



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-001746  
UI-2023-001747  
First-tier Tribunal No: HU/57035/2021  
HU/57037/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 21 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**KAMALA SUBBA  
DIL KUMARI SUBBA  
(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER (SHEFFIELD)**

Respondent

**Representation:**

For the Appellant: Mr E. Wilford, instructed by Bond Adams Solicitors  
For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 15 August 2023**

**DECISION AND REASONS**

1. The appellants appealed the respondent's decisions dated 10 May 2021 to refuse a human rights claim in the context of an application for entry clearance as the adult child of a former Gurkha.
2. First-tier Tribunal Judge Seelhoff ('the judge') considered the evidence produced by the appellants to support their stated relationship with the late Mr Nirmal Limbu Subba who is said to be their father. The judge gave reasons why the limited evidence was insufficient to show that they were related as claimed [9]-[12]. He also expressed concerns about the evidence when taken as a whole. The judge noted that it was claimed that the sponsor's daughters were applying for entry to care for her, but the evidence from the ward chairperson stated that the

second appellant was physically disabled. The sponsor failed to mention this in her evidence [13]. The first appellant had prepared a statement but not the second appellant [14]. Nevertheless, he was satisfied that the appellants did have particularly close ties with their mother, who had been living in Nepal with them until a week before the hearing. There appeared to be genuine, effective, and committed support. For this reason, he concluded that Article 8(1) of the European Convention was likely to be engaged [15]. However, because there was insufficient evidence to establish their relationship to a former Gurkha, he could not place weight on any historic injustice [16]. The judge went on to consider proportionality with reference to their relationship to their mother. He found that there was no barrier to the sponsor living in Nepal because, despite being given leave to remain in the UK some years ago, she returned to Nepal and had been living there. For this reason, he concluded that there was no interference with their right to family life and/or that the decision was proportionate [18]-[20].

3. The appellants applied for permission to appeal to the Upper Tribunal. The grounds make general submissions and are not particularised. The following points can be discerned:

- (i) It was submitted that the judge failed to attach adequate weight to the letter from the Ward Chairperson, which stated that the appellants were the daughters of Mr Subba. Elsewhere in the decision he attached weight to what the Ward Chairperson said in another letter about the second appellant's disability.
- (ii) The judge applied too high a standard of proof to the issue of paternity in this appeal. It was accepted that the appellants' mother and father were married. The sponsor is named as a Gurkha's wife on the Kindred Roll. There was no dispute that the sponsor is the appellants' mother. The letter from the Ward Chairperson also supported the assertion that the appellants were the daughters of a former Gurkha.
- (iii) In the alternative, the judge erred in requiring the appellants to be biologically related in light of other evidence that still suggested a parental relationship.

4. I have considered the First-tier Tribunal decision, the evidence that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my findings.

### **Decision and reasons**

5. The appellants applied for entry clearance as the adult daughters of a Gurkha widow. They did not produce a formal birth certificate or other official birth record to show that the former Gurkha, Mr Nirmal Limbu, was their father. They produced DNA evidence to show that the sponsor, who was granted entry as the widow of a former Gurkha in 2015, is their mother. The appellants produced a death certificate to show Mr Limbu died on 23 May 2008. The appellants produced separate letters from Mr Gurung who is said to be the Ward Chairperson of the Kanepokhari Rural Municipality dated 04 December 2020. The letters for each appellant were entitled 'Birth Verification'. They both consisted of a single paragraph stating that the respective appellant is the daughter (or wrongly

referred to as the 'son' in the case of the second appellant) of Mr Nirmal Limbu Subba and Mrs Ranga Maya Limbu. The letters stated each appellant's date of birth.

6. A separate letter was produced from the same Ward Chairperson dated 23 February 2021 merely stating that the second appellant ' has submitted an application for Disable Whereas, (sic) necessary inquiry from this office, it is verified that she is physically Disable (sic)'
7. In support of the appeal, an additional document was produced from the British Gurkhas Records Office in Pokhara. The 'Kindred Roll' lists the family members on record, which included the appellants' mother and three children born in 1962, 1964, and 1965. The evidence relating to Mr Limbu's army service indicates that he was discharged from the army in 1967. Both appellants were born after this date. The kindred roll appears to have been prepared after Mr Limbu's death because his date of death is recorded in the document. The document itself was stamped by the records office on 11 September 2014.
8. In my assessment, the arguments put forward on behalf of the appellants in the grounds of appeal and in oral submissions at the hearing amounted to general submissions on the evidence. The submission that the evidence, taken as a whole showed that the appellants are more likely than not to be the daughters of a former Gurkha, and the judge therefore applied too high a standard of proof, amounts to a disagreement with the outcome.
9. It was clear from the decision letter that the respondent did not accept that there was sufficient evidence submitted with the application for entry clearance to establish the necessary familial link with Mr Limbu. It was open to the judge to note that there were no contemporaneous birth certificates or other official records to make the necessary link with Mr Limbu.
10. The appellants produced a document that was said to be a 'Kindred Roll'. In light of the lack of any official record of birth, it was open to the judge to note that the records from the British Gurkhas Record Office in Pokhara did not assist their case. It was also open to him to find that there appeared to be a discrepancy between the evidence given the witness statement and the face of the record itself [9]. The first appellant had stated that her late father found out that they were not included on the Kindred Roll. When he found out, he 'registered our birth in the Kindred Roll'. This conflicted with the copy of the roll, which appeared to be issued after Mr Limbu's death in 2008 and was stamped by the records office in 2014.
11. Mr Wilford pointed out that the appellants' solicitor had failed to upload a separate bundle for the second appellant for the First-tier Tribunal hearing. I have a copy of the bundle, which appears to be similar in nearly every respect save that it contains a witness statement for the second appellant that was not before the First-tier Tribunal. The second appellant makes the same statement as her sister about her father registering them on the Kindred Roll. It becomes a bit clearer from this statement that the physical disability suffered by the second appellant is hearing loss.
12. It was also open to the judge to find that the letter from the Ward Chairperson was not particularly weighty because it did not state how he was aware of the details or whether they had been drawn from official sources [10]. Those were

findings that were open to him to make based on the bare statement made in the letter.

13. Even if the three grounds are taken together, as urged by Mr Wilford, they do not disclose a material error of law in the decision. The letter from the Ward Chairperson relating to their familial relationship still suffered from the weaknesses identified by the judge. Nothing in the decision suggests that he placed any particular weight on the second letter relating to the second appellant's disability save to note that is what the evidence said. The judge did not have the benefit of the second appellant's statement due to a failure by her legal representative to submit it.
14. In my assessment nothing significant turned on the fact that the judge found that there was insufficient evidence to show that the appellants were 'biologically related' to Mr Limbu. It is argued that he should have gone on to consider whether, even if that was not proved, that it was more likely than not that Mr Limbu had a parental relationship with the appellants. First, the appellants' case was that he was their biological father. It was not necessary for the judge to go on to decide possible alternatives. Second, even if this argument was taken at its highest cogent evidence would be required to show a parental relationship with someone who is not a biological parent. In any event, the level of evidence described above was also likely to be insufficient to establish that Mr Limbu had a parental relationship with the appellants.
15. I acknowledge that there was no evidence to show that the appellants mother had remarried. There was some evidence that suggested that Mr Limbu might be their father. Another judge might have come to a different conclusion. However, in view of the fact that there was no official record of birth naming Mr Limbu as their father, that there was a discrepancy in the Kindred Roll that, on their own evidence, should have named the appellants as his children, and the uncertain source of the information from the Ward Chairperson, the findings made by the judge were within a range of reasonable responses to the evidence. The judge merely found that the evidence before him was insufficient to meet the required standard of proof and noted that better evidence might be produced on another occasion. I conclude that those findings were open to him and do not disclose an error of law.
16. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of an error of law.

### **Notice of Decision**

The First-tier Tribunal decision did not involve the making of an error of law

The decision shall stand.

**M.Canavan**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

15 August 2023

