



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

Appeal Number: HU/07119/2019  
HU/10168/2019

**THE IMMIGRATION ACTS**

**Field House  
On 16 February 2021**

**Decision & Reasons Promulgated  
On 01 March 2021**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**TUKI MAYA GURUNG  
BHUWAN GURUNG  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellants: Ms K McCarthy, Counsel, instructed by Everest Law

For the Respondent: Ms A Everett, Senior Home Officer Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 24 January 2020 of First-tier Tribunal J C Hamilton which dismissed the appellants' appeals against refusal of entry clearance as the adult dependents of their mother.
2. The appellants are citizens of Nepal. The first appellant was born on 13 December 1986. The second appellant maintains his true date of birth is 8 September 1983 albeit his passport states that his date of birth is 8 September 1986. The appellants are brother and sister.

3. The appellants applied to join their mother, the widow of a Gurkha soldier. The first appellant applied on 30 December 2018. Her application was refused on 7 May 2019. The second appellant applied on 8 February 2019 and his application was refused on 26 April 2019. Their appeals on Article 8 ECHR grounds were then linked before the First-tier Tribunal and dismissed, as above, by the First-tier Tribunal in a decision dated 24 January 2020.
4. The First-tier Tribunal did not accept that the appellants had a family life with the sponsor. The judge placed adverse weight in paragraphs 37 and 55 on the sponsor having chosen to come to the UK and having lived apart from the appellants for 5 years. The judge found in paragraph 40 that the second appellant could be expected to be independent where there were employment options in the Nepal tourist industry. The judge also found in paragraphs 45 and 46 that the sponsor gave discrepant evidence on how long she had supported the first appellant in Kathmandu.
5. Before me, it was accepted for the respondent that the First-tier Tribunal judge erred in the approach taken in all those findings as they were not in accordance with the lawful approach to the assessment of family life set out in case law concerning applications by adult dependents of Gurkhas, in particular Jitendra Rai v SSHD [2017] EWCA Civ 320. The judge was not permitted to weigh against the appellants the sponsor's decision to come to the UK and the time spent living in different countries in the manner he did. The judge had to address whether there was a family life at the time of departure and not whether, in the interim, a burden had arisen on the second appellant to show that he was no longer supported by or dependent on his mother. The evidence of the sponsor on funds sent to the first appellant in Kathmandu was not clearly discrepant, the sponsor referring to how long there had been funding for a particular course rather than how long in total she had been providing funds for the first appellant to live in Kathmandu. The respondent also conceded that the errors of were material, infected the holistic assessment of whether family life existed and were such that the decision of the First-tier Tribunal had to be set aside to be remade *de novo*.
6. The position taken by the respondent was in line with my preliminary view of the decision of the First-tier Tribunal and for the same reasons, therefore, I find an error on a point of law and set aside the decision of the First-tier Tribunal to be remade *de novo*.

### **Notice of Decision**

7. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.
8. The appeals will be remade *de novo* in the First-tier Tribunal.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 16 February 2021