



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: HU/22978/2016**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 January 2018**

**Decision & Reasons  
Promulgated  
On 20 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**LAXMI RAJ RAI  
(NO ANONYMITY ORDER MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Ms A O'Callaghan, Counsel instructed by N C Brothers & Co Solicitors

For the Respondent: Ms A Fijiwala, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the refusal of the Entry Clearance Officer and the Entry Clearance Manager in Nepal to grant him entry clearance to settle in the United Kingdom as the dependent of his mother. The facts are set out in the First-tier Tribunal *inter alia* at paragraph 7:  

“Mrs Rai said (unchallenged) that her husband would have settled in the United Kingdom and the appellant says so too.”
2. Permission to appeal was granted by First-tier Tribunal Judge Holmes on the following grounds:

“The Appellant is the adult son of a former member of the Brigade of Gurkhas. The Judge accepted that he and his mother, that soldier’s widow, enjoyed family life together not only at the date that she left Nepal to settle in the UK but also at the date of the hearing. Arguably in the light of that finding it is apparent from the decision that although the Judge referred to *Rai v Entry Clearance Officer* [2017] EWCA Civ 320 he failed to apply the principles set out therein. The key question then became whether the Appellant would have settled in the UK but for the historic wrong given that the Appellant made an application for entry clearance at the same time as his mother. It is arguably difficult to see any reason why that should not have been answered in his favour. Arguably there was no public interest in the Appellant being refused entry clearance in the circumstances, and the Judge’s approach to s117A-B was flawed.”

3. The respondent served a Rule 24 reply. It says this:

“(1) The respondent to this appeal is the Secretary of State for the Home Department. Documents relating to this appeal should be sent to the Secretary of State for the Home Department, at the above address.

(2) The respondent does not oppose the appellant’s application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing.”

4. At the hearing today Ms Fijiwala has confirmed that the respondent does not seek to oppose the setting aside of the First-tier Tribunal’s decision, but she has sought to raise for the first time a suggestion that the appellant’s father would not have settled in the United Kingdom had he been allowed to do so. It is much too late for any such suggestion to be made. The point of the Rule 24 reply process is to put the appellant on notice of any arguments on which the Secretary of State may seek to rely at the resumed hearing.

5. In all the circumstances, that being plainly the only point in issue and having been unopposed before the First-tier Tribunal, I am satisfied that the proper outcome is to set aside the decision of the First-tier Tribunal and allow the appeal.

### **Conclusions**

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 the decision.

I re-make the decision in the appeal by allowing it.

Signed: **Judith A J C Gleeson**  
2018

Date: 15 February

Upper Tribunal Judge Gleeson