



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

Appeal Number: IA/38735/2013

THE IMMIGRATION ACTS

Heard at Manchester

**On 22nd September, 2014
Given extempore
Signed, 1st October, 2014**

**Determination
Promulgated
On 3rd October, 2014**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Claimant

and

LEONARDO DAVIDLOPEZ WAYTE

Respondent

Representation:

For the Claimant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr McIndoe, a Solicitor with Latitude Law

DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the Home Department and I shall refer to her as, "the claimant". The respondent is a citizen of the

Argentine Republic, born on 15th November, 1973. He entered the United Kingdom as a visitor on 9th February, 2013.

2. On 2nd August, 2013, he applied for variation of his leave to enter or remain and the application was refused by the claimant on 8th September, 2013. The respondent appealed that decision and his appeal was heard by First-tier Tribunal Judge JDL Edwards in Manchester on 7th January, 2014.
3. In his determination, the judge allowed the respondent's appeal on the basis of his Article 8 rights, having refused the respondent's immigration appeal. Unfortunately in doing so the judge failed to properly apply the Immigration Rules and failed to properly identify what circumstances about the respondent or his situation permitted him to allow the appeal outside the Immigration Rules in accordance with *Nagre, R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin) and *Gulshan (Article 8 - new Rules - correct approach)* [2013] UKUT 00640 (IAC).
4. The complainant challenged the determination and permission to appeal was granted by First-tier Tribunal Judge Alan Williams. At the hearing before me today the respondent's representative agreed that the determination could not stand and indicated that he was not opposed to the matter being remitted to the First-tier Tribunal for hearing afresh by a judge other than First-tier Tribunal Judge JDL Edwards. Mr McVeety agreed. In the circumstances I have concluded that it would be appropriate for the matter to be reheard afresh by a judge other than First-tier Tribunal Judge JDL Edwards. A Spanish interpreter is required and one a half hours should be allowed for the hearing of the appeal with just two witnesses.

Richard Chalkley
Upper Tribunal Judge Chalkley