



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

Appeal Number: HU/15545/2016

THE IMMIGRATION ACTS

Heard at Field House

On 19th April 2018

**Decision & Reasons
Promulgated
On 4th May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MISS GURUNG DIL MAYA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jaja of Counsel

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant, born on 29th March 1987, is a citizen of Nepal. The Appellant was represented by Ms Jaja of Counsel. The Respondent was represented by Mr Avery, a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for leave to enter the United Kingdom with a view to settlement as the daughter of a former Gurkha soldier, namely her father Mr Gurung. The Respondent had refused that application on 25th May 2016. The Appellant had appealed that decision and her appeal had been heard by First-tier Tribunal Judge Rowlands sitting at Hatton Cross on 21st July 2017. He had dismissed that appeal.
3. Application for permission to appeal to the Upper Tribunal was made by solicitors on the Appellant's behalf on 24th August 2017. Permission to appeal was granted by First-tier Tribunal Judge Andrew on 20th February 2018. The judge noted that there were arguable errors of law in that the judge had misdirected himself by not applying the principles in **Ghising** and **Rai** relating to his finding as to whether Article 8(1) was engaged.
4. By letter dated 20th March 2018 the Respondent did not oppose the Appellant's application for permission to appeal and invited the Tribunal to remit the case back to the First-tier Tribunal for a *de novo* hearing.

The Proceedings - Introduction

5. The Respondent in this case had conceded that an error of law had been made by the First-tier Tribunal Judge in a manner identified by the judge who had granted permission to appeal.

Decision

6. It is clear the parties were in agreement that an error of law had been made by the judge in this case. It seems clear from paragraph 12 of the judge's decision that he correctly identified that factually there was little if any challenge to the evidence in the case. To that extent it was not necessary or indeed incumbent upon the judge to make findings on fact. However, it was necessary for the judge to deal with the core issue in this case, namely whether there was family life existing between the Sponsor and the adult child and to consider the extent and depth of any family life found and apply those findings to the relevant case law. In cases involving adult children of former serving Gurkha soldiers there are somewhat discrete principles that have been considered carefully by the superior courts, in particular in the case of **Ghising [2013] UKUT 567** and more recently the case of **Rai v ECO [2017] EWCA Civ 320**. The judge in this case had dealt briefly with the core issue and does not appear in the context of dealing with that matter have reminded himself of the case of **Ghising** or indeed other similar cases. Whilst he made reference to the case of **Rai** at paragraph 16 that appeared to be no more than referring to the earlier case of **Singh [2015]** and highlighting the fact that each case is fact-sensitive.
7. There has not been in this case an adequate examination of the facts generally but most particularly when looking through the prism of those cases that relate to the important features and principles requiring consideration in Gurkha cases.

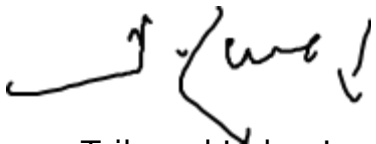
8. In those circumstances the lack of factual analysis and findings, in particular in the context of the decisions and principles set out by the superior courts in such cases, means that a material error of law was made by the judge in this case such that the decision needs to be set aside and is one of those cases where considering the Procedures Rules it is in the circumstances one that should be remitted back to the First-tier Tribunal for a *de novo* hearing.

Notice of Decision

9. I find that a material error of law was made by the judge in this case and therefore set aside the decision of the First-tier Tribunal. Given the circumstances of the finding this matter should be remitted back to the First-tier Tribunal for a *de novo* hearing.

No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Lever

Date

