



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

Case No: UI-2023-003008

First-tier Tribunal Nos: HU/51330/2022  
HU/01430/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 12 January 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**Hari Prasad Limbu  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr G Dingley, Counsel; extracted via public access

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

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

**DECISION AND REASONS**

1. The Appellant, a citizen of Nepal, appeals against the decision of First-tier Tribunal Judge Richardson (the "FTTJ") promulgated on 5<sup>th</sup> June 2023 dismissing the Appellant's appeal against the refusal of his application for entry clearance, on the basis of his seeking to settle and join his parent in the United Kingdom as a relative of a former Ghurkha soldier.
2. The Appellant applied for permission to appeal on four grounds, which can be summarised as follows:
  - (1) first, the judge made irrational findings on matters that were material to the outcome;
  - (2) second, the judge made a factual error which was material to the outcome;
  - (3) third, the First-tier Tribunal Judge failed to give weight to or make findings on supporting evidence in the Appellant's bundle;

- (4) fourth, the First-tier Tribunal Judge acted in a way which was procedurally unfair.
3. Permission to appeal was granted by First-tier Tribunal Judge Boyes in the following terms;
  - “4. Ground 1 is arguable as the Judge may have provided more detail as to why this was relevant or irrelevant in the Article 8 assessment. That he did not is arguable an error as the Appellant is left in the position of not knowing. Ground 2 is arguable on its face without more. Corroboration requirements and errors in the same are arguably errors. Ground 3 is arguable as there is swathes of material which does not feature in the judgment and in similar vein, Ground 4 is arguable. Albeit the Judge cannot be expected to put everything to a witness for comment, the highlights and headlines ought to be ventilated at least for counsel to consider.”
4. Before me, the Respondent had additionally supplied a Rule 24 response dated 6<sup>th</sup> September 2023 and the Appellant had provided a composite bundle numbering 119 pages as well as a skeleton argument numbering twelve paragraphs over four pages, all of which I have taken into account in reaching my decision.
5. At the conclusion of the hearing I reserved my decision, which I now give. I do not find that the decision demonstrates material errors of law, such that it should be set aside for the following reasons.
6. In respect of the first ground and the complaint that the judge made irrational findings on matters that were material to the outcome, this complaint relates to the judge’s finding at paragraphs 6 to 8 in relation to the sale of the family home in Nepal. In short, the judge noted that the Sponsor said he sold the house to fund his daughter’s entry clearance application in 2015, however, the Sponsor also gave evidence in his witness statement that he stayed at the family home during a visit to Nepal in 2020 and therefore the house could not have been sold in 2015 if the Sponsor were able to stay in it five years later. There was also a further discrepancy noted by the judge in that the house was purportedly sold to fund the entry clearance application of the son as well as the daughter. The complaint in respect of the first ground is, in essence, that this “single discrepancy” could not have prevented family life from being engaged; and in essence the judge placed significant weight on an immaterial matter.
7. Reading the decision as a whole and taking into account the judge's findings in paragraphs 6 to 8, I am not persuaded that the judge has elevated these discrepancies (not a single discrepancy as pleaded) to a disproportionate level of importance that was not open to him to reach. My reading of the decision is simply that the judge noted the discrepancies in the evidence before him and rightly noted the discrepant evidence that was apparent to him on the face of the evidence. The importance of the family home was that it was supposed to be the residence for the Appellant in Nepal; however, if the family home was purportedly sold in 2015, it was unclear where the Appellant was residing. No evidence was pointed to, to gainsay or demonstrate irrationality in the judge’s finding. Furthermore, when the family home came to be sold, there is no evidence what the proceeds from the sale were used for or to support the Appellant’s case (for example, showing the proceeds were used for the daughter’s application, or the

son's, or a mixture of both). Thus, in my view, these paragraphs merely represent the judge assessing the evidence as it was presented, and I do not find any indication that the judge took this discrepancy as being fatal to family life being engaged, nor that these discrepancies alone would prevent him from finding that family life was engaged if there was other sufficient evidence before him to establish it was engaged. I note that the Appellant did not file any further evidence by way of Rule 15(2A) of Tribunal Procedure (Upper Tribunal) Rules 2008 to demonstrate any purported materiality of this error in order to clarify perhaps when the property was actually sold or what the proceeds of the sale were used for or indeed where the Appellant was truly living during these years leading up to the application for entry clearance. Therefore, I find no merit in Ground 1.

8. Turning to the second ground, and the complaint that the judge committed an error of fact, Mr Dingley sought to persuade me that this could be corroborated by the judge failing to take into account the Sponsor's witness statement at paragraph 9, the Appellant's witness statement at paragraph 7 and the covering letter for the application, as well as the passport stamp in the bundle all of which were before the First-tier Tribunal Judge. In respect of these items, it is true to note that the witness statement from the Sponsor and Appellant both state that the Sponsor visited the Appellant in Nepal in 2020 for a few months and the covering letter from the Sponsor also mentions that the Sponsor and Appellant were last together on 11<sup>th</sup> February 2020 when the Sponsor went to visit him. However, I find that the criticism levelled at the judge is inaccurate as the judge's criticism is not aimed at the lack of any evidence at all, but the lack of "independent" documentary evidence of the travel to Nepal by the Sponsor on 11<sup>th</sup> February 2020. This is not an inaccurate statement. The only item of the four referred to in the grounds which could be independent, which the judge may have arguably failed to take into account, is a contemporaneous immigration stamp within a passport. However in respect of that evidence, when Mr Dingley took me to the relevant pages of the composite bundle (see pages 68 to 73 of that bundle) to show me the stamp, it transpired that the stamp on page 68 that Mr Dingley sought to rely upon demonstrating that the Sponsor had travelled to Nepal, and returned to Heathrow on the 11<sup>th</sup> February 2020, was in fact a stamp from the passport of the Appellant's sister and the Sponsor's daughter (Miss Nalbo Limbu) whose passport number is given as 06565337. This was the only passport in respect of which any internal pages featuring vignettes and immigration stamps had been provided in the Appellant's Bundle. In respect of the Sponsor, the First-tier Tribunal Judge only had the Sponsor's biometric passport page, which appears at page 71 of the composite bundle. I note that the Sponsor's passport number is 10210459, and is plainly different to that of his daughter. Thus, in pleading and arguing this point, it appears that Mr Dingley had mistakenly believed that the passport stamp belonged to the Sponsor's passport, whereas it was in fact the Appellant's sister/Sponsor's daughter's passport and could not establish that the Sponsor travelled to Nepal on 11<sup>th</sup> February 2020. Therefore, I cannot see that there was any "independent" evidence before the First-tier Tribunal Judge that he failed to take into account which resulted in a misapprehension of fact as to the evidence before him. Again, I note that no evidence was submitted by way of Rule 15(2A) to demonstrate that the Sponsor had travelled to Nepal to visit the Appellant in February 2020 (such as eTickets for the Sponsor's return flights from London to Nepal, or the relevant pages of the Sponsor's passport showing entry and exit stamps etc.) as claimed in the statements and covering letter (which are not, in and of themselves, independent pieces of evidence). Therefore, I find no merit in Ground 2 either.

9. In respect of the third ground and the complaint that the judge failed to give weight to or make findings in relation to supporting evidence in the Appellant's Bundle, this argument concerns two municipal letters discussing the Appellant's employment status and his relationship status. These documents appear in the composite bundle at pages 59 to 60. I note in respect of page 59 that, even taking this letter at its highest, it is a letter from a ward chairperson that the Appellant has "not been doing service in any kind of job until now". I note however that the original sentence, which has been altered by hand and not countersigned or initialled by the deponent originally read: "has not been doing service in any government service until now". Notwithstanding the lack of countersignature approving the amendment to this municipal letter widening its scope to the Appellant not having held "any kind of job"; even if taken at face value, given that the ward chairperson, does not give evidence of knowing the Appellant personally or how regularly he has contact with him and observes his life, or his day to day circumstances (giving rise to his knowledge deposed within the municipal letter) the letter cannot establish that the Appellant does not have any other source of income, nor that the support that he does obtain, which consists of, as the judge put it, "occasional money transfers" is sufficient to give rise to "real, committed or effective" support such that this would be demonstrative of family life being engaged under Article 8(1) consistent with the Court of Appeal's decision in Kugathas .v Secretary of State for the Home Department [2003] EWCA Civ 31 at [17].
10. Turning to the municipal letter concerning the Appellant's marital status and the statement that he is an unmarried person, I cannot see that this would have had a material impact upon the outcome of the appeal as the judge does not make any contraindicative suggestion that the Appellant is in a relationship or has formed his own family unit such that this might prevent him from sharing family life with his Sponsor under Article 8(1). Therefore, even if the FTTJ had not taken the marital status letter into account, I do not find that it would have made a material difference to the outcome of the appeal.
11. Finally, turning to the fourth ground, which argues that the judge had acted in a procedurally unfair way, in preparation for the hearing before me, the Upper Tribunal administrative staff went to urgent lengths to obtain a copy of the digital Record of Proceedings which was provided to both parties to hear to prior to the hearing. Directions were issued that the Appellant should provide a transcript of the hearing with the relevant passages sidelined a week in advance of the hearing before me, however having noted that the recordings were only provided to the parties a few days before the hearing, Mr Dingley was understandably unable to provide a transcript. I thus asked Mr Dingley the extent to which he wished to rely upon the recordings to support the fourth ground and the argument that the judge had acted in a procedurally unfair way. Having heard the recording and had the opportunity to pray in aid passages from it to make good his ground, Mr Dingley instead withdrew the part of Ground 4 which argued that the judge had acted procedurally fairly in terms of his taking into account evidence concerning money transfers and where the funds had originated from at paragraphs 9 to 10 of the decision.
12. Having withdrawn this challenge to the judge's findings on the money transfers, all that remained under ground four was a challenge to the findings at paragraph 11 in respect of the evidence of the communication between the Sponsor and Appellant, wherein the judge expressly states: "There is evidence of communication but it is unclear who this is between or for what time period it

applies to". Mr Dingley sought to argue that this was an adverse finding made without the Sponsor being adequately cross-examined in terms of his evidence of contact with the Appellant. I am not persuaded by this sole remaining argument, as the sentence I have excerpted above is self-explanatory and merely represents a finding by the judge that the evidence of communication, such as it was before him, was unclear and the judge was thus unable to discern between which persons, and for what time period the communication had subsisted. Indeed, the only portion of the cross-examination that was alluded to by both parties demonstrated that the FTT Presenting Officer had in fact noted that there was no 'contact name' identifying who the phone number the Sponsor was in touch with belonged to in response to which the Sponsor had answered in cross-examination that it was his son's number, which the parties agree the judge noted and even stated was probably correct. In the course of hearing closing submissions, however, the criticism made by the judge remains, in that the evidence was still opaque and unclear as there was no indication for how long the correspondence had continued. I note that there are occasional money transfers which the judge was aware of and that this may demonstrate contact between the Appellant and Sponsor however, it remained open to the judge to find that, given the lack of clarity as to who was contacting who and when and for what period of time, a pattern or history of emotional support had not been established by way of evidence of communication between the Appellant and Sponsor and vice versa, which could engage family life in line with Kugathas.

13. I therefore find that the decision is free from error and the judge was entitled to make the findings that he did.
14. Although the Appellant's appeal remains dismissed, it remains open to the Appellant to make a further application for leave to enter if he is able to overcome the omissions and gaps in his evidence identified by the First-tier Tribunal and thus establish family life exists between him and his Sponsor and that Article 8 ECHR is engaged.

### **Notice of Decision**

15. The appeal to the Upper Tribunal is dismissed.
16. The decision of the First-tier Tribunal shall stand.

Judge P. Saini

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

Date: 8 January 2024