



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

Appeal Numbers: IA/37850/2013  
IA/37859/2013  
IA/37865/2013

## **THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 November 2014**

**Determination  
Promulgated  
On 28 November 2014**

**Before**

**DEPUTY JUDGE DRABU CBE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

And

**RAMIRO MEJIA DELGADO  
LISVIC MAIGUALIDA BOVES MARTINEX  
JASON ALEXANDER MEJIA BOVES**

Respondent

**ANONYMITY DIRECTION IS NOT MADE**

Representation:

For the Appellant: Mr S Whitwell, Senior Presenting Officer  
For the Respondent: Mr Michael Murphy of Farani Javid Taylor Solicitors

## **DECISION AND REASONS**

1. This appeal has been brought by the Secretary of State against the decision of Judge Colvin, a Judge of the First Tier Tribunal who following a hearing at Taylor House on

17 July 2014 allowed the appeals of those now named as respondents in this determination. The Secretary of State had refused their applications to be allowed to remain in the United Kingdom, on the basis of their rights under human rights law.

2. In the consideration of these appeals Judge Colvin said at Paragraph 20 of the determination that “It is accepted that the new Immigration Rules are not applicable as the applications were made in December 2011 before the new rules came in to force. This appeal is therefore determined under the Article 8 general principles relating to family and private life.”
3. The appellant in this appeal ie. Judge Heynes granted the Secretary of State, a Judge of the First Tier on 2 September 2014. In a very brief decision the Judge said, “the grounds of appeal complain that the Judge failed to apply Appendix FM, paragraph 276 ADE and the guidance in Gulshan (Article 8 – new rules – correct approach) [2013] UKUT 640 (IAC)”.
4. At the hearing before me Mr Whitwell asked for permission to amend his grounds upon which he had been granted permission. I denied him the permission because the application was made so late that allowing it to be pursued would have been unfair and unjust to the respondents. No plausible or reasonable explanation was provided or the delay except that the Senior Presenting Officer had only been given the file the day before. I noted that the appellant had done nothing since 2 September 2014 in respect of the grounds tendered in support of her application and which formed the basis upon which this appeal before me was proceeding. In any event having looked at the application I concluded that none of the matters raised in this hugely delayed application amounted to any materially arguable error of law. I announced my decision in open court and invited Mr Whitwell to address me on the grounds, which formed the basis of the appeal before me. Mr Whitwell said that he had no arguments to put before me. Mr Murphy took me through the determination of Judge Colvin as well as the appellant’s grounds of her application and argued that the application be dismissed as having no merit.
5. I agree with Mr Murphy. The application, which led to the grant of permission, had little merit. On the one hand it was suggested therein that the respondent’s applications to remain had been made before the new rules came into being and yet it was argued that the decision in Gulshan should have been applied. The principles set out in Gulshan did not have much relevance to the facts of this case as it was agreed by the parties before Judge Colvin that the appeal had to be decided in the context of Rules as existed “before the new rules came into force”.
6. I have looked at the determination of Judge Colvin with care, I have, with respect found it to be very impressive in its reasoning as well as correct application of relevant case law principles. She has referred to all the relevant cases including the cases upon which the Secretary of State had placed reliance such as **Azimi-Moayed and others (decisions affecting children: onwards appeals) [2013] UKUT] 00197**. Her decision has no flaws in it and there is no reason whatsoever to interfere with it. Her findings are clear and evidence based and well reasoned. She says in paragraph 23 of her determination, “Of the 9 years that the third appellant has been in the UK, the significant have been since sg of 4 to 11 as referred to in the above case decision (Azimi–Moayed and others). From the evidence including the school reports it is very

clear hat he has developed strong cultural and educational ties during these years. Not only are his parents very concerned that the disruption would be caused by removing him from the UK particularly in psychological terms but the third appellant himself has made an articulate and strong plea to be allowed to stay in the only country he considers his home.”

7. In the next paragraph of her determination, Judge Colvin states “I accept it can be argued that the bad immigration history of his parents gives rise to significant public interest reasons that this family should be removed, so as to ensure effective immigration controls. However as the decision above states (Azimi–Moayed), such reasons need to be compelling in order to outweigh the best interests of the third appellant who has been in the UK for at least 7 years at a critical age development and in circumstance where his parent’s bad immigration control should not be held against him.”
8. On the evidence adduced before her, Judge Colvin was perfectly entitled to come to that conclusion.
9. Judge Colvin’s decision to allow the appeals must therefore stand as must her decision on fee award

K Drabu CBE  
Deputy Judge of the Upper Tribunal.

24 November 2014