



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-004756
First-tier Tribunal No: HU/54856/2021
IA/12156/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 10 March 2023

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE HARIA

Between

SANGE SHERPA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr E. Wilford, Counsel instructed by Everest Law Solicitors
For the Respondent: Mr S. Whitwell, Senior Home Office Presenting Officer

Heard at Field House on 11 January 2023

DECISION AND REASONS

1. In this decision, we record our reasons for accepting the Secretary of State's concession that the decision of the First-tier Tribunal involved the making of an error of law. It is also necessary to summarise the procedural background to the proceedings, as there were two linked appeals before the First-tier Tribunal, which were inadvertently de-linked and listed separately before the Upper Tribunal. As such, this decision only deals with one of the two, formerly linked appeals.

Procedural background

2. By two separate decisions dated 5 October 2020, the Entry Clearance Officer refused the human rights claims made by the appellant in these proceedings, Sange Sherpa, and his brother, Lohang Sherpa. They appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002, and their appeals were linked before the First-tier Tribunal. They were heard together on 28 April 2022 by First-tier Tribunal Judge Louveaux (“the judge”). The judge dismissed the appeals in a single, consolidated decision dated 28 April 2022.
3. The appellant and his brother appealed against the judge’s decision (or, as we set out below, his *decisions*) to the Upper Tribunal, with the permission of First-tier Tribunal Judge Kelly.
4. By a single rule 24 notice dated 6 October 2022 addressing both appeals, the respondent conceded the appeals in the following terms:

“2. The respondent does not oppose the appellants application for permission to appeal and invites the Tribunal to remit the matter to the First-Tier Tribunal for consideration.”
5. Thereafter, it appears that there were two regrettable errors in the administration of this appeal by the Upper Tribunal.
 - a. First, the appeals by Sange Sherpa and Lohang Sherpa were not linked, and so were listed separately. Only the appeal of Sange Sherpa was listed before us on 11 January 2023; Lohang Sherpa’s appeal had been listed before a different panel on a later date. We were not seized of the appeal relating to Lohang Sherpa at the hearing before us on 11 January 2023.
 - b. Secondly, it appears that the rule 24 notice was not placed before either of the judges who gave listing directions in each of the separate appeals, or otherwise given any judicial consideration ahead of the substantive appeal hearing. It was not until we enquired with Mr Whitwell at the hearing on 11 January 2023 that we were informed that a rule 24 notice had been submitted in the above terms. Had a judge had the opportunity to view the rule 24 notice in advance, consideration could have been given to disposing of proceedings without a hearing.
6. We record below our brief reasons for accepting the Secretary of State’s concession in the rule 24 notice. However, since we were only seized of the appeal relating to Sange Sherpa we only dealt with the Secretary of State’s concession insofar as it related to Sange Sherpa’s appeal. Although the judge dealt with both appeals in a single decision, each appellant enjoyed their own right of appeal, and the single composite decision of the judge, properly understood, comprised two individual, parallel appeals.

Factual background

7. Sange Sherpa is a citizen of Nepal, born on 11 March 1973. His human rights claim to the respondent was based on his claimed continuing family life with his parents (“the sponsors”), upon whom he claimed to be dependent as an unmarried and unemployed single man. His brother, who was born in 1983, made a human rights claim in similar terms. We refer to them as “the brothers”. The brothers’ father served in the Gurkha regiment, and their respective human

rights claims were based on the established historical injustice said to have been experienced by the families of Gurkha servicemen.

8. In his decision, the judge accepted that the sponsors provided some financial support to their sons but said that it was difficult to determine whether that support was their main form of income (para. 20). He accepted that the brothers were in “fairly regular” communication with the sponsors, and that they had visited their sons on four occasions from 2015 to 2020. The judge’s operative conclusion was that Article 8(1) ECHR family life does not exist between the appellants and their parents and dismissed the appeals.
9. The grounds of appeal contended that the judge departed from the test in *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31 for establishing the presence of Article 8(1) ECHR family life between adult family members and elevated the level of support required under Article 8(1) to encompass a test of necessity.
10. We accept that the respondent’s concession was properly open to the respondent to make, and do not seek to go behind it. We therefore agree with the common ground between the parties that the judge’s decision involved the making of an error of law. We set it aside. In light of the extent of the findings of fact required upon the decision being remade, we remit the decision to the First-tier Tribunal, for the appeal to be heard afresh, by a different judge, insofar. These findings apply only in relation to Songe Sherpa’s appeal.

Notice of Decision

The decision of Judge Louveaux in relation to Songe Sherpa involved the making of an error of law and is set aside with no findings of fact preserved.

The appeal brought by Songe Sherpa is remitted to the First-tier Tribunal to be reheard by a different judge.

Stephen H Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 January 2023