**UPPER TRIBUNAL**

**(Immigration and Asylum Chamber)**

R (on the application of Esther Ebun Oludoyi & Ors) v Secretary of State for the Home Department (Article 8 – )

MM (Lebanon) and Nagre IJR [2014] UKUT 00539 (IAC)

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

Heard: 1 September 2014

At: Field House

**Before**

**UPPER TRIBUNAL JUDGE GILL**

**THE QUEEN (on the application of**

**Esther Ebun Oludoyi,**

**Sunday Femi Oludoyi,**

**Christianah Damilola Oludoyi**

**and Samuel Damilare Oludoyi)**

**(NO ANONYMITY ORDER MADE)**

Applicants

**and**

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

**Representation :**

For the Applicant: Mr S Karim, instructed by The First Law Partnership Ltd.

For the Respondent: Ms J Thelen, instructed by the Treasury Solicitor.

There is nothing in R (Nagre) v SSHD [2013] EWHC 720 (Admin) , Gulshan (Article 8 – new Rules – correct approach) Pakistan [2013] UKUT 640 (IAC) or Shahzad (Art 8: legitimate aim) [2014] UKUT 00085 (IAC) that suggests that a threshold test was being suggested as opposed to making it clear that there was a need to look at the evidence to see if there was anything which has not already been adequately considered in the context of the Immigration Rules and which could lead to a successful Article 8 claim. These authorities must not be read as seeking to qualify or fetter the assessment of Article 8. This is consistent with para 128 of R ( MM & Others) v SSHD [2014] EWCA Civ 985, that there is no utility in imposing a further intermediate test as a preliminary to a consideration of an Article 8 claim beyond the relevant criterion-based Rule. As is held in R (Ganesabalan) v SSHD [2014] EWHC 2712 (Admin), there is no prior threshold which dictates whether the exercise of discretion should be considered; rather the nature of the assessment and the reasoning which are called for are informed by threshold considerations.

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**JUDGMENT**

Handed down on 29 October 2014

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1.
The applicants are nationals of Nigeria, now aged (respectively) 53 years, 59 years, 23 years and 20 years. Upper Tribunal Judge Storey granted permission to challenge the lawfulness of decisions of the respondent, first made on 9 August 2013 (the first decision) supplemented on 18 March 2014 (the second decision) and (in respect of the second applicant) a decision of 28 May 2014 (the third decision), to refuse their applications of 13 August 2012 for leave to remain in the United Kingdom on the basis of their rights under Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The grounds upon which they challenge the decisions made on their individual Article 8 claims are summarised at [32] below. In addition, they each challenge the respondent's failure to make appealable immigration decisions with an in-country right of appeal.

2.
In this particular case, it makes sense for me to describe and deal with the legal issue of general interest before turning to the facts of the individual applicants.

3.
It is generally thought that, in R (Nagre) v SSHD [2013] EWHC 720 (Admin), Sales J (as he then was) considered that, if an individual does not satisfy the requirements for the grant of leave under (in non-deportation cases) Appendix FM (in relation to family life) or para 276ADE (in relation to private life) of the immigration Rules (the "IRs") introduced from 9 July 2012 by HC 194, it is only necessary to consider Article 8 outside the IRs if there is a "good arguable case" for the grant of leave on the basis of Article 8.

4.
The legal issue of general interest is whether the observations of the Court of Appeal in R (MM & Others) v SSHD [2014] EWCA Civ 985 in the concluding words of para 128 (see [12]) below) should lead to a change in the approach that may have been thought to have been indicated by Sales J; in particular, whether a "threshold" of a "good arguable case" must be shown before the duty arises to consider Article 8 beyond any IRs which set out criteria for the consideration of family or private life.

5.
Having described the legal issue briefly in this way, it is necessary to go into some further detail:

6.
From 9 July 2012, HC 194 introduced the criteria to be met in assessing the private and family life claims of individuals. In criminal deportation cases, the relevant IRs are paras 398, 399 and 399A-D. Para 398 provides (in effect) that the first step is to consider whether paras 399 or 399A apply. If they do not, para 398 provides that: "it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors". By HC 532 and with effect from 28 July 2014, this has been amended to: "… the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A".

7.
The relevant IRs in relation to private life in non-deportation cases are paras 276ADE to 276CE. If an individual does not meet the criteria set out therein, then guidance issued by the Secretary of State in the form of instructions provides, in effect, that leave to remain outside the IRs could be granted in the exercise of residual discretion in "exceptional circumstances" which are defined in the guidance. In the Nagre case, the Secretary of State's guidance provided:

"Exceptional" does not mean "unusual" or "unique". Whilst all cases are to some extent unique, those unique factors do not generally render them exceptional. For example, a case is not exceptional just because the criteria set out in EX.1 of Appendix FM have been missed by a small margin. Instead, "exceptional" means circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate. That is likely to be the case only very rarely."

8.
In Nagre, Sales J said (at [30]):

"…if, after the process of applying the new rules and finding that the claim for leave to remain under them fails, the relevant official or tribunal judge considers it is clear that the consideration under the Rules has fully addressed any family life or private life issues arising under Article 8, it would be sufficient simply to say that; they would not have to go on, in addition, to consider the case separately from the Rules. If there is no arguable case that there may be good grounds for granting leave to remain outside the Rules by reference to Article 8, there would be no point in introducing full separate consideration of Article 8 again after having reached a decision on application of the Rules."

9.
Nagre was considered by the Court of Appeal in MF (Nigeria) v SSHD [2013] EWCA Civ 1192. As this was a deportation case, the IRs that were considered were paras 398, 399 and 399A. At [44], the Court held that the new IRs (by which the Court was referring to the IRs relating to criminal deportation cases) were a complete code and that the exceptional circumstances to be considered in the balancing exercise involve the application of a proportionality test as required Strasbourg jurisprudence. At [45], the Court held that it was a sterile question whether the proportionality test was applied within the IRs or outside the IRs; either way, the result would be the same.

10.
In Gulshan (Article 8 – new Rules – correct approach) Pakistan [2013] UKUT 640 (IAC), a reported determination of the Upper Tribunal, heard before Cranston J and Upper Tribunal Judge Taylor, the Upper Tribunal decided (at [24(b)] and citing Nagre) that, on the current state of the authorities, after applying the requirements of the IRs, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them.

11.
Also relevant is Shahzad (Art 8: legitimate aim) [2014] UKUT 00085 (IAC), the headnote for which (insofar as relevant) reads:

"(iv) MF (Nigeria ) [2013] EWCA Civ 1192 held that the new immigration rules regarding deportation of a foreign criminal are a complete code. This was because of the express requirement in them at paragraph 398 to have regard to exceptional circumstances and other factors.

(v) It follows from this that any other rule which has a similar provision will also constitute a complete code;

(vi) Where an area of the rules does not have such an express mechanism, the approach in R (Nagre) v Secretary of State for the Home Department [2013] EWHC 720 (Admin) ([29]-[31] in particular) and Gulshan (Article 8 – new Rules – correct approach ) [2013] UKUT 640 (IAC) should be followed: i.e. after applying the requirements of the rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them."

12.
At para 128 of MM, the Court of Appeal said:

" Sales J's decision therefore follows the logic of Laws LJ's statements in [38]-[39] of AM (Ethiopia) , analysed above. However, there is a difference in that in Nagre the new rules were themselves attempting to cover, generally, circumstances where an individual should be allowed to remain in the UK on Article 8 grounds; whereas in AM (Ethiopia) and in the present appeals the rule challenged stipulates a particular requirement that has to be fulfilled before the applicant will be allowed to enter or remain. The argument in each case is that it is that specific requirement that offends Article 8. Nagre does not add anything to the debate, save for the statement that if a particular person is outside the rule then he has to demonstrate, as a preliminary to a consideration outside the rule, that he has an arguable case that there may be good grounds for granting leave to remain outside the rules. I cannot see much utility in imposing this further, intermediary, test. If the applicant cannot satisfy the rule, then there either is or there is not a further Article 8 claim. That will have to be determined by the relevant decision-maker."

**Submissions of the parties on the legal issue**

13.
Mr Karim submitted that para 128 of MM means that, if there is a good arguable Article 8 claim outside the IRs, it is always necessary to follow the five-step approach explained by Lord Bingham at para 17 of R (Razgar) v SSHD (2004) UKHL 27.

14.
Ms Thelen submitted that the Secretary of State's guidance in relation to "exceptional circumstances" is the means by which one decides whether there is a good arguable case outside the IRs for the grant of leave on the basis of Article 8. Ms Thelen referred me to the judgment of Michael Fordham QC sitting as Deputy High Court Judge in R (Ganesabalan) v SSHD [2014] EWHC 2712 (Admin), where (at [21.(v)] and [25]), Mr. Fordham said:

"21.(v) There is no prior threshold which dictates whether the exercise of discretion should be considered; rather the nature of the assessment and the reasoning which are called for are informed by threshold considerations, those threshold circumstances include (a) whether an arguable basis for the exercise of the discretion has been put forward; (b) whether the relevant factors have already been assessed; (c) whether a repeat evaluation is unnecessary.

25. …[para 33 of Green J's judgment in Ahmed v SSHD [2014] EWHC 300 (Admin)], in my judgment, very clearly recognises that, having addressed the Immigration Rules and reached conclusions on their application, there is a duty by reference to the guidance on the decision maker then to step back and formulate a view. The need for a view is not triggered by there being some good arguable basis.

Rather, as Green J there explains, one of the questions – indeed the first question – to be considered in formulating that view, is the question whether there might be a good arguable case."

15.
Ms Thelen submitted that, in saying that there are no exceptional circumstances, the decision-maker is in effect saying that there is no arguable basis for the exercise of discretion outside the IRs. If there is an arguable basis for the exercise of discretion outside the IRs, it may be necessary for the decision-maker to go on to consider Article 8 "in the Razgar sense"; certain cases may require more reasoning than others. She submitted that this approach is entirely consistent with para 128 of MM.

16.
In response, Mr Karim submitted that the threshold for saying that there are "arguable grounds" is low, whereas the threshold for a decision that there are "exceptional circumstances" is higher. He therefore submitted that Ms Thelen's proposition, that a decision by a decision-maker that there are no exceptional circumstances means that the decision-maker has decided that there is no arguable case for the grant of leave to remain on the basis of Article 8, conflates two thresholds and results in the application of the wrong test. Para 128 of MM clearly states that there is no need for an intermediate test. Furthermore, given that the IRs do not cater exhaustively for all possible circumstances that might arise under Article 8, there must be circumstances outside those specifically provided for under the IRs that raise a good arguable case.

17.
On the specific facts of the case, and relying upon the Court of Appeal's judgment in UE (Nigeria) v SSHD [2010] EWCA Civ 975, Mr Karim submitted that the value to the community in the United Kingdom of an individual, for example, on account of his or her occupation, is a relevant consideration in the proportionality exercise. Any benefit to the public of an individual being allowed to remain in the United Kingdom (for example, if the individual has skills which are in short supply) is one of those identified as a relevant factor. Thus, the fact that Mrs Oludoyi is a nurse means that she has a good arguable case for the grant of leave outside the IRs. Once a good arguable case is shown, as Mrs Oludoyi has by virtue of her occupation, it was necessary for the decision-maker to assess her Article 8 claim by following the five-step approach explained in Razgar. Instead, the decision-maker proceeded immediately to the issue of proportionality.

**Discussion of the legal issue**

18.
I shall hereafter refer to any IR which sets out the criteria to be satisfied for any family life or private life claim as a "criterion-based Rule", to distinguish it from any IR which imports the proportionality test. Prior to 28 July 2014, the IRs imported the proportionality test by the use of the phrase "exceptional circumstances" (see, for example, para 398). From 28 July 2014, the IRs amended para 398 so that the proportionality test for the purpose of para 398 is imported by the use of the phrase "very compelling circumstances over and above…". In the case of para 276ADE, where there is no express provision within the IRs which imports the proportionality test, the proportionality test is imported into the guidance by the use of the phrase: "exceptional" means circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate" from which phrase it is clear that the Secretary of State accepts that domestic and Strasbourg jurisprudence as to proportionality continue to apply.

19.
It is not in dispute that:

i. Section 6 of the Human Rights Act 1998, which makes it unlawful for a public authority to act in a way which is incompatible with Article 8 (amongst other “Convention rights” as therein defined), still applies.

ii. The judgment of the Supreme Court in Huang v SSHD [2007] UKHL 1 still applies.

iii. Strasbourg and domestic jurisprudence in relation to Article 8 still applies.

iv. There is nothing in Huang or in other domestic jurisprudence or Strasbourg jurisprudence which supports the proposition that a threshold must be reached before the obligation to consider an Article 8 claim arises.

v. Likewise, in my judgement, there is nothing in MF (Nigeria) which suggests that the Court of Appeal considered that, in cases which do not meet the requirements of paras 399 or 399A, there is a threshold requirement (in the sense of whether there is a “good arguable case”) before it becomes necessary to consider proportionality.

20.
There is nothing in Nagre , Gulshan or Shahzad that suggests that a threshold test was being suggested as opposed to making it clear that there was a need to look at the evidence to see if there was anything which has not already been adequately considered in the context of the IRs and which could lead to a successful Article 8 claim. If, for example, there is some feature which has not been adequately considered under the IRs but which cannot on any view lead to the Article 8 claim succeeding (when the individual's circumstances are considered cumulatively), there is no need to go any further. This does not mean that a threshold or intermediate test is being applied. These authorities must not be read as seeking to qualify or fetter the assessment of Article 8. The guidance given must be read in context and not construed as if the judgments are pieces of legislation.

21.
In this respect, an analogy can be drawn with the explanation given by the Master of the Rolls at [42] of MF (Nigeria) to the effect that the use of the phrase “exceptional circumstances” does not necessarily mean that a test of exceptionality is being applied. The explanation given was as follows:

“…it is only in “exceptional” or “the most exceptional circumstances” that removal of the non-national family member will constitute a violation of article 8. In our view, that is not to say that a test of exceptionality is being applied. Rather it is that, in approaching the question of whether removal is a proportionate interference with an individual’s article 8 rights, the scales are heavily weighted in favour of deportation and something very compelling (which will be “exceptional”) is required to outweigh the public interest in removal. In our view, it is no coincidence that the phrase “exceptional circumstances” is used in the new rules in the context of weighing the competing factors for and against deportation of foreign criminals.”

22.
This view is consistent with para 128 of the MM, that there is no utility in imposing a further intermediate test as a preliminary to a consideration of an Article 8 claim beyond the relevant criterion-based Rule.

23.
If there may arguably be good grounds for granting leave to remain outside the IRs, then the question whether it is necessary to consider all five of the five-step approach explained in Razgar or whether it will be possible to proceed immediately to the proportionality exercise as explained in the fourth and

fifth steps explained in Razgar may vary from case to case. It may depend on the assessment that has been made under the relevant criterion-based IR. If, in the process of assessing whether an individual satisfies a criterion-based IR(s), findings as to whether family life or private life is being enjoyed have been made, it would be futile to introduce the full five-step approach when considering the Article 8 claim beyond the criterion-based Rule. In these circumstances, it would be permissible to proceed to the proportionality test since the second and third steps are not contentious in most cases. By way of a further example, if the circumstances relied upon for the grant of leave outside the IRs relate to matters that go to proportionality (such as an argument that the work that the individual does is of public benefit), it may be permissible to proceed to proportionality. I therefore do not accept Mr Karim's submission that it is always necessary to follow the five-step approach explained in Razgar.

24.
I turn now to deal with the individual cases in the instant claim.

**The Applicants' challenges**

Immigration history and factual background

25.
For convenience and without meaning any disrespect, I shall hereafter refer to the applicants, respectively, as Mrs. Oludoyi, Mr. Oludoyi, Christianah and Samuel. Christianah and Samuel are the son and daughter (respectively) of Mr. and Mrs. Oludoyi.

26.
Mrs. Oludoyi trained as a nurse in the United Kingdom, having arrived in the United Kingdom as a student on 18 January 2006 when she was 45 years of age and subsequently been granted a work permit for four years which expired on 3 October 2010. As at 9 August 2013, the date of the first decision, she had lived in the United Kingdom for about 7 ½ years. Mr. Oludoyi, Christianah and Samuel arrived in the United Kingdom on 25 June 2008 when they were (respectively) 53 years, 17 years 8 months and 14 years 7 months old. They were granted leave as Mrs. Oludoyi's dependants until 3 October 2010. Mr. Oludoyi was a trained teacher in Nigeria. In the United Kingdom, he took work as a security guard. Christianah and Samuel pursued their studies.

27.
Mr. and Mrs. Oludoyi and Samuel had a previous appeal on human rights grounds against a decision refusing their applications of 2 October 2010 for leave on human rights grounds. Christianah did not have a right of appeal because her application of the same date, which was lodged separately because she was over 18 years old by then, was rejected twice, the first time because no fee was paid and the second time because no photographs were supplied. By the time she submitted a valid application (on 14 January 2011), it was out of time. This application was still outstanding by the time the appeal of the other family members was heard before the FtT (Judge Iqbal). The judge allowed the appeal because the respondent had failed to consider Christianah's application. The respondent then refused Christianah's application and maintained the refusal of the applications of the other family members, whose appeals were then heard and dismissed by Judge of the FtT Dove QC (as he then was).

28.
Although Christianah was not an appellant, Judge Dove nevertheless considered her circumstances.

29.

Judge Dove heard evidence that Mr. and Mrs. Oludoyi had an older married daughter who lives in Abuja in Nigeria with her husband and with whom they speak on the phone from time to time. They visited her in Nigeria in 2009. Mrs. Oludoyi also had a brother, his wife and their children in Nigeria. Both Mr. and Mrs. Oludoyi had relatives in the United Kingdom. The judge said that he did not consider that the private lives that Mr and Mrs Oludoyi, Christianah and Samuel had developed in the United Kingdom were particularly weighty matters. Although he recognised that Mrs. Oludoyi and her family have severed the vast majority of their ties with Nigeria, Mr. and Mrs. Oludoyi had an adult daughter who still lived there and he considered that their private lives in the United Kingdom had been built up in the knowledge that there was only a temporary right to do so. He considered that there was nothing to suggest that the education of Christianah and Samuel could not continue in Nigeria.

30.
Mr. and Mrs. Oludoyi and Samuel were granted permission to appeal to the Upper Tribunal. The appeal was heard before Upper Tribunal Judge Storey who, in a determination promulgated on 18 April 2012, found that there was no material error of law. Judge Storey observed that the Article 8 ground was hopeless. He also commented that, whilst he did not consider that the applicants have been in the United Kingdom sufficiently long to be able to establish any significant ties of private life such as would make their return to Nigeria disproportionate, they appeared not to have been well-served by their legal representatives or other advisers. In the light of the fact that Mrs. Oludoyi was a trained nurse who appeared to have an employer willing to employ her and in the absence of any evidence before him to suggest that the family had been a burden on public funds or committed criminal offences or engaged in any misconduct, he made what he emphasised was no higher than a “polite request on an extra-judicial basis” to the respondent “to look again” at the case if it was still the case that there was a shortage of trained nurses doing the type of work Mrs. Oludoyi had been doing previously.

31.
The applications that are the subject of the instant claims were lodged on 13 August 2012, three months after Mrs. Oludoyi (with Mr. Oludoyi and Samuel as her dependants) exhausted her appeal rights on 8 May 2012.

The challenge in each case

32.
At the commencement of the hearing, I granted Mr Karim's application to amend the grounds of challenge so to include a challenge to the first and second decisions and (in the case of the Mr Oludoyi) the third decision. Mr Karim confirmed that the applicants challenge the decisions on their Article 8 claims as follows:

(i) Mrs Oludoyi does not challenge the decision under the IRs. She challenges the decision as to her private life outside the IRs. This is largely based on her occupation as a nurse. She also relies upon her good immigration history. If there is a material error of law in the decisions on the Article 8 claims of Christianah and Samuel, Mrs Oludoyi also challenges the assessment of her family life outside the IRs.

(ii) Mr Oludoyi does not challenge the decision under the IRs, nor does he challenge the decision outside the IRs as to his private life. If there is a material error of law in the decisions on the Article 8 claims of the other applicants, it is contended that there is also a material error of law in the decision outside the IRs as to his right to his family life.

(iii) Christianah and Samuel each challenge the decisions as to their right to private life under the IRs. They challenge the decision-maker's view, in relation to para 276ADE(vi), that they had not lost their ties to their home country. In this regard, the decision-maker said that, having lived in Nigeria for 18 years (in the case of Christianah) and 15 years (in the case of Samuel) and "in the absence of any evidence to the contrary", it was not accepted that in the period of time they had respectively spent in the United Kingdom they had lost their ties to their home country as they had other family members in Nigeria including a married sister.

(iv) Christianah and Samuel also challenge the decisions made in each of their cases outside the IRs as to whether there are exceptional circumstances in their individual cases. They rely upon their respective relationships with their partners; in the case of Christianah, with a Mr. Odunayo Adesina, a British citizen; and, in the case of Samuel, with a Miss Azuka Nnoruka, a British citizen born in the United Kingdom. They also rely upon the fact that they arrived in the United Kingdom as minors; their studies in the United Kingdom; and their good immigration history.

33.
I will therefore deal first with the challenge to the decision outside the IRs on the private life claim of Mrs Oludoyi followed by the challenges to the decisions on the Article 8 claims (inside and outside the IRs) of Christianah and Samuel. If there are material errors of law in any of these decisions, the impact of those errors on the decisions made in respect of the family life claims outside the IRs of Mr and Mrs Oludoyi will need to be considered.

Mrs Oludoyi – private life claim outside the IRs

34.
The first decision stated that the decision-maker had considered whether Mrs Oludoyi's application raised any exceptional circumstances and had decided that it did not. However, the first decision was supplemented by the second decision. The relevant section of this letter reads:

"Exceptional circumstances

The approach in considering Article 8 claims is to (a) assess whether a case meets the requirements of the Immigration Rules and (b) consider whether the case discloses **any exceptional circumstances such that refusal would result in unjustifiably harsh consequences for the claimant such that refusal would not be proportionate.** This was the approach followed in [the first decision], as described below. This letter supplements the analysis described under (b), exceptional circumstances. Each applicant is considered in turn.

Our current guidance defines this as:

"Exceptional" does not mean "unusual" or "unique". Whilst all cases are to some extent unique, those unique factors do not generally render them exceptional. For example, a case is not exceptional just because the criteria set out in EX.1 of Appendix FM have been missed by a small margin. Instead, **"exceptional" means circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate.** That is likely to be the case only very rarely."

[Mrs Oludoyi]

… The [first decision] also considered whether or not [Mrs Oludoyi's application] raises or contains **any exceptional circumstances which, consistent with the right to respect of private and**

**family life contained in Article 8 …, might warrant consideration by the Secretary of State of a grant of leave to remain in the United Kingdom outside the requirements of the Immigration Rules.** The [first decision] determined that it did not. As explained above, this letter supplements that analysis.

In support of your claim you have raised the fact that [Mrs Oludoyi] is a qualified nurse whose expertise would be of value to the UK. This has been carefully considered. However, it has been decided that a grant of leave is the rules is not appropriate in [Mrs Oludoyi's] case because the circumstances, as set out previously and below, are not exceptional.

The skills which [Mrs Oludoyi] has acquired as a nurse, are transferable to other countries including Nigeria, hence [Mrs Oludoyi] could continue to seek work abroad and exercise her training outside the UK. The fact that [Mrs Oludoyi] is a nurse and there is a shortage of nurses in the U.K. may be a factor to take into account when considering the balancing of [Mrs Oludoyi] Article 8 rights with other public interests such as immigration control. However, this benefit is not considered by the SSHD to be an exceptional factor which would justify a grant of leave outside the Rules.

It is noted that [Mrs Oludoyi] has extended family in the UK: two brothers-in-law, a cousin, and uncle. However, no evidence has been provided, nor has it been suggested by [Mrs Oludoyi] that there is any relationship beyond the normal emotional ties between adult relations, which would justify a grant of leave outside the Rules.

[Mrs Oludoyi], with her husband and two children, form a unit who could return to Nigeria together to continue their family life in that country. It is also noted that [Mrs Oludoyi's] eldest child still lives in Nigeria, along with Mrs Oludoyi's brother, his wife and their children. It is considered that Mrs Oludoyi's circumstances are not sufficiently compelling to warrant a grant of leave on exceptional grounds."

(my emphasis)

35.
Mr Karim submitted that the decision-maker erred by failing to adopt the five-step approach explained in Razgar. He submitted that the decision-maker erred in proceeding immediately to considering proportionality. In my judgement, this simply ignores the fact that the factor relied upon (that Mrs Oludoyi is a nurse whose work is of public benefit as it is a shortage occupation) relates to proportionality; it is difficult to see its relevance to the first, second and third steps of the five-step approach. Furthermore, and in any event, Judge Dove had made relevant findings of fact about Mrs Oludoyi's private life in the United Kingdom. No explanation was given to the respondent why her private life ties to the United Kingdom had changed since Judge Dove determined her Article 8 claim in April 2012. All that had happened is that time had passed.

36.
Mr Karim drew a distinction between "exceptional circumstances" per se and exceptional circumstances which lead to the grant of leave outside the IRs. He submitted that the fact that Mrs Oludoyi was a nurse was itself an exceptional circumstance. As a nurse, she is in a shortage occupation. Her work is of a public benefit.

37.
In drawing this distinction between "exceptional circumstances" per se and exceptional circumstances which lead to the grant of leave outside the IRs, Mr Karim was conflating the meaning

of “exceptional” in ordinary language and the meaning given to it in the guidance. The guidance attributes a specific meaning to “exceptional”. The guidance defines it as follows: ““exceptional” means circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate.” The guidance therefore uses the word “exceptional” as meaning that the decision (to refuse leave to remain/remove etc) would be in breach of the individual's rights under Article 8, having weighed the individual's circumstances against the state's interests. In other words, the guidance uses the term “exceptional” as shorthand for “disproportionate”.

38.
It is clear from UE (Nigeria) and the judgment of the House of Lords in R v Immigration Appeal Tribunal ex parte Bakhtaur Singh [1986] 1 WLR 910 that the value to the community in the United Kingdom of an individual is a relevant consideration ([21]). The fact that the community in the United Kingdom or a part of it would lose something of value if an individual is removed is relevant to an assessment of the extent of the public interest in removal ([24] and [35] of UE (Nigeria)). However, the Court of Appeal in UE (Nigeria) also made it clear at [36] that it expected that the factor of public value would make a difference to the outcome of immigration cases only in a relatively few instances where the positive contribution is “very significant”, perhaps of the kind referred to by Lord Bridge of Harwich in Bakhtaur Singh. In Bakhtaur Singh, Lord Bridge (at page 917 C-E) referred to various examples of persons with such value, such as an essential worker in a company engaged in a successful export business or a social worker upon whom a local community depended or a scientific research worker engaged on research of public importance.

39.
I am far from persuaded that the mere fact that an individual is a nurse and/or works in a shortage occupation is of itself sufficient to make a difference to the outcome on account of the public value of the work. There are many occupations that make positive contributions to society. Doctors, firemen, charity workers and social workers, to mention just a few. Plainly, their work, as well as the work of nurses, is of value to the community. However, in my judgement, these are not examples of cases (even if they are shortage occupations) that are akin to the examples Lord Bridge had in mind in Bakhtaur Singh of cases in which the factor of public value would make a difference to the outcome. I accept Mr Karim’s submission that the examples given by Lord Bridge are only examples; they are not conclusive. Nevertheless, they are examples that convey the clear message that not all work that is of public value will make a material difference to the outcome. It will only rarely do so.

40.
In my judgement, when properly analysed, the real complaint advanced on Mrs Oludoyi’s behalf is about the weight that the decision-maker gave to Mrs Oludoyi’s occupation as a nurse and the benefit to the public of her work. Indeed, the fact that the challenge is to the weight given to this factor by the decision-maker is evident from the fact that the applicants’ skeleton argument (at [51.i.]) specifically states that, having accepted that there is a shortage of nurses in the United Kingdom, the respondent “fails to attach sufficient weight to the public interest”.

41.
A submission that a decision-maker has given too little or too much weight to any particular factor does not raise any point of law. It is no more than an attempt to re-argue the merits unless the challenge is brought on the basis that the decision was Wednesbury unreasonable, that is, that no reasonable decision-maker could have refused the claim. It is clear from the second decision that the decision-maker took into account as a relevant consideration the value to the community of Mrs

Oludoyi's work as a nurse and that this was acknowledged as a shortage occupation. The weight to be given to these matters both in favour of Mrs Oludoyi and against her was for the decision-maker to decide. Given that it is clear that the decision-maker had taken these matters into account and given, further, the observations in UE (Nigeria) and Bakhtaur Singh, the decision that the refusal of leave to remain in Mrs Oludoyi's case was not disproportionate is not Wednesbury unreasonable. This conclusion is supported by the fact that in April 2012 (i.e. about two years before the most recent of the decisions that Mrs Oludoyi seeks to challenge) Judge Storey, who was plainly aware that she was a nurse, considered that the Article 8 claim was hopeless.

42.
Mr Karim also relies upon Mrs Oludoyi's immigration history. He relied upon para 3.2.8 of the respondent's guidance in the Immigration Directorate Instructions (IDIs) dated October 2013. Para 3.2.8 explains what is meant by "exceptional circumstances" which I have quoted above. Para 3.2.8 then states:

"In determining whether there are exceptional circumstances, the decision-maker must consider all the relevant factors, such as:

a) The circumstances around the applicant's entry to the UK and the proportion of the time they have been in the UK legally as opposed to illegally. Did they form their relationship with their partner at a time when they had no immigration status or this was precarious? Family life which involves the applicant putting down roots in the UK in the full knowledge that their stay here is unlawful or precarious, should be given less weight, when balanced against the factors weighing in favour of removal, than family life by a person lawfully present in the UK.

b) Cumulative factors should be considered. For example were the applicant has family members in the UK but their family life does not provide a basis for stay and they have a significant private life in the UK. Although under the rules family life and private life are considered separately, when considering whether there are exceptional circumstances private and family life can be taken into account."

43.
Mr Karim submitted that Mrs Oludoyi "meets" para 3.2.8 a), the implication being that para 3.2.8 sets out a requirement akin to requirements under the IRs that is either satisfied or not satisfied. This is misconceived, as is the notion that a good immigration history on the part of an individual somehow reduces (at all or to any significant extent) the weight that would ordinarily attach to the state's interests in immigration control. An individual's poor immigration history can and often does work against him, in that, it increases the considerations that pull in favour of the state's interests, if only to serve as deterrence to others. However, the fact that an individual has a good immigration history does not necessarily reduce the considerations in favour of the state's interests.

44.
In any event, the reality is that the second decision stated in terms that it supplemented the analysis of "exceptional circumstances" in the first decision. The first decision in Mrs Oludoyi's case referred to the fact that she arrived in the United Kingdom in 2006, in the context of para 276ADE. In the section under "Exceptional Circumstances", the decision-maker noted that her leave to remain expired on 3 October 2010, that the most recent determination of her appeal was on 14 April 2012 and that her application for leave to remain was made on 13 August 2012. It is therefore plain that the decision-maker must have had Mrs Oludoyi's immigration history in mind when reaching the second decision.

45.
Mr Karim also submitted that the decision-maker had not indicated the weight that was given to the specific private life factors in favour of Mrs Oludoyi; in particular, her occupation as a nurse and the public value of her work. This an empty point, in my judgement. When the decision-maker's reasons are considered as a whole, it is plain that he conducted the balancing exercise in relation to proportionality, considering her circumstances cumulatively, and giving such weight as he considered appropriate to each of the factors for and against Mrs Oludoyi to reach his overall conclusion.

Christianah and Samuel – para 276ADE(vi) of the IRs

46.
Christianah and Samuel each received a letter dated 9 August 2013 (i.e. the first decision). However, the second decision letter dealt with the claims of all four applicants; in relation to Christianah and Samuel, under one combined heading.

47.
Para 276ADE was dealt with in the letters dated 9 August 2013 addressed (respectively) to Christianah and Samuel. As stated at [32] above, the letters said that, having lived in Nigeria for 18 years in the case of Christianah and 15 years in the case of Samuel and "in the absence of any evidence to the contrary", it was not accepted that in the period of time they had respectively spent in the United Kingdom they had lost their ties to their home country as they had other family members in Nigeria including a married sister. Accordingly, the decision-maker considered that para 276ADE(vi) was not satisfied in relation to each of them.

48.
The second decision said as follows:

"You have also claimed that the adult children of Mr and Mrs. Oludoyi, Miss Christianah Damilola Oludoyi and Mr. Samuel Damilare Oludoyi have built up family life with their respective British partners, Mr. Odunayo Adesina and Miss Onyedika Chukwu Azuka.

In respect of [Christianah] and [Samuel], it is noted that the relationships into which they have allegedly entered do not extend to cohabiting with their respective partners. Hence at this stage, the relationships cannot be interpreted as having reached that level of commitment demonstrated by persons living together in a relationship akin to marriage. Furthermore, for a relationship to be recognised as genuine and subsisting, a period of 2 years of cohabitation is taken as being indicative as specified under paragraph GEN.1.2 of Appendix FM. As neither couple were cohabiting on 10 August 2012, a period of two years cannot be met currently.

[Christianah] and [Samuel] may therefore be regarded as having a private life with their partners. However, they do not merit a grant of leave outside the rules because they have supplied no evidence to show that contact cannot be maintained. There is nothing to prevent them continuing the private life that they have with their partners from Nigeria. Although there may be a degree of hardship for [Christianah] and [Samuel] in that they would be away from their alleged partners; if they were to return to Nigeria, there is nothing to prevent them from having contact by alternative methods such as telephone, Internet, letters and visits if they so wish. Similarly, [Christianah] and [Samuel] have cited their friendships and relationships with other persons in the UK including an uncle, Mr Oludoyi and his three young children. However, they have again provided no evidence to indicate they would be unable to maintain such friendships and relationships with extended family members or friends from abroad.

[Christianah] and [Samuel] are both healthy young adults who have benefitted from studying in the UK. They have the opportunity to continue their education in Nigeria, or seek employment on the basis of the skills/qualifications they have attained. There does not seem to be any reason why it would be unreasonable for them to return to Nigeria, where they have spent most of their lives, and have family and friends residing in that country who could help [Christianah] and [Samuel] to re adapt to life in Nigeria.

Your clients form a family unit who could return to Nigeria together to continue their family life in that country. Their circumstances are insufficiently compelling to warrant a grant of leave on exceptional grounds."

49.
Mr Karim referred me to the determination of the Upper Tribunal in Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC). Para 4 of the headnote states:

"The natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances."

50.
It is not contended on behalf of Christianah and/or Samuel that the decision-maker took into account any irrelevant matters or failed to take into account relevant considerations. The challenge plainly concerns the weight to be given to the various matters considered by the decision-maker. The challenge to the findings of the decision-maker that Christianah and Samuel had not lost their ties to Nigeria essentially concerns the weight to be given to the fact that they entered the United Kingdom as minors (Christianah was 17 years 8 months old and Samuel 14 years 7 months old). Para 51.iv of the applicants' skeleton argument contends that the decision-maker erred in "not attaching sufficient weight" to their history, in that, they entered the United Kingdom as minors and spent an important part of their lives in the United Kingdom. Mr Karim submitted that the fact that Christianah and Samuel have relatives in Nigeria does not mean that they have meaningful ties. He referred me to Christianah's application for leave where (at A124) she said: "I don't have anyone in Nigeria at present".

51.
I simply cannot see any error of law in the assessment of the "no ties" stipulation in para 276ADE(vi) for Christianah or for Samuel. The decision-maker has taken into account in terms the considerations relied upon on their behalf. Whilst they entered the United Kingdom as minors, Christianah was just under the age of 18 and Samuel was 14 years 7 months old. The decision-maker was fully entitled to find that they had not lost their ties to Nigeria, given that they had lived in Nigeria from birth until they were (respectively) 18 years and 14 ½ years old; they had lived there for long enough to become accustomed to life there and had not lived in the United Kingdom for long enough to have lost their ties; they came to the United Kingdom to study; and they have a member of their immediate family (an older sister) and her family in Nigeria, not to mention other more distant relatives. The mere fact that their sister was married does not mean that they had lost their ties to Nigeria. Christianah's bare assertion that she does not have anyone in Nigeria was not explained. It called for an explanation

given the findings of Judge Dove about the presence of her married older sister and her family in Nigeria.

52.
The weight to be given to all of these various matters both in favour of Christianah / Samuel (respectively) and against them was for the decision-maker to decide. Given that it is clear that the decision-maker had taken these matters into account in respect of each of them, the respondent's decision that Christianah and Samuel (respectively) had not lost their ties to Nigeria was not unlawful.

Christianah and Samuel – exceptional circumstances outside the IRs

53.
I shall deal first with the family life claims of Christianah and Samuel outside the IRs.

54.
It can be seen from the extract of the second decision quoted at [48] above that the decision-maker considered whether family life was being enjoyed in each case; i.e. the decision-maker began the assessment outside the IRs with the first of the five-step approach explained in Razgar. This was the correct approach because the assessments of their claims under the IRs (under para 276ADE) did not include an assessment as to whether family life was being enjoyed by them, nor was family life considered in the determination of Judge Dove as no evidence of it was placed before him.

55.
I accept that cohabitation is not necessary for a finding of family life. I also accept that the decision-maker had in error used the criterion of two-year-cohabitation criterion under the IRs as the yardstick by which to determine whether their relationships with Mr. Adesina and Miss Nnoruka, respectively, amount to family life.

56.
However, the evidence supplied to the respondent was very limited indeed. In the case of Christianah, the evidence was as follows:

(i) There was a very brief letter dated 4 July 2012 from Mr. Adesina in which he said that Christianah was his girlfriend, their relationship had started in October 2010; their relationship “has been waxing stronger ever since”; and that their ultimate goal was for their relationship to end in marriage.

(ii) There was a “sponsorship declaration” dated 12 July 2012 from Mr. Adesina which was a little longer but which still provided scant information about the strength of the relationship. Insofar as relevant, it states (at [4] and [6]) that he and Christianah had been maintaining a loving relationship as partners for over two years which started in October 2010; that although they do not live at the same address at present, they intend to reside together as man and wife after the marriage and on completion of their studies; and that, as soon as he finds a job, he and Christianah will start to live together and make arrangements for their marriage.

(iii) In her application (at A124), Christianah said: “I am now in a relationship with a British national” and “I intend to live with my partner in the UK.”

57.
In the case of Samuel, the evidence was as follows:

(i) There was a “letter of support” dated 8 July 2012 from Miss Nnoruka which described how they first met in school in October 2008. She went on to say that they became close friends, spending a lot

of time together during and after school hours. She also said that, as they were into the same activities, the friendship turned into a relationship. She then said:

“We started going out as a couple in July 2010 after our GSCE examination in year 11. Ever since I've been with him, he has been really supportive, understanding and caring. We’ve been through a lot together, we revise for our examinations together, presently we are studying the similar course at six-form and we are hoping to go to the same university in order to keep the bond in our relationship stronger, please kindly consider his application and grant him his request in order to make life bearable for both of us.”

(ii) There was a statement dated 7 August 2012 from Samuel, where he said (at [8]) of his relationship with Miss Nnoruka:

“I am in a relationship with [Miss Nnoruka] who is a British citizen. We have been having this relationship since 2010. We met each other in September 2008. We were studying at the same school and at the same class. Our relationship started in July 2010 which is continuing. We intend to live together as a couple. Though we live in different addresses, we meet each other every day as we attend the same school, namely Bedford Academy.”

58.
Whilst I accept that more information was provided about the relationship between Samuel and Miss Nnoruka by Miss Nnoruka (Samuel’s statement was brief) than was provided by Christianah and Mr. Adesina, the relationships plainly could not amount to family life on any view on the information provided to the decision-maker. Accordingly, the error in using the criterion under the IRs to determine whether family life existed could not have made any material difference to the issue as to whether family life was being enjoyed.

59.
Accordingly, the decision-maker correctly proceeded to regard the relationships in question as forming part of the private lives of Christianah and Samuel respectively.

60.
Mr Karim submitted that the decision-maker erred in failing to consider the human rights of Mr. Adesina and Miss Nnoruka; in particular, the impact upon them of removal of Christianah and Samuel respectively; and not merely the impact of the refusal of leave to them. However, even assuming (without deciding the point) that it is relevant to consider the impact of removal as opposed to the impact of refuse leave to remain, this argument is an empty one, given that: (i) the decision-maker did not err in finding that family life was not being enjoyed; and (ii) there was no evidence before the decision-maker of the impact on Mr. Adesina and Miss Nnoruka, respectively, of having to maintain contact with Christianah and Samuel, respectively, by alternative means (internet, email, telephone etc). Mr Karim submitted that the decision-maker had failed to take into account the intentions of Christianah and Mr. Adesina to marry and likewise the intentions of Samuel and Miss Nnoruka to marry. However, they do not enjoy family life. They are not even engaged to be married. The view taken that they could maintain contact by alternative means is not irrational. It would be open to them to demonstrate commitment to their relationships by getting engaged. If this happened, Christianah and Samuel may apply for entry clearance as fiancée/fiancé respectively.

61.
Christianah and Samuel also rely upon the fact that they arrived in the United Kingdom as minors; they had undertaken studies in the United Kingdom; and their immigration history in conjunction with

para 3.2.8 of the IDIs, the implication being (as in the case of Mrs Oludoyi) that their relatively good immigration history somehow reduces the weight that would ordinarily attach to the state's interest in immigration control, at all or to any significant extent. My observations at [43] above are therefore relevant and apply equally to Christianah and Samuel.

62.
Further, and in any event, the first decision in Christianah's case referred to the fact that she arrived in the United Kingdom in 2008, in the context of para 276ADE. In the section under "Exceptional Circumstances", the decision-maker noted that her leave to remain expired on 3 October 2010 and that her application for leave to remain was made on 13 August 2012. The decision-maker made a factual error in her case in stating that the most recent determination of her appeal was on 14 April 2012. Although Judge Dove considered her circumstances in the appeal determination for the other applicants, she did not in fact have an appeal; thus her leave was not extended under section 3C of the Immigration Act 1971. The error was in her favour and therefore immaterial. The second decision specifically stated that it supplemented the analysis as to "exceptional circumstances" in the first decision. In all of the circumstances, it is plain that the decision-maker must have had Christianah's immigration history in mind when reaching the second decision.

63.
The same is true in Samuel's case. The first decision referred to the fact that he arrived in the United Kingdom in 2008, in the context of para 276ADE. In the section under "Exceptional Circumstances", the decision-maker noted that his leave to remain expired on 3 October 2010, the most recent determination of her appeal was on 14 April 2012 and that his application for leave to remain was made on 13 August 2012. It is therefore plain that the decision-maker must have had Samuel's immigration history in mind when reaching the second decision. The second decision specifically stated that it supplemented the analysis as to "exceptional circumstances" in the first decision.

64.
Finally, Mr Karim submitted that the decision-maker had erred by failing to indicate the weight that was given to the various factors in conducting the balancing exercise. Again, this is an empty point. When the decision-maker's reasons are considered as a whole, it is plain that he conducted the balancing exercise in relation to proportionality, considering the circumstances of Christianah and Samuel (respectively) cumulatively, and giving such weight as he considered appropriate to each of the factors for and against Christianah and Samuel (respectively) to reach his overall conclusion in each of their Article 8 claims.

65.
For both Christianah and Samuel, the second and third steps of the five-step approach were omitted but this was not material. Mr Karim made no submissions on this point in relation to Christianah (or Samuel) notwithstanding his submission on the issue of general interest that it is always necessary to consider all five steps if there is a good arguable case.

66.
Accordingly, the decisions on the Article 8 claims of Christianah and Samuel were not unlawful.

Mr and Mrs Oludoyi – family life claims outside the IRs

67.
It follows that the decisions on the family life claims of Mr. and Mrs. Oludoyi outside the IRs were not unlawful.

Applicants’ challenges to the failure to issue appealable immigration

68.
The applicants challenge the failure of the respondent to issue appealable immigration decisions. As they were overstayers as at the dates of the decisions they seek to challenge, they contend in effect that the failure to issue removal decisions to them was unlawful. Mr Karim accepts that there is no obligation on the respondent to make an appealable immigration decision to an overstayer at any particular time: R (Daley Murdock) v SSHD [2011] EWCA Civ 161. The Supreme Court reached the same conclusion in Patel and others v SSHD [2013] UKSC [2013] UKSC 72.

69.
As at the dates on which the decisions were made, a removal decision gave rise to a right of appeal exercisable in-country if a human rights claim had been made (as did the applicants, s.92(4) of the Nationality, Immigration and Asylum Act 2002) unless certified as clearly unfounded.

70.
The respondent has a policy entitled: “Request for removal decisions” (the Removal Decisions Policy), first issued in February 2012. Insofar as relevant, the policy states:

“This guidance only applies if a person:

◦
has made a valid 'out of time' application for leave to remain which is refused

◦
did not receive a removal decision when the application for leave to remain was refused

◦
failed to leave the UK voluntarily

◦
has requested in a PAP, or letter before action, that a removal decision is made.

**Accepting a request for a removal decision**

This page tells you when to grant a request for a removal decision.

The Home Office is not required to routinely make a removal decision at the same time as refusing leave to remain from an applicant with no current leave.

If a removal decision is not made and served alongside a decision to refuse of ( sic ) an out of time application for leave to remain, a removal decision will be made if the applicant later requests it and it is appropriate to do so.

When making a decision to accept a request, you must consider:

• the need to promote the welfare of children who are in the UK

◦
any direct cost in supporting the applicant and dependants being met by the Home Office or a local authority (under section 21 of the National Assistance Act 1948 or section 17 of the Children Act 1989), and

◦

exceptional and compelling circumstances.

You can make a removal decision when requested in the following cases:

◦
the refused application for leave to remain included a dependant child under 18 resident in the UK for three years or more

◦
the applicant has a dependant child under the age of 18 who is a British citizen

◦
the applicant is being supported by the Home Office or has provided evidence of being supported by a local authority (under section 21 of the National Assistance Act 1948 or section 17 of the Children Act 1989), or

◦
there are other exceptional and compelling reasons to make a removal decision at this time."

71.
The applicants had made requests for removal decisions in their pre-action protocol letter. Accordingly, Mr Karim relied upon two arguments. The first argument draws upon the distinction I described earlier ([36]) that Mr Karim had made between "exceptional circumstances" per se and exceptional circumstances which lead to the grant of leave outside the IRs. He submitted that the mere fact that the decision-maker had considered factors outside the IRs shows that he had accepted that there were "exceptional circumstances" even if he concluded that the exceptional circumstances were not such as to lead to the grant of leave outside the IRs. I have already rejected the distinction in the context of the guidance for the consideration of the proportionality issue in the assessment of Article 8 claims outside the IRs ([37] above). There is another reason why the argument that Mr Karim makes in connection with the Removal Decisions Policy does not make sense. Whilst a specific meaning is given to the term "exceptional circumstances" in the guidance for considering Article 8 claims is the IRs (the meaning given to it essentially means that "exceptional circumstances" is shorthand for disproportionate), there is nothing in the Removal Decisions Policy which ascribes the same (or any) meaning to "exceptional" in the policy. The phrase used in the policy is "exceptional and compelling" circumstances or reasons, with the decision-maker being left to decide what amounts to "exceptional and compelling". For all of these reasons, I reject the first argument.

72.
Secondly, Mr Karim submitted that, individually or together, it was unreasonable for the respondent not to make removal decisions. He submitted that the applicants will not leave the United Kingdom voluntarily even if their judicial review claims are dismissed. Accordingly, they would be left in a limbo. The respondent would eventually have to make removal decisions at some point in any event. There is no merit in the second argument, which I have no hesitation in rejecting. It is no more than an attempt to get around the reasoning in Daley Murdock and Patel (in particular, [27]-[29] of Patel), notwithstanding the fact that the issue in those cases (on the removal decisions point) was whether the failure to issue a removal decision at the same time as a refusal of leave to remain was unlawful. There is no duty on the respondent to issue removal decisions to the applicants. They have no legal basis for remaining in the United Kingdom. The respondent is entitled to expect them to depart voluntarily. That is not an irrational or unreasonable stance for her to take.

Decision:

The claims are dismissed.

Signed

Upper Tribunal Judge Gill