



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

Appeal Numbers: HU/24340/2018
HU/18400/2018

THE IMMIGRATION ACTS

**Field House
On 19 December 2019**

**Decision & Reasons Promulgated
On 30 December 2019**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**DAL MAYA GURUNG
PADAM BAHADUR GURUNG
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr R. Jesurum, Counsel

For the Respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

**DECISION PURSUANT TO RULE 40(3)(a) OF THE TRIBUNAL PROCEDURE
(UPPER TRIBUNAL) RULES 2008**

1. The appellants are citizens of Nepal, born in 1977 and 1979, respectively. They appealed to the First-tier Tribunal (“FtT”) against decisions dated 5 November 2018 and 10 August 2018, respectively, to refuse entry clearance as the dependent children of an ex Gurkha soldier. The FtT dismissed the appeal of each appellant.
2. At the hearing before me on 19 December 2019 it was agreed between the parties that the FtT erred in law in relation to each appellant for the reasons advanced in the grounds of appeal upon which permission to

appeal was granted, as further explained in the skeleton argument dated 18 December 2019, and in particular in relation to:

- (i) the conclusion that there was no documentary evidence of the first appellant's divorce ; and
 - (ii) the finding that the first appellant's account of events is inconsistent with "cultural norms"; and
 - (iii) the application of the correct test for family life in Gurkha cases; and
 - (iv) a failure to consider relevant evidence, for example evidence of financial support from the sponsor.
3. It was also agreed between the parties that the errors of law in relation to each appellant are such as to require the decision(s) of the FtT to be set aside and for the appeals to be remitted to the FtT for a hearing *de novo*.
 4. In the circumstances, I set aside the decision of the FtT for error of law and remit the appeals to the FtT for a hearing *de novo*, in respect of each appellant, before a judge other than First-tier Tribunal Judge Khawar, with no findings of fact preserved.
 5. In remitting the appeals I have had regard to paragraph 7.2 of the Practice Statement of the Senior President of Tribunals.
 6. Pursuant to rule 40(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) are required, the decision being made with the consent of the parties.

Upper Tribunal Judge Kopieczek

dated 19/12/19