



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

Appeal Number: HU/05243/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 4 April 2022**

**Decision & Reasons
Promulgated
On 26 May 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

CHANDRA BHADUR PANDEY
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Syed-Ali, Counsel instructed by Direct Public Access
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Nepal, born in 1972, against the decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent on 2 July 2019 refusing him leave to remain on human rights grounds.
2. The appellant's case is based upon his close relationship with his partner one Sunita Gharti-Chhetri.
3. I consider the First-tier Tribunal's decision and reasons in more detail below but in outline terms the judge decided that there were no "insurmountable obstacles" in the way of the appellant's partner leaving her home in the United Kingdom and establishing herself with the appellant in Nepal.

4. The judge recognised it was the appellant's case that his partner did not want to establish herself in Nepal and if they could not live together in the United Kingdom she would end their friendship.
5. Permission to appeal was given by Upper Tribunal Judge Owens who said:

"It is arguable that when assessing the insurmountable obstacles to the appellant and sponsor relocating to Nepal, the judge failed to take into account the extent of the political difficulties that the sponsor experienced in Nepal."
6. I consider now the judge's Decision and Reasons.
7. The judge noted that it was the respondent's case that

"there would be no insurmountable obstacles with family life continuing with the respondent's partner in Nepal".

She then considered the appellant's position. She noted the appellant claimed to have a strong bond with his partner and said at paragraph 22:

"The appellant's partner is British, born of Bhutanese origin and cannot be expected to relocate to Nepal as she experienced difficulties in Nepal for her political beliefs and was a refugee known to the Nepalese Authorities."
8. It was also the appellant's case that his partner had been granted asylum and

"therefore it would be inconsiderate for the respondent to expect the appellant's partner to return to Nepal."
9. The judge noted that the appellant's partner was a "Bhutanese refugee of Nepalese origin" who had "lived in a refugee camp in Nepal from 2000 to 2010. Her asylum was granted after interview with no appeal to the Tribunal".
10. The judge outlined the appellant's evidence. The appellant said he could not return to Nepal as his property had been destroyed in an earthquake. He had come to the United Kingdom as a student. His leave ran out in May 2012. He had not returned to Nepal because of his close relationship with his partner in the United Kingdom and because family relationships in Nepal had broken down. His partner knew of his immigration status before their relationship developed. According to the judge "the appellant accepted there was nothing preventing his partner living in Nepal." However, he also explained that "as his partner was from Bhutan, Nepalese society would not see her as a person from Nepal but from a different country."
11. The judge then outlined the appellant's partner's evidence. She adopted her witness statement. She is a woman who claims to have suffered some terrible experiences. Her parents died in prison and her husband was sent to prison. She had heard that he had died but did not know the circumstances of his death. The judge recorded that when it was suggested that she could return to Nepal she "became upset".
12. She was presently unemployed and could not envisage circumstances where she could earn enough money to support an application for the appellant to return to the United Kingdom as a partner.
13. It was her evidence that she had been granted asylum based on events in Bhutan. She also said it would be difficult to live in Nepal but when asked to explain why that was so she said that the appellant had no property there and

she did not know anyone in Nepal and the Nepalese people would not see her “with the same eye” because she was from Bhutan. She accepted that she would expect to obtain work although it would be low-level employment.

14. She also confirmed that she had holidayed in Nepal briefly in 2012 at the invitation of a friend.
15. The judge acknowledged the Presenting Officer’s submission that the fact the appellant’s partner had returned to Nepal with a friend (it was said this was in 2010), albeit briefly, was a “strong indicator that she could return”. The judge also noted the submission that “the only reason given not to return was economic in that she would not be able to obtain employment.”
16. The appellant’s submissions were that her personal circumstance needed to be considered carefully and that although she was a national of Bhutan about a third of the population of Bhutan did not speak to people from Nepal. When the appellant left Bhutan she went to Nepal and had said in her own interview that she had lived in a camp and was a member of a political party in Nepal and had problems in Nepal. It was not safe for her to return to Nepal and she was found credible in her asylum claim.
17. There was also some point raised about COVID difficulties but nothing turns on this.
18. At paragraph 64 the judge noted that when the appellant’s partner had been asked to clarify why it would be difficult for her to live in Nepal she explained they had no property in Nepal and did not know people who lived in Nepal because she was not from Nepal and it would be hard for her to establish herself in Nepal as she came from Bhutan. The judge found the reason she would not return was based on economic factors where she would live in a country without a benefits system and which provided few economic opportunities.
19. At paragraph 66 the judge acknowledged it was argued on behalf of the appellant that if the partner were to return to Nepal she would be persecuted. However, the appellant’s partner had lived in Nepal ten years earlier before moving to the United Kingdom and had not complained of persecution during that time. She also confirmed that after leaving Nepal she had returned with a friend in 2012. The judge found there was no insurmountable obstacles in the way of return.
20. I want to consider particularly the evidence that was before the First-tier Tribunal Judge.
21. The judge referred to Ms Chhetri’s “immigration interview” and said at paragraph 63 that “Ms Chhetri’s evidence was clear that she was granted asylum based on the events in Bhutan and not the events in Nepal.”
22. This is clearly right as far as it goes because there was never any question of sending the appellant’s partner to Nepal. Her claim was for asylum based on her being outside of her country of nationality and in need of protection. This appears at page 89 of the “additional indexed bundle”.
23. It was very pleasing to see that the appellant’s representative has paginated the additional bundle so it is sequential from the main bundle.

24. Ms Chhetri was asked about her experiences in Nepal starting at around question 116. She said that after she arrived in Nepal friends encouraged her to join the BPP and she distributed leaflets and posters on behalf of the party. Between 2000 and 2003 she worked outside the camp doing casual jobs but “the police started to give trouble” so from 6 November 2003 she decided to live in refugee camps.
25. She described in some detail the kind of pamphlet that she distributed and identified the refugee camp where she stayed. At question 127 she explained that she had problems with Maoist insurgents in Nepal who pressurised her and others to join their movement and their attitude upon her refusing was such that she felt she had to leave the camp in 2005 to get away from them. She explained very clearly in answer to question 132 that after she left the camp she stayed somewhere called Ilam and continued to support the political party “so the local police knew about it and they started to give me trouble.”
26. She said she continued to support the party because she had made friends. Her activities seemed to be limited to going to meetings with friends and putting up posters. Her attendance at meetings was limited by her obligations to her employer. She was asked about the trouble from the local police and said [question 143]:
- “they actually warned us ‘if you keep on doing these things, then you will end up in jail’. That’s why we thought we may get ourselves into trouble if we continued to do so”.
27. Nevertheless they did continue giving their support but were discreet about attending meetings. She believed the police had made several attempts to arrest her but she left Nepal having moved from one place to another to avoid them.
28. She was then asked about her experiences as a political activist when living in the refugee camp. She believed the authorities noticed her activities because she was open about what she did. Asked directly, at question 152, if she had “any trouble from the Nepalese authorities when you lived at the camp?” she indicated she had not had trouble with the authorities inside the camp but she had had trouble with men who attempted to abuse women including her. Near the end of the interview at question 180 she was asked “Are there any reasons why you could not return to live in Nepal?” and she replied:
- “Because Nepal is not my country. If I am sent there, the police and the Nepalese authorities will continue to trouble me because I am a lone woman”.
29. It is against this background that I consider the grounds of appeal. The grounds acknowledge that at paragraph 44 the First-tier Tribunal noted that the Appellant accepted there was nothing preventing his partner living in Nepal. Point 4 in the grounds of appeal maintains that this is a material error of fact. The ground asserts:
- “However, the FTJ did not record how the evidence came before the Tribunal that *The Appellant accepted there was nothing preventing his partner living in Nepal.* The appellant’s appeal was significantly based on the fact that his partner was a successful asylum seeker in UK from Nepal with Bhutanese ancestry. She cannot return to Nepal for the same political parties that made it imperative for her to leave Nepal in the first place. Those are still operating in Nepal. The appellant’s

partner was found credible in her asylum interview and asylum was granted after interview.”

30. On the face of it this suggests rather serious error by the First-tier Tribunal Judge.
31. The grounds move on to complain that the judge did not show proper consideration of the claim that the appellant’s partner could not settle in Nepal.
32. Mr Syed-Ali made his points succinctly and they were none the worse for that. The difficulty is that the scenario in the grounds that the:

“Appellant’s appeal was significantly based on the fact that his partner was a successful asylum seeker in the UK from Nepal with Bhutanese ancestry. She cannot return to Nepal and the same political parties that made it imperative for her to leave Nepal in the first place.”
33. This assertion does not stand up to scrutiny. It was certainly an element of the case because it is what she said in her asylum interview as disclosed in the papers that were sent to the Secretary of State and the Tribunal before the First-tier hearing. However the judge was entitled to find it significant that when asked to clarify why it would be difficult for her to live in Nepal Ms Chhetri talked about lack of property and not having anywhere to live. She had by then made a short visit to Nepal and was not complaining in her written evidence that she feared persecution in the event of return.
34. It would have been a very important and possibly very persuasive element in this case if the appellant’s friend had been able to put together a case that she had a subjective fear of return to Nepal that would have been even better if she could have established an objective fear of return to Nepal, but when given the opportunity to explain her case, she did not opt for fear of persecution but for difficulties because she did not know people.
35. I note it has not established that the appellant’s partner was ever a refugee or that her claims were believed by the Secretary of State. Plainly she is now a British citizen but Ms Everett indicated that her records showed that the appellant had been given humanitarian protection. This is not to say she was not believed about anything but it is not an uncontroversial conclusion that she was ever a refugee. That is perhaps beside the point being illuminated by postdecision events but I find I cannot see a proper way of finding an error of law on the part of the First-tier Tribunal Judge. Rather she did appreciate the points and considered them and reached a conclusion that was at least open to her.
36. I wanted to reflect on this case after the hearing. I have no doubt that the appellant’s partner really does not want to live with him in Nepal. For whatever reason, it has been accepted that could not be returned to her country of nationality. She has now established herself in the United Kingdom where her means only enable her to live modestly but where she has formed a genuine partnership with a man and wants him to be allowed to remain with her in the United Kingdom. Refusing his application forces her chose between ending the relationship and living somewhere she does not want to live. There is a general obligation in international law to allow people to make families but not in their country of choice. The real problem here maybe that she is not able to earn

enough money to support her partner in the United Kingdom. That is regrettable but does not give the appellant a right to remain.

37. The First-tier Tribunal asked itself if the appellant's partner would be at risk in Nepal and the judge did consider her reluctance and disinclination to go and live there. The judge concluded the appellant's had not shown that his partner could not return to Nepal and establish herself there with him, but only that she did not want to adjust to life there. Overall the decision is thorough and balanced. The judge's conclusion is supported by the findings and the findings are permissible in law.
38. I find that no material error of law has been established.

Notice of Decision

39. I dismiss this appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 28 April 2022