



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

Appeal Number: IA/33037/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 23 April 2014**

**Determination  
promulgated  
on 28 April 2014**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**MENUKA KATWAL KAFLE**

Appellant

**and**

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

Respondent

For the Appellant: No appearance  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

No anonymity order requested or made.

**DETERMINATION AND REASONS**

- 1) The appellant is a citizen of Nepal, born on 2 March 1984. She had leave as a student, valid until 25 May 2012. On 4 May 2012 she sought further leave to remain outwith the provisions of the Immigration Rules on the basis that she was 38 weeks pregnant and unable to travel. Her husband, also a citizen of Nepal, born on 29 March 1976, applied as her dependant. By notices dated 22 July 2013 the respondent refused both applications, because they did not meet requirements of Appendix FM of the Immigration Rules, and although the appellant had provided evidence that at the time of her application she was unable to fly, she was no longer pregnant and was free to return to her country of origin, hence no exceptional circumstances.

The appellant and her husband (case reference IA/33095/2013) appealed to the First-tier Tribunal.

- 2) Judge Kempton dismissed the appeals by determinations promulgated on 20 January 2014. (It is not clear why separate determinations were thought desirable, and it would have been more convenient for these to have been combined in one document.) The judge plainly had some sympathy with the appellant, who aimed to continue to degree level study, expressing the hope that the respondent would look favourably on a further application, "given the unfortunate circumstances."
- 3) The appellant sought permission to appeal to the Upper Tribunal, saying in her grounds that due to pregnancy she had been unable to continue her studies; that the respondent took nearly 15 months to make the decision; and that discretion should have been exercised in her favour, so that she would not require to return to Nepal to obtain further entry clearance.
- 4) On 17 February 2014 Designated Judge Campbell granted permission to appeal, on the view that although the grounds were poorly drafted, it was arguable that the judge erred in law by failing to deal with the lawfulness of the removal decisions.
- 5) In a Rule 24 response dated 26 February 2014 the respondent observes that any failure of the judge to consider the lawfulness of the removal decisions was immaterial.
- 6) By letter dated 10 April 2014 the appellants' legal representatives advised the Upper Tribunal that they were no longer instructed.
- 7) By letter dated 22 April 2014 the appellant's husband asked to withdraw his appeal. The Upper Tribunal consented, and notice was issued accordingly on that date.
- 8) There was no appearance by or on behalf of the appellant on 23 April 2014. The hearing proceeded under Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
- 9) As Mr Mullen submitted, there is nothing unlawful about the removal decisions. The determination concerns itself with some irrelevant issues, but there is no apparent error of law in the outcome. There was no basis in evidence or in legal argument for any other result.
- 10) The appellant's appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal, dismissing her appeal, shall stand.

A handwritten signature in black ink, reading "Hugh Maclewan". The signature is written in a cursive style with a large, stylized initial "H".

23 April 2014  
Judge of the Upper Tribunal