



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003659
First-tier Tribunal Nos:
HU/57880/2021
IA/17213/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

Wilson Rai
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr E Wilford, Counsel; Everest Law Solicitors
For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 1 March 2024

DECISION BY CONSENT AND DIRECTIONS

1. Pursuant to Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and by the consent of the parties the following order is made:
 - (1) Upon the parties' agreement that the decision of the First-tier Tribunal promulgated on 7th July 2023 discloses a material errors of law, it is hereby ordered by consent as follows.
 - (2) The parties agree that the First-tier Tribunal Judge committed errors of law in the manner described in the Grounds of Appeal as pleaded as follows:
 - "2. The grounds assert that the Judge erred in law in that he:
 - a. Elevated the test for the existence of family life engaging Article 8(1) by inserting a test of necessity. The Appellant's choice not to work is immaterial to the engagement of Article 8(1).

- b. Misapplied the Devaseelan principles in that he treated the previous findings as an 'end point' and not a 'starting point' and failed to adequately consider fresh evidence that challenged a previous finding on who paid for the Appellant's application.
 - c. Elevated the test for the Article 8(1) via the insertion of a requirement that family has existed continuously from his mother's migration to the UK to the date of the hearing.
 - d. Failed to take account of material factors; mother paid for migration to Malaysia and return to Nepal; Appellant is unmarried and unemployed; Appellant is financially supported by mother; they lived together before he left for Malaysia; contact between them; Appellant's intention to care for mother in the UK."
- (3) As a consequence of the above agreed errors, which I also approve, the decision is hereby set aside in its entirety and thus requires remaking, *de novo*.
- (4) The parties agree that given that the decision is set aside in its entirety the matter would benefit from being remitted to the First-tier Tribunal where findings of fact can be made, particularly as the Respondent maintains her position, as set out in the refusal letter.

Directions

2. I make the following directions for the continuation of this appeal:
- (1) The appeal is to be remitted to IAC Taylor House.
 - (2) A Nepalese interpreter is required.
 - (3) At present, the only witness before the First-tier Tribunal will be the Sponsor.
 - (4) The standard directions are to be issued.
 - (5) The appeal is to be remitted to be heard by any judge of the First-tier Tribunal other than Judge Howard and Judge Rowlands.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 March 2024