



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

Appeal Number: HU/03222/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 11 February 2022**

**Decision & Reasons Promulgated
On 25 March 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**KAMALA LIMBU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr D Balroop, instructed by Everest Law Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nepal born on 25 January 1985. She appeals against the decision of First-tier Tribunal G Richardson, promulgated on 21 April 2021, dismissing her appeal against the refusal of entry clearance on human rights grounds. On 22 November 2021, I found the judge erred in law and I set the decision aside. None of the judge's findings were preserved. The matter came back before me for rehearing.
2. The appellant lived with her parents and siblings in Nepal before she came to the UK as a student on 27 October 2009 with leave valid until 6 November 2010. On 9 July 2010, the appellant's father entered the UK

having been granted settlement, on 26 March 2010, as a former member of the Brigade of Gurkhas. The appellant applied for leave to remain as a student on 26 October 2010 which was granted until 21 February 2012. The appellant's mother came to the UK on 25 July 2011 and the appellant has lived with her parents as a family unit since then.

3. On 31 August 2011, the appellant applied for indefinite leave to remain as a dependant of her father. This application was refused on 24 January 2012. On 15 February 2012, the appellant applied for indefinite leave to remain outside the immigration rules. This was refused on 27 June 2012 and her appeal was allowed on 18 October 2012. The respondent reconsidered the decision and again refused the application for settlement on 7 December 2012. The appellant's appeal was dismissed for the reasons given by First-tier Tribunal Judge Grimmett in his decision dated 9 October 2015. The appellant became appeal rights exhausted on 28 April 2016. On 29 April 2016, the appellant again applied for indefinite leave to remain as an adult dependant of her father. The application was refused on 4 August 2016.
4. The appellant's brother was granted entry clearance for settlement and entered the UK in January 2019. On 14 January 2019, the appellant applied for leave to remain which was granted on 17 June 2019 valid until 16 December 2021. The appellant left the UK temporarily to apply for entry clearance for settlement. This application was refused on 22 November 2019 and is the subject of the appeal.
5. At the hearing before me, the appellant submitted further evidence including an updated witness statement and a witness statement from her brother. Mr Balroop relied on his skeleton argument. Mr Walker submitted the appellant was granted discretionary leave in June 2019 on the basis of her family life. He accepted there had not been a change in circumstances since 2019.
6. Having review the decision of Judge Grimmett, I am satisfied the circumstances have changed since he dismissed the appeal. The appellant has been living with her parents for over 10 years and they jointly contribute to the household expenses and support each other financially and emotionally. The appellant has satisfied the test in Rai v ECO [2017] EWCA Civ 320. In addition, the respondent accepted the appellant has established family life having granted discretionary leave in June 2019.
7. Mr Walker quite properly conceded the appellant had established family life and therefore, applying relevant case law, the refusal of indefinite leave to remain was disproportionate.
8. The appellant's father served with the Brigade of Gurkhas from 1971 to 1986. I am satisfied that, but for the historic injustice, the appellant's father would have settled in the UK at a time when the appellant would have been able to accompany him as his dependant child.

9. Accordingly, I find the appellant has established family life in the UK and the refusal of indefinite leave to remain is disproportionate. I allow the appellant's appeal on human rights grounds.

Notice of Decision

Appeal allowed

J Frances

Signed
Upper Tribunal Judge Frances

Date: 11 February 2022

TO THE RESPONDENT
FEE AWARD

As I have allowed, I make a fee award of any fee that has been paid.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 11 February 2022

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.