



IAC-FH-CK-V2

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

Appeal Numbers: IA/44871/2014
IA/44874/2014
IA/44879/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6th January, 2016
Given extempore**

**Decision & Reasons Promulgated
On 26th January, 2016**

Before

Upper Tribunal Judge Chalkley

Between

**MRS PRIYANGA IROSHI PELAWATTA
MR DEEPTHI PATHIRANA MANADI PATHIRANNEHELAGE
G P
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Pinder, Counsel instructed by Theva Solicitors

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

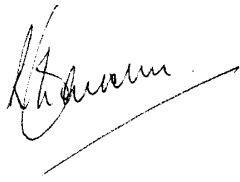
DECISION AND REASONS

1. The three appellants are all citizens of Sri Lanka and their respective dates of birth are 2nd July, 1978, 29th January, 1972 and 3rd February, 2004. They have lived in the United Kingdom for some five and a half years.

2. On 4th July, 2014 the first appellant made an application on her own behalf and also in respect of her daughter and husband for the issue of a residence card on the basis that they were the extended family members of the first appellant's cousin, Mrs Priyaharsani Jansen, who is a German national born on 8th June, 1957. It was not in dispute that Mrs Jansen, to whom I shall make reference as the sponsor, is a worker and an EEA national exercising treaty rights.
3. On 22nd October the respondent refused to issue a residence card because it was not accepted that the appellants and sponsor were related as claimed, nor was any evidence of dependency disclosed. The appellants appealed the decision and their appeal was heard at Richmond Magistrates' Court on 2nd July, 2015.
4. The judge noted the Tribunal's decision in *Dauhoo (EEA Regulations - reg 8(2))* [2012] UKUT 00079 and said in paragraph 16 of the determination that in these appeals it has never been suggested that the sponsor, and the appellants enjoyed prior membership of the same household before coming to the United Kingdom. In fact that is wrong. The judge fails to record even a synopsis of the evidence he heard, but it is clear from his Record of Proceedings that the appellant adopted her statement in paragraph 3 of which, she points out that she and the sponsor lived together in the same household in Sri Lanka in 1996. That error on the part of the judge is not, however, a material error which affects the outcome of the appeal.
5. Mr Tufan has provided a copy of the Tribunal's decision in *Moneke (EEA - OFMs) Nigeria* [2011] UKUT 00341 and from paragraph 40 of that determination it is clear that a person claiming to be an OFM may either be a dependant, or a member of the household of the EEA national, and in the case of dependency or membership of the household, it must be on a person who was an EEA national at the material time. The sponsor in this case became an EEA national when she obtained her German nationality in 2007, so that she was not an EEA national at the time that she and the appellants lived together in Sri Lanka.
6. Counsel has in my view very properly agreed that in the circumstances this appeal cannot succeed. I find that the First-tier Tribunal Judge did err in law, but such error was not material to the outcome of the appeal because the appellant could not succeed.

Notice of Decision

The First-tier Tribunal Judge dismissed the appeals. I uphold his decision.

A handwritten signature in black ink, appearing to read 'Chalkey', with a long horizontal flourish extending to the right.

Upper Tribunal Judge Chalkey