



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

Appeal Number: HU/01690/2019 (P)

THE IMMIGRATION ACTS

**Decided under rule 34
On 23 June 2020**

**Decision & Reasons Promulgated
On 8th July 2020**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**MANIKA [R]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant was born in Nepal and was refused entry clearance to join her parents in the United Kingdom as an adult dependent relative on 10 December 2018. She appealed against this decision, but her appeal was dismissed by First-tier Tribunal Judge Grimmett, in a decision promulgated on 31 July 2019.
2. She appealed against this decision and First-tier Tribunal Judge Keane granted her permission to appeal to the Upper Tribunal on 10 March 2020.

He found that it was arguable that First-tier Tribunal Judge Grimmett had not made the necessary findings of fact or considered whether a historic injustice had occurred.

3. On 2 April 2020 Upper Tribunal Judge Jackson gave directions about the future conduct of the error of law proceedings in the light of the restrictions imposed in response to the Corona Virus Pandemic. She also said that she was minded to find that there had been a material error of law in First-tier Tribunal Judge Grimmett's decision, to set aside her decision and remit the appeal to the First-tier Tribunal.
4. She gave the parties 21 days to object to this course of action and no such objections have been received to date by the Upper Tribunal. Therefore, I have proceeded to decide whether there was an error of law on the papers, as it is in the interests of justice for there to be no further unnecessary delay in this appeal.

ERROR OF LAW DECISION

5. Counsel for the Appellant had set out the relevant case law in the Appellant's skeleton argument but First-tier Tribunal Judge Grimmett did not refer to this document or its contents in any particularity. At most, in her very short decision, she referred to Ghising & Others (Gurkhas/BOC'S: Historic Wrong; weight) [2013] UKUT 567 (IAC) in passing.
6. She failed to refer to R (Gurung) v Secretary of State for the Home Department [2013] EWCA Civ 8 and the historic injustice principle and possible remedy. It is clearly arguable that this undermined her consideration of proportionality for the purposes of Article 8(2) of the European Convention on Human Rights.
7. Her findings of fact in relation to dependency were also undermined by the fact that the allegation about the funds sent being used by the Appellant's siblings was never put to her sponsor or challenged. She was also not asked about the Appellant's grandfather and the Judge merely assumed that he was still alive. First-tier Tribunal Judge Grimmett also failed to take

into account the letter confirming that the Appellant was not in employment in Nepal. In addition, she did not refer or apply the decision in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 32 and Rai v Entry Clearance Officer [2017] EWCA Civ 320. All of these errors undermined First-tier Tribunal Judge Grimmett's findings in relation to family life for the purposes of Article 8(1) of the European Convention on Human Rights.

8. For all of these reasons, First-tier Tribunal Judge Grimmett's decision contained material errors of law.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) First-tier Tribunal Judge Grimmett's decision is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Grimmett.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 23 June 2020