



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos UI-2023-004638
First-tier Tribunal No:
HU/52117/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

Nibandhana RAJBHANDARI
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr D Balroop of Counsel, instructed by Everest Law
For the Respondent: Mr A Basra, Senior Home Office Presenting Officer

Heard at Field House on 1 December 2023

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Khurram signed on 11 September 2023 dismissing an appeal against a decision dated 6 January 2023 refusing an application for entry clearance as the adult dependent child of a former member of the Brigade of Gurkhas.
2. The Respondent's decision raised an issue in respect of identity in these terms:

“You have not provided a Kindred Roll to demonstrate your relationship to the former Gurkha. You state that you are also known as “Nibandamaya Sunwar” and that you are recorded under this name with date of birth 18 June 1984 on your sponsor’s Kindred Roll. As evidence of this, you have provided a notary’s letter dated 26 May 2022 and a birth verification letter dated 25 May 2022. I acknowledge that Home Office records show a Nibandamaya Sunwar with date of birth 18 June 1984 was seen on your sponsor’s Kindred Roll in their 2020 application. However, I am not satisfied that the evidence you have provided demonstrates that you are Nibandamaya Sunwar. I am aware that notarial documents such as those you have provided are produced based on self-declaration, and therefore do not place significant weight on these documents alone as evidence of your statements. You have provided no other evidence, such as a birth certificate issued at the time of your birth, to demonstrate your identity; nor have you provided any explanation for the difference between your passport details and those on the Kindred Roll. Consequently, I am not satisfied that you are related to the former Gurkha as you state.”

3. The Respondent decision-maker went on to consider the matter in the alternative: even if it were to be accepted that the Appellant was related as claimed, the Respondent was not satisfied that she qualified for entry clearance under the Immigration Rules, policy relating to the dependents of former Gurkha soldiers, on human rights grounds, or otherwise.
4. It is convenient to note at this juncture that ‘Rajbhandari’ is the surname taken by the Appellant at the time of her marriage. (She has since divorced.) The Sponsor’s surname is in most documents stylised as ‘Sunuwar’ rather than ‘Sunwar’. However, his Army Certificate of Service book uses ‘Sunwar’. To that extent the use of ‘Sunwar’ rather than ‘Sunuwar’ in the Kindred Role is consistent. Documents said to relate to the Appellant from the time before her marriage, for instance school certificates, also used the stylisation ‘Sunuwar’ for the Appellant’s surname. It is to be recalled that these are anglicised versions of names that would have originally been written in the Nepalese devanagari script. Plausibly there is no real distinction between such stylisations.
5. However, none of this explains the apparent discrepancy as to date birth and indeed no clear explanation for such discrepancy has been forthcoming at any point.
6. The ‘notarial documents’ referred to in the decision letter are documents issued through a ward office of the local municipality and purport to

confirm that the person making the application for entry clearance is indeed the daughter of the Sponsor, and also, in a document headed 'Same Person Verification', that the holder of the passport in the name 'Nibandhana Rajbhandari' is the same person who appears in the 'Family Details maintained at The Brigade of Gurkhas' as 'Nibandamaya Sunwar'.

7. The First-tier Tribunal concluded that the Appellant had not "*discharged the burden of proof with respect to her relationship with the sponsor*", and as such Article 8 was not engaged (paragraph 17). The appeal failed accordingly without further consideration.
8. Permission to appeal to the Upper Tribunal was granted on 19 October 2023 by First-tier Tribunal Judge Moon in respect of three of four pleaded grounds. The grant of permission to appeal includes the following:

"In the decision the Judge states that the kindred roll was not available at the time of the decision but this is a document which is referred to in the reasons for refusal letter. The decision does not address the fact that the verification documents have been provided by the Ward office and have been stamped and so it arguable that the judge relied on mistaken assertions. In relation to the second ground, it is arguable that the Judge did not adequately consider all of the evidence and circumstances or consider why somebody would have access to a bank account if there was no relationship, arguably the judge has not given adequate reasons for rejecting the oral evidence of the sponsor, reasons were given for rejecting the evidence of his wife only."
9. The Respondent has not filed a Rule 24 response. At the commencement of the hearing Mr Basra indicated that the Respondent resisted the Appellant's challenge. However, during the course of submissions he accepted that there was a material error of law in the decision of the First-tier Tribunal, and did not resist to it being set aside.
10. I accept the concession as properly made. In the circumstances I do not propose to rehearse here the full detail of the evidence and arguments before the First-tier Tribunal, or reference the entirety of the Judge's reasoning; it will suffice to identify the particular basis upon which Mr Basra made his concession on behalf of the Respondent.
11. The concession relates to the matter alluded to in the grant of permission to appeal in the words "*it is arguable that the Judge did not adequately consider all of the evidence and circumstances or consider why somebody would have access to a bank account if there was no relationship,*

arguably the judge has not given adequate reasons for rejecting the oral evidence of the sponsor”.

12. It was argued on behalf of the Appellant that the weight to be accorded to the documents - notwithstanding that in some respects there were clear differences between them, and that notwithstanding that in isolation any particular document might not be determinatively probative - could not be assessed without a wider, or circumstantial, consideration of all the evidence. Such a wider consideration necessarily would involve an evaluation of the Sponsor’s testimony as to his relationship with the Appellant, and a consideration of - and, crucially, findings on - circumstantial matters such as the evidence that he was supporting the Appellant through the provision of accommodation and by way of financial remittance. The evaluation of the documentary evidence required an evaluation of the Sponsor’s evidence because it went both to provenance and content of the documents.
13. The First-tier Tribunal’s decision does not contain any such analysis. Mr Basra accepted that an evaluation of the quality of the family life claimed to exist between the Appellant and the Sponsor, as evidenced by such matters as the Sponsor support, their communications, and the visits made to the Appellant, was a relevant consideration to determining the key question of whether the Appellant and the sponsor were related as claim. Given that there was no finding in respect of the Sponsor’s testimony, and no finding in respect of the claimed facts of the relationship - irrespective of what the documents did or did not prove in themselves - it was accepted that the Judge had not had regard to all relevant matters; this amounted to an error of law.
14. The challenge to the decision of the First-tier Tribunal succeeds accordingly.
15. It was common ground between the parties, and I agree, that the appropriate forum in which to remake the decision in the appeal is the First-tier Tribunal.

Notice of Decision

16. The decision of the First-tier Tribunal contained a material error of law and is set aside.
17. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Khurram.

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004638
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Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

22 February 2024