



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000267
First tier Number: HU/57098/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of March 2024

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Kiran Limbu
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jesuram, Counsel instructed by Everest Solicitors
For the Respondent: Mr Parvar, Senior Home Office Presenting Officer

Heard at Field House on 6 March 2024

DECISION AND REASONS

1. The Appellant is a national of Nepal born on the 18th April 1980. She appeals with permission against the decision of the First-tier Tribunal (Judge Moffatt) to dismiss her appeal on human rights grounds.
2. The parties are in agreement that the decision of Judge Moffatt must be set aside. For the Respondent Mr Parvar accepted that the decision is flawed for the following reasons:
 - i) The Tribunal reached negative credibility findings about aspects of the evidence that the Appellant had no notice of, and so no opportunity to address. The Respondent had not attended and so the evidence, insofar as it strayed beyond matters addressed in the refusal letter, was unchallenged. It was procedurally unfair for the Tribunal to have proceeded in this way without giving the Appellant and opportunity to respond to this forensic challenge;

- ii) In its assessment of whether there is a subsisting family life for the purpose of Article 8 between the adult Appellant and her father, the Tribunal failed to conduct a holistic assessment of all of the relevant factors, and apparently impermissibly restricted its assessment to whether there was financial support in place.
3. On this basis I was invited to set the decision aside, and since ground (i) raises issues of fairness, for the matter to be remitted to the First-tier Tribunal. I agree that this is the appropriate course.

Decisions

4. The decision of the First-tier Tribunal is set aside.
5. The decision in the appeal is to be remade following a hearing *de novo* in the First-tier Tribunal by a Judge other than Judge Moffatt.
6. There is no order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
6th March 2024