



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/13167/2013
IA/13193/2013
IA/13170/2013
IA/13178/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 7 August 2014**

**Decision & Reasons Promulgated
On 23 March 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**NPA
KMA
OCA
SMA**

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer

For the Respondent: Ms B Jones, instructed by Jein Solicitors

DECISION AND REASONS

1. The respondents are all citizens of Sri Lanka. The first and second respondents are husband and wife and the third and fourth respondents are their children (the latter aged 15 and 13 years respectively). I shall

hereafter refer to the respondents as the appellants and to the appellant as the respondent (as they appeared before the First-tier Tribunal).

2. The first appellant entered the United Kingdom in October 2007 with entry clearance as a student. The second, third and fourth appellants arrived in April 2008 as the first appellant's dependants. In May 2012, the leave of the first appellant was curtailed as she had ceased studying in the United Kingdom and the leave to remain of the remaining appellants was also curtailed as a consequence. Prior to the expiry by curtailment of the first appellant's leave, she made an application for further leave to remain in the United Kingdom on human rights grounds. That application was refused by the respondent by a decision dated 2 July 2012. Applying the "new" Immigration Rules (i.e. those introduced after 9 July 2012) the respondent considered that the appellants did not meet the requirements of the Rules. Although the application for further leave to remain predated the Rule change, the decisions postdated that change so the new Rules did apply (see *Singh* [2015] EWCA Civ 74). In any event, Counsel before the First-tier Tribunal Judge (Judge Bagral) acknowledged that the appellants could not meet the requirements of the Immigration Rules [20]. Judge Bagral went on to consider Article 8 ECHR outside the Immigration Rules and allowed the appeals on that basis. The Secretary of State now appeals, with permission, to the Upper Tribunal.
3. There are three grounds of appeal. In the first ground, the Secretary of State argues that the judge failed to have regard to a relevant consideration, namely that the first appellant's student status did not give rise to a legitimate expectation that leave would be granted to enable his family to remain in the United Kingdom. Secondly, the decision is challenged on the basis that the judge failed to strike a correct balance between Article 8 ECHR "as encapsulated in paragraph 276ADE of the Immigration Rules." Thirdly, the judge's finding that the third appellant was "at a critical stage of his education" was not supported by the evidence. The third appellant was not due to sit his GCSE exams until summer of 2007, some three years hence.
4. The judge described the first appellant as an "intelligent and assiduous individual" [29], the child appellants were doing very well at school, the fourth appellant (aged 12) described as "extremely well-behaved, honest and reliable" [32]. The judge clearly found that this was a respectable law-abiding family as was evidenced by a number of letters from members of their community which had been between the First-tier Tribunal. The judge did describe [48] the present time to be a "critical stage" in the education of the third appellant. She noted that the child appellants had laid down roots in the local community and had many friends.
5. In the normal course of events, these observations may not have gone very far in supporting the claim for leave to remain under Article 8 ECHR outside the Immigration Rules. However, the judge's analysis was very thorough. Whilst another Tribunal may have come to an entirely different view of the evidence, it cannot be said that Judge Bagral's analysis is

flawed by reason of an improper consideration of irrelevant matters or a failure to have regard to relevant facts. Her view of the “critical stage” reached in the third appellant’s education was as legitimate as the respondent’s own assertion that the stage was not critical, the GCSEs being some years away. The lead up to those examinations, even at three years’ distance, might reasonably be described as a “critical” period in a child’s education. The opinions of the judge and of the Secretary of State are arguably both correct from which it follows that the judge’s finding cannot properly be described as perverse or wholly unreasonable. What I do find dilutes the force of the submissions of the Secretary of State is that the judge has made her findings on the evidence and has conducted her Article 8 analysis fully aware of the relevant jurisprudence which might have indicated an alternative outcome. For example, following *Nasim (Article 8) Pakistan* [2014] UKUT 25 (IAC) she properly attached little weight to the lawful conduct of the family whilst in the United Kingdom, whilst lawful conduct may not enhance an Article 8 claim it may have the effect of lessening the weight which should properly be given to the public interest concerned with removal. The judge was also aware that the United Kingdom did not owe these children an education nor did she seek to argue that the first appellant had any legitimate expectation that his period as a student in the United Kingdom would lead to a longer period of residence. Judge Bagral has been alive throughout her decision to the factors which tended to indicate a negative outcome of the appeal whilst she has given careful and detailed reasons for finding that, on these particular facts, the appeal should be allowed. The Upper Tribunal should hesitate before seeking to interfere with or alter the conclusions of a judge who has had the opportunity of hearing the oral evidence and who has assessed that evidence fully aware of the jurisprudence which favoured the position of the Secretary of State, as well as that of the appellants. Although I acknowledge that a different Tribunal might have reached a different outcome, that is not the point. I can identify no significant error of law in Judge Bagral’s analysis which would lead me to set aside her decision. Accordingly, the Secretary of State’s appeal is dismissed.

DECISION

The Secretary of State’s appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 28 February 2015

Upper Tribunal Judge Clive Lane