



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

Case No: UI-2023-004827

First-tier Tribunal No:  
HU/57446/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

10<sup>th</sup> January 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

**Between**

**LAL BHADUR PUN**  
(NO ANONYMITY ORDER MADE)

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr R. Sharma, Counsel instructed by Everest Law Solicitors Ltd.

For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

**Heard at Field House on 19 December 2023**

**DECISION AND REASONS**

**Introduction**

1. The Appellant challenges the decision of First-tier Tribunal Judge CAS O'Garro (hereafter "the Judge") who, in a decision promulgated on 14 February 2023, dismissed the Appellant's Article 8 ECHR appeal against the refusal decision of the Respondent dated 7 October 2021.

2. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Landes on 1 May 2023.

### **Relevant background**

3. In brief, the Appellant's father (and Sponsor), Mr Chandra Pun, served as a Gurkha soldier in the British Army between 1961 and 1968.
4. The Sponsor relocated to the UK with Indefinite Leave to Enter on 11 June 2012.
5. The Appellant applied for entry clearance on the basis of his Article 8 relationship with the Sponsor on 30 July 2021.

### **The Judge's decision**

6. In the decision the Judge noted/found the following:
  - a. The Appellant's brother's appeal against a similar refusal had been dismissed by the First-tier Tribunal and he was now studying as a nurse in Australia, §7.
  - b. Between 2009 and 2018, the Appellant was working overseas (Dubai) as a security guard before returning to Nepal, §9.
  - c. During that time the Sponsor had relocated to the UK with Indefinite Leave to enter on 11 June 2012. When the Appellant returned to Nepal in 2018 (due to an appendicitis), he had been unable to find work, §9.
  - d. The Judge concluded that the evidence established that the Appellant had sent money to the Sponsor whilst he was working in Dubai but that this did not constitute *real, committed and effective support*, §36.
  - e. The Judge also found that there was restricted communication between the Sponsor and Appellant whilst the Appellant was working in Dubai and that when the Sponsor left Nepal to relocate to the United Kingdom in 2012 there was no family life between the Sponsor and the Appellant, §39.
  - f. Equally the Appellant had failed to establish that he had family life with the Sponsor amounting to *real, committed and effective support* between 2012 and 2018, §40.
  - g. Finally, the Judge downplayed the evidence from the two additional witnesses (Mr Pun and Mr Tilija) on the basis that financial support was an expected part of Nepalese culture and did not suggest a bond over and above that usually expected between an adult child and his parents.

### **The error of law hearing**

7. In the error of law hearing, Mr Sharma adopted the grounds of appeal as settled by Mr Jesurum. In response Mr Wain argued that the Judge had made reference to the relevant binding case law in respect of the Article 8(1) ECHR test at §29, and had made findings which were open to her bearing in

mind the Court of Appeal's decision in Mobeen v Secretary of State for the Home Department [2021] EWCA Civ 886, ("Mobeen").

8. Having heard the competing submissions, I indicated to the representatives that the Appellant had established that there were material errors of law in the decision such as to require it to be set aside in its entirety.

### **Findings and reasons**

9. Firstly, it is clear to me that, despite making reference to the Court's decision in Rai (Jitendra) v Entry Clearance Officer [2017] EWCA Civ 320 at §29, the Judge then inexplicably misstated the test in respect of adult relationships under Article 8(1) on at least two occasions: at §§36 & 40.
10. Mr Wain appeared to argue that nothing turned on the Judge's misstatement of the relevant legal test because of the Court of Appeal's approach to Article 8(1) in Mobeen, at §46.
11. In my view there is nothing in this argument. Whilst the Court may have paraphrased the test as "effective, real or committed support", that is still manifestly different in legal substance to the test as actually applied on two occasions in this decision, that being: *effective, real and committed support*. Equally, there is no suggestion in Mobeen that the Court considered that they were deviating from any earlier authority of the Court of Appeal on this particular point.
12. I therefore find that this is a material error of law which manifestly undermines the Judge's conclusions in respect of Article 8 in their totality.
13. Secondly, for completeness, I also accept the Appellant's argument that the Judge failed to assess whether there was family life **at the date of the hearing**. The Judge has erroneously centred only upon the period in which the Appellant had left Nepal to work in Dubai and has entirely sidelined the period between 2018 until the date of hearing - this is a material error of law.
14. Thirdly, I also accept that the Judge has failed to adequately assess the evidence of the two additional witnesses who spoke of their experience of seeing the emotional aftermath of the Sponsor and his wife speaking to the Appellant on the phone. The Judge only centred upon the sending of money by the Sponsor to the Appellant since 2018. This is also a material error of law.
15. Related to this is the further point that the Judge has also completely ignored the Sponsor's own vulnerabilities (including his diabetes and his significant social isolation) when failing to assess the emotional support between the Appellant and the Sponsor. This is a further material error of law.

### **Notice of Decision**

16. The decision of the Judge must be set aside in its entirety for the reasons given above.

### **Remittal to the First-tier Tribunal**

17. In light of my decision that the entirety of the Judge's decision must be set aside, I have ultimately concluded that the Appellant is yet to have the benefit of a full assessment of the evidence in his appeal. I therefore decide that the appropriate venue for the remaking hearing should be the First-tier Tribunal. The appeal is to be heard by a judge other than Judge CAS O'Garro.

### **DIRECTIONS**

- (1) The remaking appeal at the First-tier Tribunal should be listed for 3 hours. There is an expectation of four witnesses giving evidence.
- (2) The Tribunal must provide a Nepalese interpreter for the hearing.
- (3) In light of the Sponsor's health difficulties and vulnerabilities I also direct that the remaking hearing is listed for a CVP hearing.

***I P Jarvis***

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

2 January 2024