



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02224/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 21<sup>st</sup> May 2018

Decision & Reasons Promulgated  
On 19<sup>th</sup> June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

TUL MAYA GHALE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

**Representation:**

For the Appellant: Mr S Jaisri, Counsel instructed by Sam Solicitors  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a female citizen of Nepal born on 2<sup>nd</sup> July 1981. She applied to the British High Commission, New Delhi, for entry clearance to the UK as the dependent daughter of the Sponsor, Bal Ram Ghale, a former Gurkha soldier. That application

was refused for the reasons given in a Refusal of Entry Clearance dated 17<sup>th</sup> January 2017. The Appellant appealed and her appeal was heard by First-tier Tribunal Judge Buckwell sitting at Hatton Cross on 1<sup>st</sup> November 2017. He decided to dismiss the appeal for the reasons given in his Decision dated 10<sup>th</sup> November 2017. The Appellant sought leave to appeal that decision and on 13<sup>th</sup> April 2018 such permission was granted.

### **Error of Law**

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal under the Immigration Rules. That decision has not been impugned in this appeal. The Judge went on to dismiss the appeal under the provisions of Article 8 ECHR outside of the Immigration Rules. The Judge found the decision of the Respondent to be proportionate. At the hearing before me, Mr Jaisri referred to the grounds of application and argued that the Judge had erred in law in his consideration of proportionality. Mr Jaisri referred to the Judge's analysis at paragraphs 51 to 53 inclusive of the decision and argued that the Judge had erred in law by not considering the historic injustice in cases of this nature. Mr Jaisri relied upon the decisions in **Gurung v SSHD [2013] EWCA Civ 8** and **Rai v ECO [2017] EWCA Civ 320**.
4. In response, Mr Tufan noted that at paragraph 50 of the Decision the Judge had found that the Appellant had a family life such that Article 8(1) ECHR was engaged. Mr Tufan then said that he agreed with the analysis of the jurisprudence made by Mr Jaisri and accepted that there was an error of law in the decision of the First-tier Tribunal and that subsequently the appeal should be allowed.
5. I find an error of law in the decision of the First-tier Tribunal which I therefore set aside. The Judge had failed to take into account the historic injustice to the dependants of former Gurkha soldiers in his balancing exercise necessary for any assessment of proportionality. The Judge had failed to follow the relevant jurisprudence and in particular the decision in **Rai**.

### **Remake Decision**

6. Having set aside the decision of the First-tier Tribunal, I then proceeded to remake the decision in the appeal. There was no argument between the representatives that the appeal should be allowed in accordance with the decision in **Rai**. I therefore allow the appeal.

### **Decision**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

I remake the decision in the appeal by allowing it.

**Anonymity**

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Deputy Upper Tribunal Judge Renton

Date 15<sup>th</sup> June 2018

**TO THE RESPONDENT**  
**FEE AWARD**

In the light of my decision to remake the decision in the appeal by allowing it, I have considered whether to make a fee award. I heard comments from the representatives in this respect. Mr Tufan explained that there had been insufficient information provided to the Entry Clearance Officer to establish family life and therefore the engagement of Article 8(1) ECHR. Mr Jaisri did not argue that a fee award should be made. On the basis of Mr Tufan's argument, I make no fee award.

Signed

Date 15<sup>th</sup> June 2018

Deputy Upper Tribunal Judge Renton