



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02824/2015

THE IMMIGRATION ACTS

Heard at Bradford
On 23 January 2018

Decision & Reasons Promulgated
On 7 June 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

BIJAYA KUMAR RAI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: Mr Chaudhry, instructed by N C Brothers & Co Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 2 November 2017, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside.
2. Further evidence had been adduced for the resumed hearing which took place at Bradford on 23 January 2018. That evidence addresses the apparent hiatus in the provision of financial support of the appellant by the United Kingdom sponsor which had concerned Judge Watson in the First-tier Tribunal. In the light of the new evidence, Mrs Pettersen, who appeared for the Secretary of State made no further submissions.

3. I reserved my decision.
4. As I noted in my error of law decision, it is necessary for the Tribunal to take into account case law which follows on from *Kugathas*, in particular *Ghising* and *Gurung* (see error of law decision). Having regard to those authorities and to the evidence now before me and having regard also to the fact that Mrs Pettersen accepted the evidence which has been adduced in the most recent bundle of documents by the appellant, I find that the Upper Tribunal should remake the decision by allowing the appeal on Article 8 ECHR grounds. I am satisfied that the extent and duration of dependency (including financial dependency) of the appellant on the United Kingdom sponsor considered together with the remaining evidence indicating the existence of family life which has suffered interference because the United Kingdom sponsor has travelled to this country without the appellant (see *UG (Nepal)* [2012] EWCA Civ 58) leads me to conclude that the ECO's decision constitutes a disproportionate breach of the appellant's right to a family and private life. I allow the appeal accordingly.

Notice of Decision

5. The appeal of the appellant against the Entry Clearance Officer's decision dated 6 July 2015 is allowed on human rights grounds (Article 8 ECHR).
6. No anonymity direction is made.

Signed

Date 20 APRIL 2018

Upper Tribunal Judge Lane