London College of Business Management and she and the other respondents were granted further leave to remain until 9th April 2013. She stated that she had enrolled to complete an ACCA course, but the London College of Business Management was closed down around April 2012. The first named respondent claimed that she was unable to find a suitable replacement course and she and her family lodged applications for leave to remain in the United Kingdom on 31st July 2012, on a compassionate basis. The claimant was not satisfied that the respondents qualified for leave to remain in the United Kingdom on the basis of their family life as the first named respondent's husband was not British nor settled in the United Kingdom nor did he have sole parental responsibility for any of the children who were British or who were settled in the United Kingdom. The claimant considered the appellants' applications on the basis of their private life in the United Kingdom but found that they did not meet the requirements of Appendix FM.

4. In his determination, the First-tier Tribunal Judge noted that the first named respondent had made a choice to uproot her children from Sri Lanka and bring them to the United Kingdom whilst intending to obtain an ACCA qualification. He took into account documents from friends, sports coaches, and from a priest known to the claimant family and said this:

> "The [respondents] knew that their stay was dependent upon the main claimants' status. I recognise that Sathma and Shenal are still relatively young and naïve and I have recommended under the circumstances that the family be allowed to remain in the United Kingdom until June 2014 to allow Sathma and Shenal time to finish this stage of their education. But after that I am of the view that any removal of the [respondents] would be a proportionate response to the government's aim of marinating a fair and firm immigration policy in the UK. This is particularly so where the family have maintained strong ties to Sri Lanka where they built up resources to come to the UK to pursue an education in the first place."

5. The judge went on to purport to allow the respondents' appeals to that extent. The claimant, dissatisfied with the decision, sought and challenged it on the basis that the judge had failed to consider the Immigration Rules and consider whether or not there were good grounds for granting leave outside them, as per *Gulshan (Article 8 – new Rules – correct approach)* [2013] UKUT 00640 (IAC) and *Nagre, R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin). To allow the appeal in the way in which the judge did was, it was suggested, an error of law.

6. At the hearing before me on 14th April, 2014, I found that the judge had erred by failing to properly apply the Immigration Rules and by making a recommendation in the terms in which he did. Either the judge should have allowed the appeal or he should have dismissed it. The matter was listed for hearing before me at 2 o'clock today, 18th July. Prior to the hearing the respondents' solicitors had purported to withdraw the respondents' appeal. It was pointed to the claimants' solicitors that this was not the respondent's appeal but the claimant's appeal and it was not for their client to withdraw.

7. In writing to the Tribunal the respondents' solicitors have enclosed a copy of the authority signed by Nirosha Reid in which she says that she gives the fullest consent to Carmelite Solicitors to withdraw the court case which will be heard on 18th July.

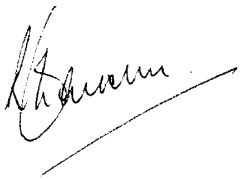
8. There was no appearance by or on behalf of the respondents at 3.0 p.m. I therefore concluded that I should proceed with the hearing of the appeal.

9. For the claimant Mr Tufan invited me to allow the claimant's appeal and dismiss the respondent's appeal. I have concluded that the First-tier Tribunal Judge did err in law. He failed to consider the requirements of the Immigration Rules and establish whether or not the respondents met them. There is no suggestion anywhere that the claimants could meet the requirements of the Rules, in fact at paragraph 16 he points out that it was not disputed that they could not meet the requirements of R-LTPRP, E-LTPRPT, and EX1 of the Immigration Rules, because none of the claimants re in a relationship with a British citizen or a person who is present and settled in the United Kingdom.

10. The judge records that the claimant considered the applications under the provisions of paragraph 276ADE of the Immigration Rules and recorded that Counsel on their behalf conceded that the appellants could not mete the requirements of the Rules.

11. The judge failed to apply *Gulshan* or *Nagre* and instead went on to consider Article 8 jurisprudence. It was on that basis that he appears to have concluded that he was empowered to make a recommendation. The judge was not. He only had power to either allow the appeal or dismiss it and having found that the appellants did not meet the requirements of the Immigration Rules, he should have dismissed it.

12. The days of Immigration Judges making recommendations have long passed. I allow the claimant's appeal. The respondent's appeals are dismissed.



Upper Tribunal Judge Chalkley