



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

**Ce-File Number: UI-2021-
001750**
**First-tier Tribunal No:
HU/20848/2019**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 21 April 2023**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

DIPENDRA LIMBU
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Moriarty, counsel instructed by Everest Law
For the Respondent: Mr W Whitwell

Heard at Field House on 1 December 2022

DECISION AND REASONS

1. This is an appeal by a citizen of Nepal against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Entry Clearance Officer (acting for the Secretary of State), refusing him entry to the United Kingdom for the purposes of settlement.
2. The hearing before me had a delayed start. For very good reasons concerning the private life of a colleague, Mr Whitwell was only recently instructed, and I delayed the hearing for him to consider the case that I am now deciding. It is important that he did that because he has effectively decided that it is an appeal that should no longer be opposed.

3. The First-tier Tribunal made important findings of fact. In particular, the First-tier Tribunal accepted that the appellant's sponsor, a former Ghurkha soldier, would have arranged for his family to settle in the United Kingdom at an earlier time if that had been permissible. The appellant was being supported financially by his sponsor and was dependent on him.
4. The First-tier Tribunal was concerned that the dependency did not appear to be a dependency of necessity but that is not important. What matters is whether the appellant was in fact dependent. It was clearly established that he was dependent and also that there remained a close relationship between the sponsor and the appellant. These findings might have been thought to have led the First-tier Tribunal to allow the appeal but it did not, it dismissed the appeal.
5. Permission to appeal was granted by First-tier Tribunal Judge Mills. Paragraph 3 of his grant is particularly apt and I set it out below. He said:

"I consider that the grounds do make out an arguable case that the judge has erred in law in his consideration of the existence of Article 8 family life, given his acceptance that the appellant is presently dependent upon the financial support of the sponsor, and also that the sponsor is currently living with the appellant in Nepal."
6. It is not surprising against that background that the Secretary of State, in a Rule 24 notice, conceded that the First-tier Tribunal had erred and invited this Tribunal to accept that an error had been made and to deal with the matter by a continuance hearing.
7. Mr Moriarty asked the rhetorical question, given the findings that had been established, "where is there to go?" The findings are reasons to allow the appeal on Article 8 grounds and Mr Whitwell, having had time to consider the matter, agreed. I make it plain that, in my view, he was quite right to do that.
8. In the circumstances, I find the First-tier Tribunal erred in law.

Notice of Decision

9. I set aside its decision and I substitute a decision allowing the appellant's appeal against the decision of the Entry Clearance Officer.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 12 January 2023