



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

Appeal Number: HU/11599/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 10th April 2018**

**Decision & Reasons
Promulgated
On 20th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[J L]

(~~ANONYMITY ORDER NOT MADE~~)

Respondent

Representation:

For the Appellant: Ms Z Ahmad, Home Office Presenting Officer

For the Respondent: Ms A Jaja, Counsel instructed by Howe & Co Solicitors

DECISION AND REASONS

1. [JL] is a male Nepalese national who appealed against the decision of the Respondent refusing him permanent settlement in the United Kingdom to join his grandfather. For ease of parties, I shall continue to refer to the parties as they were at first instance, namely the Appellant and Respondent.

2. The Appellant's appeal was allowed under Article 8 ECHR by Judge Greasley in a decision promulgated on 13th July 2017.
3. Grounds of application were lodged by the Respondent on the basis that the judge had made a material misdirection in law in that there had been an earlier hearing heard on 23rd July 2014. In a determination of 1st September 2014 the Tribunal had dismissed the appeal and Judge Greasley seems to have proceeded without consideration of that knowledge. It was therefore respectfully submitted that the Tribunal should have used the first decision as a starting point as per **Devaseelan [2002] UKIAT 00702** and the failure to do so meant findings on the most recent Tribunal were fundamentally flawed. Furthermore, it was said that the Tribunal had not applied anxious scrutiny to the evidence. The earlier decision had pointed out that evidence provided by Gurkha Police Foundation was hearsay. In addition it was submitted that the Tribunal had failed to consider all the relevant factors of the evidence.
4. Permission to appeal was granted on the basis that there was an arguable error of law by Judge Greasley.
5. Before me Ms Ahmad relied on her grounds. **Devaseelan** did apply. The judge had not considered the previous decision. As such the case should be remitted for a fresh hearing.
6. For the Appellant Ms Jaja said that the Respondent would have been aware of the earlier decision but there was no onus on the judge to seek out such a decision if it was not put to him. This was not a **Devaseelan** point.
7. From her knowledge the earlier decision was one to do with a claim for asylum and this decision was an Article 8 claim made outside the Rules. There was no error of law by the judge in not considering a document not put in front of him and the decision should stand.
8. I reserved my decision.

Conclusions

9. The position here is that the judge cannot be faulted in any way for not considering a decision which was not put in front of him. It cannot be said that there has been unfairness to either party given that, for whatever reason, the previous decision played no role in the judge's decision. Nevertheless the Respondent says that the decision should be set aside because the earlier decision has now been made available. The logic of this position is that in any case where the Respondent fails to appreciate that there was an earlier decision she can then appeal at a later date, after the appeal has been allowed, producing the earlier decision and say there should be a rehearing.
10. In my view this proposition is fundamentally unsound. There has been no procedural unfairness to the Respondent. I was not told why the earlier decision had not been lodged and there appears on the face of it to be no

good reason for that. It is because the earlier decision was not available to the judge at the date of the hearing that the **Devaseelan** point does not apply.

11. The judge considered the case before him in detail and concluded for clear reasons that the appeal should be allowed under Article 8 ECHR. There were a number of family witnesses who gave evidence before Judge Greasley and the judge accepted their evidence. There was also unchallenged evidence in relation to continued financial support from the grandparents and visits back to Nepal (paragraph 28). The judge concluded, for the reasons stated, that maintenance of the refusal decision would be a wholly disproportionate and therefore unlawful decision taking into account Section 117B of the Nationality, Immigration and Asylum Act 2002 (paragraph 30).
12. There is no real challenge to the careful findings made by the judge. He considered all the evidence put to him and was entitled to make the findings he did. There is no error, let alone material error in law.
13. As such the judge's decision must stand.

Notice of Decision

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
15. I do not set aside the decision.
16. No anonymity order is required.

Signed *JG Macdonald*

Date 19thApril 2018

Deputy Upper Tribunal Judge J G Macdonald