Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09226/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 January 2018	**On 30 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

SANTU KUMARI KHAND
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Afolake Jaja, Copunsel, instructed by Howe & Co, solicitors
For the Respondent: Ms A Broklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Grant, promulgated on 20 July 2017. The appellant is Nepalese. Her father served as a soldier in the Gurkha army. He died in 1994. The appellant's mother took advantage of favourable visa arrangements and came to the United Kingdom in January 2014.

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2. The preponderance of the evidence and argument before the First-tier Tribunal was directed to compliance with the Immigration Rules and the judge's findings are at paragraphs 26 and following. Paragraph 27 concludes that there can be no valid claim under the Rules in the absence of a formal dependency. There is no challenge within this appeal to that factual conclusion.

3. Paragraphs 28 and following discuss whether a family life was enjoyed under Article 8. The judge's findings are briefly stated as follows.

> "29. I find that the appellant does not enjoy family life with her mother over and above the normal emotional family ties which exist between a mother and child. This is emphasised by the decision of the sponsor to leave her daughter when the sponsor leaves the United Kingdom. I therefore find the respondent's decision does not amount to a breach of a right to respect for family life between the appellant and the sponsor.
>
> 30. With regard to private life I find the respondent's decision does not amount to a breach to the right to respect for private life because the appellant's private life has always been enjoyed and established in Nepal where she will have friends as well as her siblings. Her whole life has been spent in Nepal. The respondent's decision does not amount to an interference with her right to respect for private life on any basis."

4. Cases concerning the dependency of spouses, children and remoter issue of Gurkha soldiers have been the subject of a number of appeals in the Upper Tribunal and the Court of Appeal in recent years, in consequence of a Home Office policy introduced to redress historic injustice. The principal authorities are cited by the judge at paragraph 9, **Gurung v Secretary of State for the Home Department [2013] EWCA Civ 8** and **Ghising and others [2013] UKUT 567**.

5. The case-law, however, prescribes a sophisticated and nuanced approach to the redressing of historic injustice and the grounds of appeal rely on a number of instances in which it is suggested that the judge's analysis in this instance was inadequate. The most persuasive of the grounds are the first two, namely the absence of reasoning and the wrong judicial approach.

6. The absence of reasoning is implicit from the brevity of the paragraphs I have quoted which marks the totality of the judge's analysis. In a more straightforward case, briefly expressed conclusions may suffice, but where one is dealing with complex issues of redressing historic injustice upon which the higher courts have developed a nuanced approach, the paucity of reasoning renders the determination porous such that it amounts to an error of law.

7. The judgment of Lindblom LJ in **Rai v Entry Clearance Officer New Delhi** **[2017] EWCA Civ 320** makes plain that determinations under Article 8 in Ghurka cases are more than usually fact sensitive. They call for a level of analysis and clarity of conclusion significantly greater than is to be found in the decision of the First-tier tribunal.

8. I do not consider it helpful to recite the authorities at any greater length or to rehearse their application to the factual background as found by the judge. As I have indicated the judge's reasoning is less than adequate having regard to the jurisprudence it is inevitable that this matter must be remitted to a differently constituted First-tier Tribunal to be reheard.

9. The setting aside of the decision of the First-tier Tribunal should be interpreted as an indication as to the likely outcome when it is remade. Indeed, after the hearing of this matter on 8 January 2018, when I delivered an *ex tempore* judgment, the following judgment was published in the *Times Law Reports*: **Pun v Secretary of State for the Home Department** **[2017] EWCA Civ 2106.** I did not consider it appropriate to revisit my decision, even if such a course were available to me, since on any account the judge's expressed reasoning was inadequate and the decision still needs to be remade.

10. When this matter is heard afresh in the First-tier Tribunal, the judge will give full consideration to all the jurisprudence, including the Court of Appeal's recent comments in **Pun** and apply them to the facts as found in determining this appeal *de novo*.

Notice of decision

(1) Having found a material error of law, the decision of the First-tier Tribunal herein is set aside.

(2) The matter is remitted to the First-tier Tribunal to be heard afresh by a judge other that Judge Grant.

(3) No anonymity direction is made.

Signed *Mark Hill* Date 29 January 2018

Deputy Upper Tribunal Judge Hill QC