



IAC-FH-AR-V2

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

Appeal Number: OA/16269/2013

THE IMMIGRATION ACTS

Heard in Birmingham
On 26 February 2015
Prepared on 26 February 2015

Decision & Reasons Promulgated
On 24 July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**KUSHAL GURUNG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ECO - TOKYO

Respondent

Representation:

For the Appellant: Miss A Walker, Counsel, instructed by Chris Raja Solicitors

For the Respondent: Mr D Mills, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Nepal, appealed against the ECO's decision, dated 27 June 2013 to refuse entry clearance as an adult dependent relative of an ex-Ghurkha. The refusal of 10 April 2008 was made on the basis that the Appellant did not meet the requirements of paragraph 317 of the Immigration Rules and that the ECO was not satisfied the Appellant was living alone outside the United Kingdom in the most

exceptional compassionate circumstances and was mainly dependent financially on relatives settled in the United Kingdom.

2. The Appellant submitted an application on 18 June 2013 and refusal was made with reference to the Secretary of State's policies for dependants. The ECO decided that the Appellant had not met all the requirements of paragraph EC-DR.1.1 of Appendix FM of the immigration rules.
3. An appeal came before First-tier Tribunal Judge Napthine who, on 7 November 2014, dismissed the appeal under the Immigration Rules and under Article 8 ECHR.
4. Permission to appeal the judge's decision was given by First-tier Tribunal Judge Levin on 7 January 2015.
5. At the hearing before me it was accepted by Mr Mills that a number of issues, including an assessment of the evidence, which was relevant to the issues of entry to the United Kingdom, had not been considered. He and Miss Walker therefore invited me to accept that the judge had made a number of errors of law and that the only course was for the matter to be remade.
6. Having considered the grounds and the parties' remarks, I am satisfied that the judge's decision disclosed a number of errors of law in failing to address evidence that had been adduced, failing to properly assess whether Article 8 was engaged, and whether or not the Appellant was entitled to come to the United Kingdom based upon re-establishing a family life with his Sponsor father.
7. Accordingly, I accept that the Original Tribunal decision cannot stand and the matter will have to be remade in the First-tier Tribunal.

Directions

- (1) Relist for hearing before any judge of the First-tier Tribunal other than Immigration Judge Napthine.
- (2) Time estimate 1½ hours.
- (3) No interpreter required.
- (4) No findings of fact to stand.
- (5) The issue to be determined is whether the Appellant has a claim to enter the United Kingdom based on Article 8 ECHR outside of the Rules.
- (6) Please relist with reference to Miss Walker's availability.

Signed

Date 23 March 2015

Deputy Upper Tribunal Judge Davey