



IAC-FH-NL-V1

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

Appeal Numbers: OA/14754/2013
OA/14755/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 17 October 2014
Extempore judgment**

**Determination
Promulgated
On 21 October 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

ENTRY CLEARANCE OFFICER

Appellant

And

**MISS CHEENA DHENGA
MISS BIBASANA DHENGA**

Respondents

Representation:

For the Appellants: Mr L Tarlow, Senior HOPO

For the Respondent: Mr R Jesurum, counsel, instructed by Howe & Co Solicitors

DETERMINATION AND REASONS

1. This is the appeal of the Entry Clearance Officer against the decision of the First-tier Tribunal allowing the appeals of Miss Cheena Dhenga and her sister, Miss Bibasana Dhenga against the decision of the ECO to refuse entry clearance to settle in the UK as dependent daughters of

their father, an ex-Ghurka soldier. The decision is dated 27 June 2013. The appeal was heard by the First-tier Tribunal on 7 June 2014 and allowed on human rights grounds. It was accepted by their legal representative before the First-tier Tribunal that they did not meet the requirements of the Rules.

2. The ECO sought permission to appeal on the grounds that the First-tier Tribunal Judge had not considered the guidance in **Gulshan**, namely that if there are arguably good grounds for granting leave to remain outside the Immigration Rules and thus whether it is necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules. The grounds seeking permission also state that the Immigration Judge made no findings in this regard and simply proceeded to undertake a freestanding Article 8 assessment. The grounds submitted that without making findings as to arguably good grounds and compelling circumstances not sufficiently recognised under the Rules the judge cannot undertake a freestanding Article 8 assessment.
2. Permission to appeal was granted but that itself appears to have included an error of law because the reference in there does not actually reflect the grounds upon which the ECO was seeking permission to appeal. Be that as it may, in paragraph 12 of the judgment of the First-tier Tribunal, the judge clearly found that there were matters specific to the claimant's circumstances which were not fully covered by the Rules. In paragraphs 12 and 13 of her judgment she set out clearly and plainly all the matters that she took into account. She accepted that the sponsor would have applied to settle in the UK upon discharge from the army had he been permitted to do so. Had he done so the claimants would have been minors and admitted with their parents. She points out that this is not a case where the ECO has pointed to matters over and above the public interest in maintaining a firm immigration policy and the grounds seeking permission to appeal do not indicate in what way or whether matters were incorrectly taken into account or not taken into account when the judge made her findings.
3. Accordingly I am satisfied that there is no error of law in the findings and conclusions of Judge of the First-tier Tribunal Kamara's determination and the appeal of the ECO is dismissed.
4. The appeal against the refusal to entry clearance remains as allowed.

Signed

Date 20th October 2014

Upper Tribunal Judge Coker