



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/09812/2012
OA/09851/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 30 September 2014**

**Determination
Promulgated
On 8 October 2014**

Before

**THE RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE KEBEDE**

Between

**SANTOSH GURUNG
PAUL GURUNG**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Jesurum, Counsel, instructed by Howe & Co Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are Paul Gurung and Santosh Gurung. They are brothers who are nationals of Nepal. They appealed to the First-tier Tribunal against the decisions of the respondent of 22 December 2011 to refuse their

applications for entry clearance to settle with their father, Mr Baburam Gurung, the sponsor, who was granted settlement in the UK as a Ghurkha Veteran along with his wife and minor daughter. The sponsor had entered the UK in April 2011.

2. The Judge of the First-tier Tribunal on 21 November 2012 dismissed their appeals. These were then appealed to the Upper Tribunal and in a decision of the Upper Tribunal dated 22 May 2013 the determination was upheld.
3. There then followed an appeal to the Court of Appeal and after sundry procedure on 11 July 2014 by consent it was ordered that the determination of the Upper Tribunal on 22 May 2013 and the determination of the First-tier Tribunal of 21 November 2012 should both be set aside. The appeal was remitted to the Upper Tribunal to be reheard on the basis that it was accepted that the respondent's decision is one which engages Article 8(1) applying the principles applicable to Article 8(2) set out in Gurung [2013] 1WLR 2546 and Ghising and Others (Ghurkhas/BOCs historic wrong weight) [2013] UKUT 567 (IAC).
4. Before us Mr Jesurum for the appellant adhered to the skeleton arguments which had been submitted. Mr Bramble, the Home Office Presenting Officer, very fairly informed us that the considerations which are set out in paragraph 60 of Ghising, that is to say the public interest, going beyond the public interest in the maintenance of a firm and fair immigration policy such as a bad immigration history and/or criminal behaviour could not be maintained in this case.
6. That being so, it is clear that the appeals in both cases must be allowed and we shall accordingly do so.

LORD BOYD OF DUNCANSBY
Sitting as an Upper Tribunal Judge
(Immigration and Asylum)

Chamber

Date