



IAC-AH-KEW-V1

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

Appeal Numbers: IA/36097/2014
IA/36108/2014
IA/36109/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 19 February 2016**

**Decision & Reasons Promulgated
On 8 March 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS SHOVA SHRESTHA MAHARJAN (FIRST APPELLANT)
MR RAKESH MAHARJAN (SECOND APPELLANT)
[RM] (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr Walker, Senior Home Office Presenting Officer
For the Respondents: Mr Patel, Hiren Patel Solicitors

DECISION AND REASONS

1. In this decision, I shall refer to the respondents as the appellants and to the appellant as the respondent (as they appeared respectively before the First-tier Tribunal). The appellants are all citizens of Nepal. The third appellant is the daughter of the second and first appellants. On 28 August 2014, the respondent refused the application of the first appellant for

leave to remain in the United Kingdom as a Tier 4 Student. The second and third appellants were refused also as the first appellant's dependants. The decision was also taken to remove the appellants from the United Kingdom under Section 10 of the Immigration and Asylum Act 1999. The First-tier Tribunal (Mr S D Lloyd) found that the appeal should be allowed as "not in accordance with the law." The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. At [10] the judge wrote:

The Tier 4 decision is stated to have no right of appeal due to the 'earlier' Section 10 decision to remove. Both decisions carry the same date, the IS151B date of service is stated to be 1 September 2014. I therefore do not accept that the Section 10 decision preceded the Tier 4 decision nor that the right of appeal is excluded from it. No earlier Section 10 decision is adduced as being relied on by the respondent in respect of this.

3. Mr Walker, for the Secretary of State, informed me that he had conducted a search of the respondent's records but could find no earlier Section 10 removal decision. Mr Walker did not seek to persuade me that the judge's remarks at [10] were inaccurate or wrong in law. He did not pursue the second ground of appeal (failure to give adequate reasons for findings on a material matter). He agreed with me, however, (as did Mr Patel, for the appellants) that it was clear from [20] that the judge intended to return the matter to the respondent in order that she may re-make the decision in the light of the judge's findings of fact. I am happy to clarify the First-tier Tribunal's decision to that extent.

Notice of Decision

The appeals of the Secretary of State are dismissed. The applications of these appellants are to be returned to the Secretary of State in order that she may make decisions in the light of the First-tier Tribunal's findings of fact.

No anonymity direction is made.

Signed

Date 20 February 2016

Upper Tribunal Judge Clive Lane