



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

Appeal Numbers: IA/09425/2014  
IA/09426/2014  
IA/09427/2014  
IA/09428/2014  
IA/09429/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28<sup>th</sup> November 2014**

**Decision & Reasons Promulgated  
On 5<sup>th</sup> December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**MR RAMAMURTHY GOPAL (1)  
MRS MAITHILI RAMAMURTHY (2)  
MISS VAISHNAVI RAMAMURTHY (3)  
MISS VISHNUPRIYA RAMAMURTHY (4)  
MASTER DHYANESH RAMAMURTHY (5)  
(ANONYMITY DIRECTION NOT MADE)**

**Respondents**

**Representation:**

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer  
For the Respondents: Mr A Earnest, of Kumar Legal Ltd

**Interpretation:**

Mr Kanasalingham in the Tamil language

## DECISION AND REASONS

### *Introduction*

1. Although this is an appeal by the Secretary of State I shall refer to the parties as they were before the First-tier Tribunal.
2. The appellants are all citizens of India. The first appellant was born on 12<sup>th</sup> March 1973; his wife, the second appellant, was born on 1<sup>st</sup> February 1979; his children, the third, fourth and fifth appellants, were born on 11<sup>th</sup> September 2001, the 28<sup>th</sup> June 2003 and 23<sup>rd</sup> March 2011. The first appellant applied for leave as a domestic worker, and the other appellants applied as his dependents. The applications were refused on 6<sup>th</sup> February 2014. They appealed on 13<sup>th</sup> February 2014. These appeals were allowed under the Immigration Rules in a determination of Judge of the First-tier Tribunal Buckwell promulgated on 22<sup>nd</sup> September 2014.
3. On 20<sup>th</sup> October 2014 Judge of the First-tier Tribunal Cheales found that there was an arguable error of law because accommodation and finance had been put in issue in the refusal letter but this issue was not addressed in the determination of Judge Buckwell.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

### *Submissions – Error of Law*

5. Mr Bramble relied upon the grounds of appeal. The appellants had to show that there was adequate maintenance and accommodation in accordance with paragraph 159EA(v) with reference to paragraph 159A(vii) of the Immigration Rules. Judge Buckwell had erred material in law as he had failed to consider or make findings as to whether the appellants could fulfil this requirement.
6. Mr Earnest said that Judge Buckwell could be seen to have addressed this requirement as he referred to the bank statements of the first appellant at paragraph 16 of his determination, and the amount for the first appellant's earnings were given on the application form.
7. Mr Bramble submitted that paragraph 16 of the determination simply addressed whether the first appellant had been continuously employed as a domestic worker by reference to the bank statements. It was clear that the issue of maintenance and accommodation had been put in issue by the respondent (see paragraph 2 of the determination) and was not dealt with by the First-tier Tribunal.

### *Conclusions – Error of Law*

8. I informed the parties that I found Judge Buckwell had erred in law for the reasons set out in the Secretary of State's grounds. Judge Buckwell had identified that

maintenance and accommodation were in issue at paragraph 2 of his determination but failed to deal with this issue, which amounted to an error of law as he had entirely failed to deal with a material issue when allowing the appeal. As Mr Bramble submitted the reference to bank statements at paragraph 16 was in relation to their showing that the appellant could satisfy the requirement under the Immigration Rules to have been continuously employed as a domestic worker.

9. I set aside the decision of Judge Buckwell but preserved all of his findings on other matters as there was no contention by the Secretary of State that they had been made improperly. It remained simply to re-make the appeal by making findings on the issue of whether the appellant could accommodate and maintain himself and his dependents adequately, without recourse to public funds, and therefore whether the appellants could show compliance with all of the requirements at paragraph 159EA of the Immigration Rules.

#### *Re-making - Conclusions*

10. Both parties were happy for the error to be instantly remade. It was agreed that the only income the family had was from the first appellant's wages and that this was accurate set out at 5.3 of the FLR(O) application form, and that the rent the family paid was also set out accurately at 5.2 of the application form.
11. It was agreed that the measure of adequacy is the amount the appellant and his family would receive if on income support, in accordance with KA & Others (adequacy of maintenance) Pakistan [2006] UKAIT 65.
12. At the hearing I provided figures as to the amount the appellant and his family would receive per week on income support. This was an amount of £326.81 per week (£112.55 for the couple, £65.62 for each child (3), and £17.40 family premium), which was equivalent of a monthly net salary of £1416. As the appellant's salary, the only family income, was just £850 and as from this he had to pay £350 in rent, leaving just £500 a month to maintain the family, it was clear that the appellants could not show adequate maintenance.
13. I therefore informed the parties that I would therefore re-make the appeal dismissing it under the Immigration Rules as it was clear that the maintenance and accommodation requirement could not be met.
14. The appeal under Article 8 ECHR had been withdrawn before the First-tier Tribunal and there was no request to reinstate it.

#### **Decision**

1. The First-tier Tribunal erred in law.
2. The decision, but not the findings, of the First-tier Tribunal is set aside.

3. The appeal is remade dismissing it under the Immigration Rules.

No anonymity direction is made.

Signed  
Judge Lindsley  
Deputy Upper Tribunal Judge

Date 3/12/2014

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 3/12/2014

Judge Lindsley  
Deputy Upper Tribunal Judge