Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/25032/2013
IA/25747/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 27 March 2014	
Delivered orally	……

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PAUL SAMSON SANTOSHKUMAR SAMUEL JAYAKUMAR
SHIKAINAH CHAMPION

Claimants

Representation:

For the Appellant: Ms A Holmes, Presenting Officer
For the Claimants: Ms Anzani, Counsel, instructed by Nag Law Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Raymond promulgated on 3 February 2014 in which he allowed the appeals of Mr Paul Samson Santoshkumar Samuel Jayakumar and Mrs Shikainah Champion ("the

claimants") against the decision of the Secretary of State made on 4 June 2013 to refuse them further leave to remain in the United Kingdom.

2. I should say at the outset that the claimants have two children who it appears should have lodged appeals against the decisions of the Secretary of State made at the same time as those in respect of their parents but for reasons which are not clear to me at this stage, no separate appeals were created for them and they do not appear to have been treated by the First-tier Tribunal as appellants.

3. In summary Judge Raymond found that the claimants did not meet the requirements of the Immigration Rules but decided that for the reasons set out in his decision, in paragraphs 24 onwards that removing the claimants from the United Kingdom would be in breach of the United Kingdom's obligations under Article 8 of the European Convention on Human Rights.

4. The respondent sought permission to appeal on the grounds that:

   (i) **MF (Nigeria) [2013] EWCA Civ 1192** confirmed that the Immigration Rules are a complete code, and any Article 8 assessment should only be made after consideration under the Rules which was not done here, the Tribunal erring by not having had regard to the Rules and that the subsequent proportionality assessment is unsustainable because of that omission.

   (ii) As was made clear in **Gulshan [2013] UKUT 0064 (IAC)** an Article 8 assessment shall only be carried out when there are compelling circumstances not recognised by the Rules and that the Tribunal had not identified these.

   (iii) **Gulshan** also makes clear at this stage an appeal should only be allowed where there are exceptional circumstances – see **Nagre [2013] EWHC 720 (Admin)** and that the Tribunal had not followed this approach.

   (iv) The Tribunal had failed to provide adequate reasons why the claimants' circumstances are compelling or exceptional and that the claimants do not have the right to remain in the United Kingdom purely because of their employment prospects being better in this country.

5. Permission was granted by First-tier Tribunal Judge J M Holmes on 24 February 2014 who stated that it was arguable that the decision fails to engage with the guidance of the Supreme Court in **Patel [2013] UKSC 72** and to the Upper Tribunal in **Nasim [2014] UKUT 25** as to the scope of a private life appeal when the individual's moral and physical integrity are not affected by the decision under appeal. There is no general right to remain in the United Kingdom for the purpose of pursuing a career or education whether or not the United Kingdom has funded part of the training for them. There was no legitimate expectation of settlement despite the inability to meet the Immigration Rules. As the grounds argue all of the relevant applicable jurisprudence (including both **Gulshan** and **Nagre**) requires the judge to start from

an identification of why the applications fell outside the Immigration Rules and then the compelling and exceptional circumstances relied upon as the basis for the argument that they should nonetheless succeed. Arguably the judge fell into error in failing to identify what was sufficiently compelling and exceptional about this family's circumstances as to require the respondent to grant them DLR rather than to require them to return to India and seek to secure admission by the work permit route on the basis of the second appellant's employment prospects.

6. When the matter came before me there was some discussion between the representatives in relation to the rule 24 response submitted by the claimants. Ms Holmes accepted that she had received that.

7. It is accepted that in this case the claimant's applications were made on 19 May 2012 and thus prior to the coming into force of the new Rules including Appendix FM and paragraph 276ADE. As is accepted, the Statement of Changes in the Immigration Rules (HC 194) which introduced those changes makes clear that Appendix FM does not have effect to applications which were pending as at 8 July 2012. Accordingly, Ms Holmes accepted that it appears that the decision letters sent to the claimants (and their children) had proceeded on the erroneous basis that Appendix FM and paragraph 276ADE were applicable in this case. It was accepted also that erroneous assumption underpins the basis on which the grounds of appeal were drafted and Judge Holmes' decision granting permission.

8. Ms Holmes accepted that in the circumstances it could not be argued that this was a case in which the Rules set out the requirements of Article 8 and that it could not properly be said in this case that **MF (Nigeria)** was applicable given that this is not a deportation case and it is not suggested that the Immigration Rules introduced by HC 194 had the effect in respect of Article 8 cases which were arising from applications made for further leave to remain under the Rules could apply unlike the situation in respect of deportation application decisions. Ms Holmes said that in the circumstances there was little sensible that she could say out in the grounds. Understandably, in the circumstances, Counsel for the claimants had little to add over and above what is said in the response from the respondents.

9. In the circumstances, given that it is now accepted that this is not a case to which Appendix FM or paragraph 276ADE applies then the First-tier Tribunal did not err materially in its approach to Article 8. While it did consider the "new" rules first (which it need not have done), it reached conclusions with regard to the particular, unusual factual matrix in this appeal, which were open to it, and for which it gave adequate reasons. In the light of the concession by Ms Holmes, and that absence of any alternative challenge from her to the findings reached by the First-tier Tribunal, I am not satisfied that it did err in law. In the circumstances I find that there was no error of law set out in the decision of the First-tier Tribunal and accordingly I uphold it.

10. My decision and that of the First-tier Tribunal relates only to the two adult appellants in this case as neither of the children are parties to this appeal. Clearly however it is

a matter that will need to be resolved by the respondent in due course bearing in mind the findings which have been made in respect of their parents.

SUMMARY OF CONCLUSIONS

1 The determination of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed: Date: 28 March 2014

Upper Tribunal Judge Rintoul