



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

**Appeal Number:  
HU/06145/2020; UI-2021-000524  
HU/06155/2020; UI-2021-000525**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 18 July 2022**

**Decision & Reasons Promulgated  
On the 15 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**NAULI MAYA DURA GURUNG  
SANTA MAYA DURA GURUNG  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr E Wilford, instructed by Everest Law Solicitors  
For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Nepal born in 1978 and 1982 respectively. They appeal against the decision of First-tier Tribunal Burnett, promulgated on 29 April 2021, dismissing their appeals against the refusal of entry clearance on human rights grounds.
2. Permission was granted by Upper Tribunal Judge Stephen Smith on 13 January 2022 on the grounds it was arguable the reasons given by the

judge for rejecting the evidence of the sponsor went beyond those that were ventilated at the hearing and that, accordingly, it was unfair for the judge to reject the evidence on the basis that he did.

3. Mr Wilford made detailed submissions on the six grounds of appeal. In summary, he submitted the judge failed to consider the unchallenged evidence of the appellant's mother ('the sponsor') or to give her an opportunity to address the points he held against the appellants. He submitted these errors infected the judge's findings challenged in the remaining four grounds of appeal: failure to consider the evidence in the round; failure to apply weight to relevant factors; insertion of a requirement of dependence out of necessity; and elevation of the threshold for establishing family life.
4. Ms Everett conceded there was a material error of law in respect of ground two; the sponsor's evidence was overlooked or disbelieved without sufficient reasons and this affected the remaining grounds.
5. I am persuaded by Mr Wilford's submissions and agree with Ms Everett. I find the judge erred in law and I set the decision aside. The appeal is remitted to the First-tier Tribunal to be re-heard *de novo* by a judge other than Judge Burnett. None of the judge's findings are preserved.

### **Notice of Decision**

**Appeal allowed.**

**J Frances**

Signed  
Upper Tribunal Judge Frances

Date: 18 July 2022