



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

Appeal Number: HU/13428/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 January 2019**

**Decision & Reasons Promulgated  
On 25 January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**MR T B R  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Jaisri, counsel  
For the Respondent: Ms S Cunha, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nepal born on 8 October 1987. The appellant had sought entry clearance to the UK as the adult dependent child of his mother, a widow of a former Gurkha soldier. His application was refused by the respondent. That decision was upheld on appeal to the First-tier Tribunal.
2. First-tier Tribunal Judge Rowlands (“the FTTJ”) found that the appellant was not dependent on his mother, that he had a source of income in Nepal and that Article 8 was not engaged. He dismissed the appeal on human rights grounds.
3. Permission to appeal was granted by Upper Tribunal Judge Rintoul in the following terms:

“It is arguable that First-tier Tribunal Judge Rowlands misdirected himself in law in assessing whether there was family life and thus wrongly considered only financial dependence.

All grounds are arguable.

It is my preliminary view that the decision did involve the making of an error of law capable of affecting the outcome, and that the decision of the First-tier Tribunal should be set aside, the appropriate course of action being to remit the case to the First-tier Tribunal for a fresh determination on all issues.

Unless within ten working days of the issue of these directions there is any written objection to this course of action, supported by cogent argument, the Upper Tribunal will proceed to determine the appeal without an oral hearing and will remit it to the First-tier Tribunal.

In the absence of a timely response by a party, it will be presume that it has no objection to the course of action proposed.”

4. Unfortunately, despite these directions, the Upper Tribunal issued standard directions and the matter was listed for oral hearing before me. However, both Mr Jaisri and Ms Cunha were in agreement that there was no objection to the course proposed by UTJ Rintoul for the reasons he had given in granting permission to appeal.
5. I adopt UTJ Rintoul’s preliminary view and find that the decision of the FTTJ contains a material error of law in that the FTTJ misdirected himself as to the assessment required in order to decide whether family life existed between the appellant and his mother. His assessment was consequently flawed in that the FTTJ based his decision solely on his findings with regard to the absence of financial dependence.
6. The nature of the appellant’s relationship with his mother is at the crux of the appeal on Article 8 grounds. The decision must be set aside in its entirety.

### **Decision**

7. The making of the decision of the First-tier Tribunal involved a material error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from FTTJ Rowlands.
8. The appellant is entitled to anonymity in these proceedings and I make a direction accordingly.

**A M Black**

Deputy Upper Tribunal Judge

Dated: 24 January 2019

**Anonymity Direction – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

***A M Black***

Deputy Upper Tribunal Judge

Dated: 24 January 2019